

Office of Audit Services



Public Agency Review

City of Manteca

**Employer Code: 0934
CalPERS ID: 7604626108
Job Number: P13-074**

July 2014



California Public Employees' Retirement System
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July 28, 2014

Employer Code: 0934
CalPERS ID: 7604626108
Job Number: P13-074

City of Manteca
Suzanne Mallory, Finance Director
1001 W. Center Street
Manteca, CA 95337

Dear Ms. Mallory:

Enclosed is our final report on the results of the public agency review completed for the City of Manteca (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your Agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Phyllis Miller
PHYLLIS MILLER, Acting Chief
Office of Audit Services

Enclosure

cc: Council, City of Manteca
Karen L. McLaughlin, City Manager, City of Manteca
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Renee Ostrander, Assistant Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS

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RESULTS IN BRIEF

The primary objective of our review was to determine whether the City of Manteca (Agency) complied with applicable sections of the California Government Code, California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page two of this report.

- Payroll information was incorrectly reported.
- Special compensation was not reported as required by CCR Section 571.
- Pay schedule did not meet all of the requirements of CCR Section 570.5.
- Tax Deferred Member Paid Contributions were incorrectly reported.
- Unused Sick Leave was incorrectly reported.
- Part-time employees were not enrolled as required.
- An employee was not enrolled as required.

OAS recommends the Agency comply with applicable sections of the California Government Code, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

SCOPE

The Agency contracted with CalPERS effective February 1, 1973, to provide retirement benefits for local safety (police and firefighters) and miscellaneous employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the Board approved plan for fiscal year 2013-2014, the OAS reviewed the Agency's payroll reporting and member enrollment related to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from July 1, 2010 through June 30, 2013. The on-site fieldwork for this review was conducted from March 24, 2014 through March 28, 2014. The review objectives and a summary of the procedures performed are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency incorrectly reported payroll information.

Condition:

- A. The Agency reported an incorrect payrate for two employees. Specifically, an elected official earned \$350.00 per month or \$2.02 an hour. However, the Agency incorrectly reported the hourly rate of \$4.04 an hour which equated to \$700.25 per month. Similarly, a Fire Battalion Chief earned a payrate of \$41.59 an hour, but the Agency incorrectly reported the hourly rate of \$58.22 an hour. As a result, payrates were over reported to CalPERS and did not agree with the payrate listed in the Agency's pay schedule. Payrate is an important factor in computing a member's retirement allowance because service credit and final compensation are directly related to the payrate and earnings reported for a member.
- B. The Agency reported incorrect number of work week hours for two Safety-Fire employees. These employees' normal work schedule consisted of a 40-hour work week. However, the Agency reported the scheduled work week as 56 hours in the pay period ending May 31, 2013. Therefore, the Agency did not report the correct work week schedule for these employees.

Recommendation:

The Agency should ensure that the payrates are correctly reported and in accordance with approved pay schedules. The Agency should also ensure scheduled hours are reported correctly to CalPERS.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 20636
CCR: § 570.5

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2: The Agency did not report special compensation as required by the CCR.

Condition:

- A. The Agency incorrectly reported Longevity Pay as special compensation in the amount of \$2,266.60 for an employee. According to the labor policy, mid-managers with ten years of service are eligible for twenty percent of one month's base salary if the employee has not received any serious discipline during the twenty-four month period immediately preceding the anniversary date upon which payment of the benefit is based. Pursuant to the CCR Section 571, Longevity Pay did not meet the definition of special compensation because it was contingent upon disciplinary action. Therefore, it should not have been reported to CalPERS.
- B. The Agency did not report special compensation of Uniform Allowance as required by the CCR. Specifically, we noted the following instances.
- The Agency incorrectly reported Uniform Allowance for a Safety-Police employee as a lump sum instead of when earned. Specifically, the Agency paid and reported \$1,000.00 Uniform Allowance in July 2012. The Police Officers Association labor policy provides for a \$1,000.00 Uniform Allowance on July 1 each year. Pursuant to Government Code Section 20636(c)(3), the Agency shall identify the pay period(s) in which compensation was earned.
 - The Agency incorrectly reported Uniform Allowance as a lump sum instead of when earned for a General Service employee. Specifically, the Agency paid and reported \$150.00 Uniform Allowance in July 2012. The General Services Group labor policy provides for an annual Uniform Allowance of \$150.00 for the purchase of non-steel boots. Pursuant to Government Code Section 20636(c)(3), the Agency shall identify the pay period(s) in which compensation was earned.
 - The Agency did not report the monetary value of the maintenance of uniforms for an employee as required by the CCR. The Agency provided uniform service to employees in the General Services Group as specified in the labor policy. CCR Section 571 requires the monetary value for the purchase, rental, and /or maintenance of required clothing, a statutory item, be reported as special compensation. However, the Agency did not report the value of the uniform maintenance as special compensation.

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- The Agency incorrectly reported Uniform Allowance for a Safety-Fire employee. The Agency's labor policy provides Safety-Fire employees an annual uniform allowance of \$825.00 for uniform service provided by the Agency. According to the labor policy, if any positive balance remains between the \$825.00 and the actual cost of the uniform service, the Agency will pay those employees the positive balance in the first pay period of August 2012. Although the Agency reported the unused allowance balance of \$232.43, it did not report the actual uniform service cost of \$592.57 as required. Pursuant to Government Code Section 20636(c)(3), the Agency shall identify the pay period(s) in which compensation was earned.

C. The Agency did not report special compensation of Holiday Pay earned by an employee who worked on a holiday in the period ending May 31, 2013. The employee was required to work without regard to holidays and received additional compensation. The Agency incorrectly reported Holiday Pay in the pay period ending June 15, 2013 instead of in the period earned. Pursuant to Government Code Section 20636(c)(3), the Agency shall identify the pay period(s) in which compensation was earned.

Recommendation:

The Agency should ensure Longevity Pay meets the definition as listed in the CCR and is contained in a written labor policy.

The Agency should ensure that the Uniform Allowance is reported as a special compensation for each pay period in which it was earned.

The Agency should ensure that the Holiday Pay for all eligible employees is reported in the period earned.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20630, § 20636

CCR: § 571

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3: The Agency's pay schedule did not meet all of the requirements of the CCR.

Condition:

The Agency's pay schedule did not identify the position title and payrate for every employee position as required by CCR Section 570.5. In addition, the Agency's pay schedule referenced another document in lieu of disclosing payrates.

Only compensation earnable as defined under Government Code Section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. For purposes of determining the amount of compensation earnable, a member's pay rate is limited to the amount identified on a publicly available pay schedule. Per CCR Section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws.
- Identify the position title for every employee position.
- Show the payrate as a single amount or multiple amounts within a range for each identified position.
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually.
- Be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website.
- Indicate an effective date and date of any revisions.
- Be retained by the employer and available for public inspection for not less than five years.
- Not reference another document in lieu of disclosing the payrate.

Pay amounts reported for positions that do not comply with the pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). There are no exceptions included in Government Code Section 20636(b)(1).

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Recommendation:

The Agency should ensure its pay schedule meets all the CCR requirements.

The Agency should work with CASD to make any necessary adjustments to active or retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636(a), § 20636 (b)(1), § 20636 (d)
CCR: § 570.5

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4: The Agency did not report correct Tax Deferred Member Paid Contributions.

Condition:

The Agency did not report the correct Tax Deferred Member Paid Contribution (TDMPC) amount for an employee who was subject to the Public Employees' Pension Reform Act of 2013 (PEPRA) requirements. The member contribution rate for employees subject to PEPRA was 6.75 percent. However, the employee's written labor policy effective July 1, 2012 included a provision that all members pay a total of six percent of the member retirement contribution through June 30, 2015. OAS verified the employee paid six percent of the retirement contribution in the pay period ending May 31, 2013 and the Agency paid the additional 0.75 percent. However, the Agency incorrectly reported the entire 6.75 percent as TDMPC.

OAS also found the Agency did not inform CalPERS that the Agency would pay a portion of the member's contribution due to an impairment of the employee's written labor policy. If an Agency determines that an existing labor policy is impaired, the Agency must communicate with a written certification to formally notify and certify to CalPERS that it will not comply with the requirements of one or more provisions of the Government Code Section 7522.30 until such time as the labor policy expires under its terms, or is terminated, amended, reviewed, or extended.

Recommendation:

The Agency should ensure that it correctly reports member contributions. Additionally, if the Agency continues to pay member contributions, then it should ensure a certification is submitted to CalPERS as required by PEPRA.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 7522.04, § 7522.30

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5: The Agency certified an incorrect amount of unused sick leave.

Condition:

The Agency certified an incorrect number of sick leave days for a retiree. Specifically, the Agency allowed a cash-out of up to 50 percent of the retiring member's unused sick leave balance at retirement. After the cash-out, the retiree had an annual sick leave balance of 909.38 hours or 113.67 days. However, the Agency incorrectly certified 970.5 hours, which equated to 121.32 days at retirement. Retiring members are eligible for additional service credit for unused sick leave accrued by the member during the normal course of employment. The total number of unused sick leave hours at retirement is converted to determine the additional service credit.

Recommendation:

The Agency should ensure that retiring members' unused sick leave balances are correctly reported to CalPERS.

The Agency should work with CASD to make any necessary adjustments to the retired member's account pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20965

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6: The Agency did not enroll eligible part-time employees as required.

Condition:

- A. The Agency did not enroll eligible part-time employees into membership as required. For instance, one part-time employee worked a total of 1,364.5 hours in fiscal year 2012-13 and met the 1,000-hour membership eligibility requirements on April 30, 2013. The employee should have been enrolled on May 1, 2013. However, the Agency enrolled the eligible employee on March 1, 2014. In addition, the Agency did not enroll two other employees who worked a total of 1,042.0 and 1,398.5 hours in fiscal year 2012-13 and met the 1,000-hour membership eligibility requirements on June 30, 2013, and April 30, 2013, respectively. The Agency did not enroll and report the eligible employees.
- B. The Agency failed to enroll an eligible employee who had previously established CalPERS membership. The Agency should have enrolled the employee at the beginning of employment with the Agency on June 27, 2012. Instead, the Agency enrolled the employee on October 16, 2013.

For employees who completed 1,000 hours within a fiscal year, membership shall be effective no later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed, pursuant to Government Code Section 20305. In addition, Agencies are required to enroll employees with previous CalPERS membership immediately upon hire.

Recommendation:

The Agency should monitor the hours worked by temporary/part-time employees to ensure the employees are enrolled when membership eligibility requirements are met. In addition, the Agency should verify the membership status of all temporary/part-time employees. If prior membership was established, the Agency should enroll employees into membership at the beginning of their employment with the Agency.

The Agency should work with CASD to make any necessary adjustments to the active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20028, § 20120, § 20121, § 20122, § 20160, § 20305(a)

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7: The Agency did not enroll an employee incorrectly classified as an independent contractor.

Condition:

The Agency incorrectly classified an employee as an independent contractor and therefore, did not enroll the employee into CalPERS membership. OAS determined this individual worked in an employer/employee relationship. The Agency engaged the individual to serve as a Code Enforcement Officer for \$30.00 an hour. The individual reported to the former Police Chief. The duties of the individuals included routine assignments related to code enforcement such as, responding to citizen complaints, conducting field investigations, pursuing administrative activities necessary to obtain compliance with zoning, related land use codes, city ordinances and Agency policies, and preparing criminal and civil case filings for court dispositions.

In another instance, the same individual was again misclassified as an independent contractor when the Agency engaged the individual to serve as an Animal Control Services Supervisor for \$30.00 an hour. The Agency's contract with the individual required reporting to the Police Chief or his designee, and the duties included overseeing the daily operations and activities related to animal control, responding to community complaints, caring for and impounding animals, initiating enforcement action, issuing citations and notices, and investigating cases of cruelty, neglect and abandonment.

OAS verified in my|CalPERS database and found that the employee was an active member who was enrolled into membership effective September 17, 2001 with the City of Stockton. The employee began working for the Agency effective January 19, 2011. As a result, the Agency should have enrolled the employee into membership upon hire.

For the purposes of the PERL and for programs administered by the Board, the standard used for determining whether an individual is the employee of another person or entity is the California common law employment test as set forth in the California Supreme Court case entitled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist. v. Superior Court (Cargill)*, (2004) 32 Cal. 4th 491, and which was adopted by the Board in two precedential decisions, *In the Matter of Lee Neidengard*, Precedential Decision No. 05-01, effective April 22, 2005 and *In re the Matter of Galt Services Authority*, Precedential Decision No. 08-01, effective October 22, 2008.

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Applying the California common law employment test, the most important factor in determining whether an individual performs services for another as employee is the right of the principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

Other factors to be taken into consideration under the common law employment test are as follows:

- (a) whether or not the one performing services is engaged in a distinct occupation or business;
- (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal or by a specialist without supervision;
- (c) the skill required in the particular occupation;
- (d) whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (e) the length of time for which the services are to be performed;
- (f) the method of payment, whether by the time or by the job;
- (g) whether or not the work is a part of the regular business of the principal; and
- (h) whether or not the parties believe they are creating the relationship of employer-employee.

Recommendation:

The Agency should ensure that independent contractors are properly classified and not working in an employer/employee relationship. The Agency should also ensure that common law employees who meet eligibility requirements are enrolled into membership and reported to CalPERS.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20028(b), § 20128, § 20160, § 20300, § 20505

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CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix A. OAS limited the test of transactions to employee samples selected from the Agency's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, California Code of Regulations.

Respectfully submitted,

Original signed by Phyllis Miller
PHYLLIS MILLER, CPA, CIA
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Manager
Janice Ang, Associate Program Evaluator

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APPENDIX A

OBJECTIVES

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OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the Agency complied with applicable sections of the California Government Code (sections 20000 et seq.) and Title 2 of the CCR.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2010 through June 30, 2013.

SUMMARY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

- ✓ Reviewed:
 - Provisions of the contract and contract amendments between the Agency and CalPERS
 - Correspondence files maintained at CalPERS
 - Agency Board minutes and Agency Board resolutions
 - Agency written labor policies and agreements
 - Agency salary, wage and benefit agreements including applicable resolutions
 - Agency personnel records and employee hours worked records
 - Agency payroll information including Contribution Detail Transaction History reports
 - Other documents used to specify payrate, special compensation, and benefits for all employees
 - Various other documents as necessary
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meeting laws.
- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.

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- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

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APPENDIX B

AGENCY'S WRITTEN RESPONSE



July 15, 2014

CITY OF MANTECA

FINANCE DEPARTMENT

California Public Employees' Retirement System
Office of Audit Services
Margaret Junker, Chief Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701

RE: Draft Compliance Review Report Employer Code 0934

Dear Ms. Junker:

The Agency has reviewed the draft report issued to us on June 23, 2014 concerning the Agency's compliance review. Enclosed is our response to the findings.

Please let us know if you have any additional questions after reviewing our responses.

Best regards,

Suzanne Mallory
Finance Director

Office of Audit Services Review Results
City of Manteca
Employer Code 0934

Finding 1: The Agency incorrectly reported payroll information.

The Agency underwent a software conversion as of January 1, 2013. The reporting errors cited were a result of the conversion. The Agency has corrected the errors and will work with CASD to make any additional adjustments to member accounts as necessary.

Finding 2: The Agency did not report special compensation as required by the CCR.

A. The Agency was unaware that the Longevity Pay as defined in some of its Memoranda of Understanding (MOU) did not meet the definition of special compensation as defined by CCR Section 571. The Agency will work with CASD and its bargaining units to take corrective action and to refine the basis of receiving Longevity Pay.

B1. The Agency was unaware that it could not report Uniform Allowance in a lump sum. The Agency will work with CASD and its bargaining units to take corrective action.

B2. The Agency was unaware that the monetary value of the maintenance of uniforms was to be reported as special compensation. The Agency will work with CASD and its bargaining units to take corrective action.

C. The Agency's past practice was to report holiday special compensation pay in the period in which it was paid. The Agency is now aware that it must report in the period in which it was earned regardless of when it was paid and does not anticipate this reporting error occurring in the future. The Agency will work with CASD to make any necessary adjustments to active and retired member accounts.

Finding 3: The Agency's pay schedule did not meet all of the requirements of the CCR.

The Agency will update all pay schedules to meet the CCR requirements and will work with CASD to make any necessary adjustments to active or retired member accounts.

Finding 4: The Agency did not report correct Tax Deferred Member Paid Contributions (TDMPC).

The employee identified was the Agency's first employee enrolled under PEPR. Due to the conflict between PEPR and the Agency's negotiated labor agreement the Agency incorrectly reported the TDMPC for a single period only (5/31/13). Corrective action was immediately taken and all other periods have been correctly reported.

The Agency understands that it must report a MOU impairment to CalPERS as required by PEPR regarding the Agency's negotiated labor agreement. The Agency will work with CASD to make any necessary adjustments to active and retired member accounts.

Office of Audit Services Review Results
City of Manteca
Employer Code 0934

Finding 5: The Agency certified an incorrect amount of unused sick leave.

The error in question occurred prior to the implementation of My CalPERS. With the implementation of the new processes associated with My CalPERS, the Agency does not anticipate this error occurring in the future. The Agency will work with CASD to make any necessary adjustments to the retired member's account.

Finding 6: The Agency did not enroll eligible part-time employees as required.

A. The Agency underwent a software conversion as of January 1, 2013. During the conversion period, the Agency did not correctly monitor and track the total number of hours worked by part-time employees. The Agency has implemented additional procedures to ensure that it correctly identifies any employee who completes 1,000 hours within a fiscal year. The Agency will work CASD to make any necessary adjustments to active and retired member accounts.

B. The Agency has a procedure in place that requires all new employees to identify if they have established CalPERS membership at another agency. There is not a record that the identified employee indicated prior CalPERS membership. The employee in question has been enrolled in CalPERS and the Agency will work with CASD to make any additional adjustments to the member's account.

Finding 7: The Agency did not enroll an employee incorrectly classified as an independent contractor.

The Agency believed that the employee in question was correctly classified as independent contractor. With the additional information provided regarding the common law employment test the Agency concurs that the individual in question should have been classified as an employee. The Agency will work with CASD to make any additional adjustments to the member's account.