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December 16, 2022

Mr. Andrew White, Regulation Coordinator
California Public Employees' Retirement System (CalPERS)
P.O. Box 942720
Sacramento, CA 94229-2720

RE: Proposed adoption of section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR).

Dear Mr. White:

On behalf of the California State Association of Counties (CSAC), representing all 58 counties in the state, I would like to thank you for the opportunity to provide comments and feedback on this proposed rulemaking action, which seeks to define "limited duration" employment and provide clarity and uniformity for CalPERS-covered employers.

This rulemaking action comes at a time of significant labor disruption and difficulty hiring in almost every economic sector. As referenced in our July 21, 2022, letter commenting on the initial rulemaking action, some counties are reporting 20 and even 30 percent vacancy rates, and not just for traditionally hard-to-fill positions. Nearly three out of four counties have less general fund revenue per capita now than they did before the Great Recession, in real dollars. This alarming and little-known fact is even more daunting when considering the significant downstream impact this rulemaking action would have on critical and difficult positions, such as first responders, health care professionals (including critically impacted behavioral health positions), and other positions that are relied upon intermittently, such as certain positions within the voting and elections workplace.

Layering new restrictions and administrative requirements on counties would lead to greater disruptions in county services. At a time when the state is expected to experience significant budgetary shortfalls, it is not prudent to alter the longstanding requirement that a retired person may be temporarily employed for up to 960 hours in any given fiscal year without reinstatement. With this context, we offer the following comments.

Improvement in the definition of limited duration employment.

The revised text provides much needed clarity to the definition of "limited duration" under proposed section 574.1(a). The amended language establishes an identifiable start date for post-retirement appointments and is an improvement from the initial text proposed during the 45-day comment period.

The notification requirements are administratively burdensome.

We were disappointed to see additional mandates under proposed section 574.1(a)(2), requiring a CalPERS-covered public employer to notify CalPERS of an appointment end date not to exceed 24 consecutive months from the appointment start date and any end date of an extension. These administratively burdensome changes in the revised text would likely require hundreds, if not thousands, of notifications to be sent from counties to CalPERS. The requirement that a CalPERS covered employer

notify CalPERS of an appointment end date is not administratively feasible due to the temporary nature of some of the appointments. For example, if the retired annuitant was appointed to a position that was part of a project with a six-month timeframe and the project ultimately took nine months, would the appointment authority have to temporarily prohibit the employee from working at the end of six months? Conversely, would the CalPERS-covered employer be required to submit an addendum if the retired annuitant worked for nine months instead of the six months, as originally noticed?

We request that CalPERS seek other, less administratively burdensome options to would reduce the reporting requirements for CalPERS-covered public employers. For example, the regulations could be amended to specify that CalPERS-covered employers must notify CalPERS of an appointment start date since the "end date" requirements are clear.

The public meeting certification process is administratively burdensome.

The mandate under proposed section 574.1(a)(3)(A), which requires the governing body of a CalPERS-covered contracting agency to certify, by resolution at a public meeting, its approval of the appointment extension that includes the reason for extending the appointment, reason the duties cannot be performed by non-retired employees, details in regard to the plan for transitioning the duties to non-retired employees, and other mandates, would create a substantial workload for counties. Specifically, these mandates would require several hours of staff time for each county to develop the mandated resolution and required findings, and subsequently place the resolution on the agenda for a vote.

Adding these new requirements has the potential to significantly slow county business as routine extensions and personnel transactions would require resolutions under these proposed regulations. We therefore request that the text be revised to create a certification process similar to the process described under proposed section 574.1(a)(3)(B), which authorizes the California Department of Resources (CalHR) to certify the requirements under section 574.1(a)(3)(A) by memorandum. The streamlined process under section 574.1(a)(3)(B) available to the state should also be available to other CalPERS-covered employers.

The extension period timelines under proposed section 574.1(a)(4) are rigid and impractical.

Under proposed section 574.1(a)(4), the first extension period starts the day after end of the 24 consecutive month period for the initial limited term of appointment. There are many circumstances where a retired annuitant may work for 24 consecutive months, take a break, and then six months or 12 months later begin to work as a retired annuitant again. Under the proposed regulations, the first extension begins the day after the end of the 24-month period, meaning the maximum amount of time that a retired annuitant can work is for 48 consecutive months, regardless of the amount of time actually worked during that period.

Coupled with the requirements under proposed section 574.1(a)(3), which requires extensions to go through governing body via resolution, this mandate would have a substantial impact on the amount of time that a limited duration employee can serve beyond the initial 24-month period, rendering some extensions meaningless since they would first require the process under proposed section 574.1(a)(3). We therefore request language specifying that the first and second extension periods begin on the first day *worked* after the end of the 24 consecutive period and the first day *worked* after the end of the first extension, respectively. The fiscal consequences of not securing these changes may be severe, as it would significantly reduce the amount of time that a retired annuitant could work beyond the initial 24-month period and two 12-month extensions. Some counties, particularly for behavioral health positions, could

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potentially be forced to rely on contract staff, which often results in significantly higher costs than civil servants. At a time when the state is suffering a severe shortage in behavioral health clinicians, it would be catastrophic to adopt inflexible regulations that would prevent counties from utilizing all resources available to address this public health crisis.

There is no administrative flexibility to suspend these regulations during a local or state disaster emergency, public health crisis, or other emergency.

On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which suspended the work hour limitations for retired annuitants. As the COVID-19 global pandemic has illustrated, during a local or state emergency, many critical positions may be needed as part of the response. For example, first responders play a critical role in responding to emergencies as well as health professionals and other critically needed positions.

We respectfully request that additional language be added to provide an opportunity for a CalPERS-covered employer to petition CalPERS to waive some or all of the requirements of proposed section 574.1 during a declared local or state disaster emergency, public health crisis, or another emergency.

Again, CSAC appreciates the opportunity to provide comments on this proposed rulemaking action. Please do not hesitate to contact me at 916.247.8692 with any questions or comments.

Sincerely,



Kalyn Dean
Legislative Representative