Title 2. Administration

Proposed Adoption of Section 574.1 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

§574.1 Definition of Limited Duration Employment

(a) For purposes of this section, the following definitions shall apply:

(1) Retired person means a person who has been retired under CalPERS.

(2) Employer means a CalPERS-covered public employer.

(b) For purposes of clarifying Government Code sections 7522.56, 21224, and 21229, “limited duration” is defined as a limit of twenty-four consecutive months per appointment of a retired person by an employer, regardless of how many months or hours in those months the retired person served in the appointment during that twenty-four consecutive month period.

(1) For purposes of this subdivision (b), an appointment is defined as either:

(A) A post-retirement position under which no duties overlap with the duties of another post-retirement position subject to this section that the retired person performed after retirement for the same employer, or

(B) A post-retirement position for a different employer from any previous employer the retired person performed duties for after retirement while in a position subject to this section.

(2) For purposes of this subdivision (b), appointment start date is defined as the first day the retired person serves any hours in the appointment or the effective date of this section, whichever is later, and initiates time counted towards the twenty-four consecutive month limit. Employment by a retired person prior to the effective date of this section will not count towards the limit of twenty-four consecutive months.

(3) An employer must notify CalPERS of an appointment end date not to exceed twenty-four consecutive months from the appointment start date and any changes to the appointment end date, including but not limited to the end date of an extension as prescribed in paragraph (4) of this subdivision (b) and end date of an extension authorized under an exemption as prescribed in paragraph (5) of this subdivision (b).

(4) An employer may extend the appointment no more than twice, up to twelve consecutive months per extension, beyond the limit of twenty-four consecutive months under this subdivision (b), if the requirements below are met:

(A) The employer’s governing body must certify by resolution at a public meeting each of the following:

(i) The position title,

(ii) The description of the duties to be performed during the extension,

(iii) The reason the appointment needs to be extended,

(iv) The reason the duties under subparagraph (ii) above cannot be performed by non-retired employees,

(v) That a plan is in place to transition the duties under subparagraph (ii) above to non-retired employees or another retired person,

(vi) The anticipated end date for the extension, and

(vii) Its approval of the extension.

(B) For purposes of this paragraph (4), the first extension period start date is defined as the day after the end of the twenty-four consecutive month period under this subdivision (b), and the second extension period start date is defined as the day after the end of the first extension period, thirty-six consecutive months from the appointment start date, regardless of whether or when the employer extended the appointment and regardless of how many months or hours in those months the retired person served during either extension period. The retired person may not continue serving in the appointment beyond the end of the twenty-four consecutive month or thirty-six consecutive month period described above until the employer satisfies the requirement in subparagraph (A) of this paragraph (4) for each extension.

(C) The employer shall retain the resolution required in subparagraph (A) of this paragraph (4) for each extension and must notify CalPERS of the approved extension. The employer shall provide the resolution to CalPERS upon request during any future investigations or audits.

(5) If an employer determines the appointment is needed beyond the two extension periods, forty-eight consecutive months from the appointment start date, as calculated under subparagraph (B) of paragraph (4) of this subdivision (b), the employer may approve an exemption for a continuous extension if the appointment does not exceed 120 hours per fiscal year and the requirements below are met.

(A) The retired person may not have more than one appointment at a time for which the same employer has approved an exemption.

(B) The employer's governing body must certify by resolution at a public meeting each of the following:

(i) The position title,

(ii) The description of the duties to be performed,

(iii) The reason the appointment needs to be extended,

(iv) The reason the duties under subparagraph (ii) above cannot be performed by either non-retired employees or another retired person,

(v) The appointment will not exceed 120 hours per fiscal year,

(vi) The retired person will not have more than one appointment at a time for which the same employer has approved an exemption,

(vii) The anticipated end date for the exemption, and

(viii) Its approval of the exemption.

(C) The employer must satisfy the requirement in subparagraph (B) of this paragraph (5) for the exemption within twelve consecutive months following the end of the second extension period under paragraph (4) of this subdivision (b).

(D) The retired person may not continue serving in the appointment beyond the end of the forty-eight consecutive month period until the employer satisfies the requirement in subparagraph (B) of this paragraph (5) for the exemption.

(E) The employer shall retain the resolution required in subparagraph (B) of this paragraph (5) for the exemption and must notify CalPERS of the approved exemption. The employer shall provide the resolution to CalPERS upon request during any future investigations or audits.

(6) For purposes of the certifications required under subparagraph (A) of paragraph (4) and subparagraph (B) of paragraph (5) of this subdivision (b), the following shall apply:

(A) Except as otherwise provided in this paragraph (6), for an appointment with the state, the certifications shall be made by the Department of Human Resources by memorandum. The Department of Human Resources may establish a process to delegate certification authority to individual state agencies, but may audit the process to determine if abuses of the system occur. If necessary, the Department of Human Resources may assume an agency's certification authority for retired persons.

(B) For an appointment with the California State University, the certifications shall be made by the Trustees of the California State University by resolution at a public meeting.

(C) For an appointment with the legislature, the certifications shall be made by the Senate Committee on Rules or the Assembly Rules Committee, as applicable, by resolution at a public meeting.

(D) All other requirements for extensions and exemptions set forth in paragraphs (4) and (5) of this subdivision (b) apply to appointments with the state, California State University, and legislature.

(7) An annual report of the extensions approved by the employer pursuant to paragraph (4) and the exemptions approved by the employer pursuant to paragraph (5) will be provided to the board and publicly available.

(c) For purposes of clarifying Government Code sections 7522.56, 21224, and 21229, if the terms of a collective bargaining agreement explicitly provide the duration of permissible employment for the retired person, then subdivision (b) shall not apply to the employer and retired person subject to that collective bargaining agreement but shall instead be subject to “limited duration” defined in this subdivision (c). “Limited duration” is defined as the duration provided in the applicable collective bargaining agreement, not to exceed sixty consecutive months, for the post-retirement appointment of a retired person by an employer. The appointment duration is consecutive regardless of how many months or hours in those months the retired person served in the appointment during that appointment duration.

(1) For purposes of this subdivision (c), appointment start date is defined as the first day the retired person serves any hours in the appointment and initiates time counted towards the duration limit defined in the applicable collective bargaining agreement or sixty consecutive months, whichever is less.

(2) An employer must notify CalPERS of an appointment end date not to exceed the duration defined in the applicable collective bargaining agreement or sixty consecutive months from the appointment start date, whichever is less, and provide CalPERS a copy of the applicable collective bargaining agreement specifying the duration of that post-retirement appointment.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision (c), for post-retirement appointments in effect prior to the effective date of this section, the appointment start and end dates shall be the start and end dates established in accordance with the collective bargaining agreement prior to the effective date of this section.

(4) A retired person serving in a post-retirement appointment in accordance with this subdivision (c) cannot serve in another post-retirement appointment with the same employer subject to this section.

(d) Retired persons and employers in violation of this section will be subject to Government Code sections 21202, 21220, and 7522.56, as applicable.