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Announcements

Circular Letter

July 2, 2021

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Distribution: IV, V, VI, X, XII, XVI

To: All CalPERS Employers
Subject: Changes to Governor's Executive Order N-08-21

Purpose

The purpose of this Circular Letter is to provide you guidance regarding Executive Order N-08-21 and its impact to CalPERS retirees employed as retired annuitants with CalPERS employers effective July 1, 2021.

Background

In March 2020, Governor Gavin Newsom declared a statewide state of emergency due to the COVID-19 pandemic and issued Executive Order N-25-20 to further enhance California's ability to respond to COVID-19.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21 to phase out the executive actions in effect since March 2020 that helped facilitate a coordinated response and ensure the state could quickly and efficiently respond to the impacts of the pandemic. This executive order modifies some of those actions that suspended statutes and regulations to help state agencies, schools, and public agencies continue operations during the pandemic.

Summary of Impacts

Executive Order N-08-21 keeps some of the post-retirement employment requirements and reinstates others that Executive Order N-25-20 originally lifted.

The following post-retirement employment requirements have been reinstated by Executive Order N-08-21 and go back into effect July 1, 2021:

- Retirees must serve 180-day wait period after retirement (exceptions apply).
- If a retirement incentive is received, no exceptions are available. A retiree must serve a 180-day wait period before returning to work.

180-Day Wait Period Exception

Under Executive Order N-25-20, the 180-day break in service requirement under Government (Gov.) Code section 7522.56(f) and (g) was suspended for retired annuitants hired to ensure adequate staffing during the state of emergency. Effective July 1, 2021, this requirement is reinstated pursuant to section 2(b) of Executive Order N-08-21. Retirees with a start date after July 1, 2021, who plan to return to work prior to waiting the 180-day wait period, must have the agency's governing body approve the appointment through a resolution as an action item. State agencies must go through the California Department of Human Resources (CalHR) to complete this process. However, retirees who received a retirement incentive, including separation incentive packages, must wait 180 days prior to returning to work as a retired annuitant with no exceptions.

If a retiree was approved to return to work prior to Executive Order N-25-20, has a start date prior to July 1, 2021, and is still in the same position after July 1, 2021, the retiree is not required to stop working and wait 180 days before returning to work. If the retiree changes positions, the normal post-retirement employment restrictions and applicable processes apply for this new appointment.

CalPERS will continue to review notifications emailed to CalHR's [California State of Emergency mailbox](#) to waive the 180-day wait period for state retired annuitants with start dates from March 4, 2020 to June 30, 2021. Public agencies and schools must notify CalPERS of any individual employed pursuant to these waivers. Notification should be emailed to CalPERS' [Executive Order Review mailbox](#). However, if the retiree's projected start date is on or after July 1, 2021, that appointment is subject to the 180-day wait period.

The following post retirement employment requirements continue to be suspended under Executive Order N-08-21:

- 960-work hour limit per fiscal year
- Retirees employed in a vacant position under Gov. Code section 21221(h) can only be appointed to the position once
- 60-day bona fide separation in service

Work Hour Limitation

Consistent with applicable federal law and to ensure adequate state staffing to expedite emergency response and recovery, the work hour limitations under Gov. Code section 7522.56(d) were suspended.

Effective July 1, 2021, the suspension of the work hour limitation is still in effect. Executive Order N-08-21 does not terminate the suspension of the 960-hour limit. Any hours worked by a retired annuitant to ensure adequate staffing during the state of emergency will not be counted toward the 960-hour limit for the fiscal year. The work hour limitations for retired annuitants are suspended from the date the state of emergency was declared until further notice.

Appointment to Vacant Positions

On December 14, 2020, Governor Newsom signed into effect Executive Order N-84-20. Paragraph four of this order allowed for the suspension of the 960-hour limitation under Gov. Code section 21221(h). Along with the suspension of the hours, this order also allows for retirees to be appointed more than once to the same vacancy under Gov. Code section 21221(h). This portion of the order remains in effect until further notice.

60-Day Bona Fide Separation

Effective July 1, 2021, the suspension of the 60-day separation in service is still in effect. Under subdivision (c) of section 586.2 of Title 2 of the California Code of Regulations (CCR), the declaration of a state of emergency exempts retired annuitants from the 60-day separation in service requirement under subdivision (a)(2) of CCR section 586.2. However, the prohibition under subdivision (a)(1) of CCR section 586.2 on any predetermined agreement between an employer and an impending retiree who has not attained normal retirement age continues to remain in effect, consistent with federal law.

Continued Compliance

Agencies must continue to enroll and report retired annuitants to CalPERS. The remaining working after retirement provisions in Gov. Code sections 21221(h), 21224(a), and 7522.56(e) continue to apply.

- Compensation for the appointment shall not be less than the minimum monthly base salary nor exceed the maximum monthly base salary paid to other employees performing comparable duties, as listed on a publicly available pay schedule divided by 173.333 to equal an hourly rate.
- A retired annuitant shall not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

CalPERS will continue to monitor work hours for retired annuitants and send communications to confirm when a violation is found and whether it complies with working after retirement laws.

Questions

If you have any questions, call our CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

Renee Ostrander, Chief
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