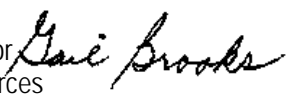


Date: December 18, 2008 Code: HR 2008-23
To: CSU Presidents Supersedes: HR 2006-02
From: Gail E. Brooks
Vice Chancellor 
Human Resources
Subject: Post-Retirement Employment: CalPERS' Retirees

Overview

Audience: Associate Vice Presidents/Deans of Faculty, Human Resources Directors, Benefit Officers or other individuals responsible for making decisions regarding post retirement employment of CSU retirees.

Action Items: None (Information only)

Affected Employee Groups/Units: Employees interested in post retirement employment with the CSU

Summary

The CSU is reissuing its post-retirement guidelines for employing CalPERS retirees to clarify certain Government Code provisions and CSU policy. This HR Letter should be reviewed in its entirety by staff responsible for making hiring decisions in the employment of CalPERS retirees.

The Post-Retirement Employment policy is being reissued to clarify certain provisions of the Government Code specific to CSU and CSU policy provisions that impact employment of CalPERS retirees. Government Code provisions permit former CSU academic, staff, and management employees and other CalPERS-covered individuals who retire and receive CalPERS retirement benefits to accept limited CSU employment without jeopardizing retirement benefits or requiring reinstatement from retirement. Attachment A lists relevant Government Codes and provides summaries of CalPERS post-retirement employment provisions.

Academic Positions

Government Code section 21227 permits a retiree to be appointed as a rehired annuitant to an academic position, however, the employment may not exceed 960 hours or 50 percent of the hours the member was employed

Distribution:

Chancellor	Human Resources Directors
Executive Vice Chancellor and CAO	Benefit Officers
Executive Vice Chancellor and CFO	Payroll Managers
Vice Presidents (all campus Vice Presidents)	
Associate Vice Presidents/Deans of Faculty	

during the last fiscal year prior to retirement, whichever is less. The hourly restriction is accumulative for all CalPERS' covered employers. CSU is to use this Government Code section for Faculty Early Retirement Program (FERP) participants and other annuitants rehired to fulfill academic program requirements. Please note that the FERP article in the CSU-CFA Collective Bargaining Agreement (CBA) is more restrictive and limits FERP employment to 90 days (720 hours) or 50 percent of the employee's regular time base in the year preceding retirement.

Please note: CSU has clarified with CalPERS that for the purpose of determining the hours a member may work post retirement, the member is to use the hours worked in the full fiscal year prior to retirement. For example, if a faculty member is retiring in December 2008, the member is to use the hours employed during fiscal year 2007-08. Because of this clarification, campuses may offer a retiree the option to recalculate his/her post retirement employment limit pursuant to GC 21227 based upon this revised interpretation with no adverse impact to the retiree's CalPERS retirement benefit.

Staff and Management Positions

Under certain circumstances, retirees may be appointed as rehired annuitants to staff or management positions but are restricted to working 960 hours for all CalPERS-covered employers in a fiscal year. Annuitants may be rehired during an emergency to prevent stoppage of public business or because the retiree has skills needed in performing specialized work of limited duration. Both the campus and the rehired annuitant are responsible for tracking hours of employment. It is recommended that campuses document the specialized skills of the rehired annuitant for audit purposes.

Calculating Employment Limits

To calculate employment limits under the relevant Government Code sections, different methods are used for academic and staff and management appointments:

- **For FERP academic appointments:** The applicable campus academic calendar defines workdays for this purpose. If a retired faculty member is hired for an academic term, all the academic workdays (prorated by time base) defined by the academic calendar count toward the FERP 90 day (720 hour full time equivalent) or 50 percent methodology maximum (time base maximum) regardless of actual days spent teaching. This is true whether the faculty member is working full or part-time during the term.
- **For Non-FERP academic appointments:** The applicable campus academic calendar defines workdays for this purpose. If a retired faculty member is hired for an academic term, all the academic workdays (prorated by time base) defined by the academic calendar count toward the 960 hour (the equivalent of 120 academic workdays) or 50 percent of the hours methodology maximum (time base maximum) whichever is less, regardless of actual days spent teaching. This is true whether the faculty member is working full or part-time during the term.
- **For non-exempt and exempt staff and management appointments:** Each day or partial day the retiree works is calculated on an hour-for-hour basis toward the 960 hour maximum. For example, a retiree appointed to work an eight (8) hour Monday-Wednesday-Friday schedule would charge 24 hours per week against the 960 hour maximum.

Employment Provisions

Rehired annuitants are considered *retirees* and receive their CalPERS retirement benefits in addition to compensation for limited CSU work permitted under statute. Post retirement CSU compensation is subject to federal, state, and Medicare taxation. The law excludes CSU compensation from Social Security taxation for rehired annuitants receiving retirement benefits through CalPERS.

If eligible for CalPERS retiree medical and/or CSU basic retiree dental benefits, retirees continue to receive these benefits while working as rehired annuitants. Rehired annuitants are ineligible for holidays, sick leave, vacation or any *employee* leave or benefit program. An exception exists for FERP participants who are eligible for the benefits set forth in HR/Benefits 2004-08 and the Unit 3 contract.

Please note: Retirees who participated in the 1992 Early Retirement Incentive Program for faculty are no longer excluded from working for the CSU under the provisions listed above.

Penalties for Exceeding Restrictions

If a rehired annuitant works in excess of the restriction allowed under the applicable Government Code, the rehired annuitant is subject to reinstatement to employment retroactive to when the employment began and must reimburse CalPERS for all retirement allowances received during the unlawful employment. Both the rehired annuitant and campus also are subject to payment of retirement contributions for the wages earned during the period of employment.

Additional CalPERS Post-Retirement Employment Restrictions

The CalPERS' Defined Benefit Plan is a tax-qualified pension plan under Section 401(a) of the Internal Revenue Code (IRC), and, as such, it must comply with the requirements of this section to maintain tax-exempt status. Internal Revenue Service rules do not permit the distribution of benefits to a participant who retires prior to the plan's normal retirement age unless the participant has a "bona fide" separation from service.

CalPERS Circular Letter 200-181-04, dated September 3, 2004, titled *Employment after Retirement With A CalPERS-Covered Employer* provides the regulations covering what constitutes "Normal Retirement Age" and "Bona Fide Separation in Service" and may be accessed at: www.calpers.ca.gov/eip-docs/employer/circulars/2004/200-181-04.pdf. A summary of the regulations follows:

- Normal Retirement Age – The normal retirement age is the member's benefit formula age. For example: The normal retirement age for a member with the 2% at 55 benefit formula would be age 55.
- No Pre-Determined Agreement With Employer – For members who retire before reaching normal retirement age, there can be no agreement (either verbal or written) prior to retirement to render service to any CalPERS-covered employer as a retired annuitant regardless of the length of the separation.
- Bona Fide Separation in Service – A retired member who is under normal retirement age must have a minimum separation in service of 60 calendar days prior to returning to any CalPERS-covered employment without reinstatement.
- Emergency Hiring Exceptions – Allows for immediate employment of a retired member under normal retirement age for emergency situations as defined by Government Code section 8558.

Campuses are to exclude from hire retirees who have collected unemployment insurance compensation during the 12-month period prior to an appointment eligible under Government Code sections 21224, 21227 or 21229 if the retiree received any unemployment insurance compensation arising out of prior employment subject to any of these GC sections with the same employer. Furthermore, a retiree who accepts an appointment after receiving unemployment insurance compensation pursuant to any of these provisions, must terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to these sections for a period of 12 months following the last day of employment. The retiree shall not be subject to

Section 21202 or subdivision (b) of Section 21220 (reinstatement provisions.) Technical Letter HR/Benefits 2004-30 provides additional information regarding GC 21224, however the law was subsequently expanded to include Government Code sections 21227 and 21229. The provisions of HR/Benefits 2004-30 remain in effect and cover all three Government Code provisions.

Please note: the California Public Employees' Retirement Law (PERL) governs the California Public Employees' Retirement System. The above statements are general; the PERL is complex and subject to change. If there is a conflict between the law and statements in this memorandum, any decision will be based on the law as interpreted by CalPERS.

If you have faculty-related questions, please contact Margy Merryfield at (562) 951-4503. Questions related to staff or management should be addressed to Pamela Chapin at (562) 951-4414. This memorandum is also available on Human Resources Administration's web page at: <http://www.calstate.edu/HRAdm/memos.shtml>.

Attachment
GEB/pc

**GOVERNMENT CODE (GC) RESTRICTIONS AND PENALTIES
CalPERS Post-Retirement Employment**

The following is a summary of statutes that outlines terms in which an annuitant may return to limited CSU employment without reinstatement or penalty:

- GC Section 21223 - allows post-retirement employment under certain conditions where the retiree's knowledge or presence is required by his/her former employer for anticipated litigation or legal proceedings or a proceeding before the State Board of Control. CalPERS' offset provisions will apply.
- GC Section 21224 - allows a retiree to work up to 960 hours in any **fiscal year** for all CalPERS' employers. Such employment is allowable to prevent stoppage of public business or because the retiree has skills that are needed for specialized work of limited duration. Prohibits employment of a retiree who received unemployment insurance compensation during the 12-month period prior to an appointment eligible under GC 21224 as a result of previous employment under this section with the same employer. (See also GC 21229.)
- GC Section 21227- allows a retiree to work as a member of the CSU academic staff, where employment does not exceed, in any fiscal year, 960 hours for all employers or 50 percent of the hours the member was employed during the last fiscal year prior to retirement, **whichever is less**. Prohibits employment of a retiree who received unemployment insurance compensation during the 12-month period prior to an appointment eligible under GC 21227 as a result of previous employment under this section with the same employer. (This is the section of the Government Code that covers Faculty Early Retirement Program participants.)
- GC Section 21228 –allows an individual, who retired for disability (subject to CalPERS' approval), to work in a position other than that from which he/she retired or a position in the same member classification. CalPERS' offset provisions will apply.
- GC Section 21229 - allows a retiree to work up to 960 hours in any fiscal year for all CalPERS' employers. Such employment is allowable to prevent stoppage of public business or because the retiree has skills that are needed for specialized work of limited duration. Prohibits employment of a retiree who received unemployment insurance compensation during the 12-month period prior to an appointment eligible under GC 21229 as a result of previous employment under this section with the same employer. (See also GC 21224.)

If post-retirement employment limits are exceeded, the CalPERS' retiree and CSU are subject to penalties as outlined in the following summaries of pertinent Government Code sections:

Retiree will be required:

- To be reinstated to (CalPERS) membership in the category in which, and on the date which, the unlawful employment occurred (GC 21202).
- To reimburse the retirement system for any retirement allowance received during any period of employment, which is in violation of law (GC 21220).
- To pay to the retirement system an amount of money equal to the employee contributions that would otherwise have been paid during any period of unlawful employment, plus interest (GC 21220).
- To contribute toward reimbursement of the retirement system for administrative expenses incurred in responding to this situation, as determined by the executive officer (GC 21220).

CSU will be required:

- To pay to the retirement system an amount equal to the employer contributions which would otherwise have been paid during any unlawful period of employment, plus interest (GC 21220).
- To contribute toward reimbursement of the retirement system for administrative expenses incurred in responding to this situation, as determined by the executive officer (GC 21220).

Please note: The California Public Employees' Retirement System is governed by the California Public Employees' Retirement Law (PERL). The above summaries are general; the PERL is complex and subject to change. If there is a conflict between the law and the above summaries, any decision will be based on the law and not the above summaries.