



CALIFORNIA STATE ASSOCIATION OF COUNTIES

## Retired Annuitants: Useful Options, Complicated Processes

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If you are considering hiring retired annuitants to augment your staff, you should know that the landscape has changed recently. There are some new rules to consider in light of the implementation of the Public Employees Pension Reform Act of 2013 (PEPRA). Liebert, Cassidy, and Whitmore (LCW) recently published a blog that offers some guidance and clarifications related to hiring retired annuitants.

Generally speaking, employees who accept an employment position after retiring must be reinstated into the California Public Employees' Retirement System (CalPERS). However, there are some exceptions to this rule that allow retired employees to serve in some situations. The process can be complicated, but many public entities find great value in utilizing the institutional knowledge of retired employees for some limited period of time.

This type of work falls within CalPERS' authority for compliance reviews, and CalPERS recently released a circular letter reminding participating agencies of that fact. The consequences of violating the provisions of the laws governing retired annuitants are serious: employees must reimburse the system for whatever retirement benefits they'd been paid while working inappropriately, and both employers and employees would be required to reimburse CalPERS for the costs they would have paid into the system had the employee been appropriately classified. Administrative costs may also be charged. CalPERS also issued a circular letter detailing the requirements associated with utilizing retired annuitants.

Government Code §21221 and Government Code §21224 outline specific requirements for this type of work. The two differ in terms of the type of position being filled by the retired annuitant and who may make the hire. In §21221, the position is appointed – this is typically used for high-level type positions. §21224 is more general and does not require formal appointment. In both cases, the retired annuitant position cannot be long term and cannot be used to fill a vacant position – it's for things like covering during a temporary leave by a current employee or in the case of a vacancy where additional help is needed to keep work moving in the short term.

LCW highlights the requirements that hold true for both types of retired annuitants. When hiring retired annuitants in your workforce, please be sure to check the applicable codes for more details.

1. The retired annuitant may only work 960 hours per year across all agencies.
2. Compensation cannot exceed the maximum salary paid to other employees performing comparable duties.
3. The person may not receive any benefits or any type of compensation other than the hourly rate.
4. The position cannot begin sooner than 180 days after the person's official retirement date, except in certain cases involving critical need like public safety employees.
5. If the retiree is younger than normal retirement age, there must be a true separation in service.
6. The retiree may not have received any unemployment insurance payments for retired annuitant work for any public employer within 12 months.

Appointment-style positions under §21221 (h) have additional requirements:

1. The position may not be open-ended. This is in addition to the firm 960 hour limit.
2. The position must be during a recruitment period for a permanent hire.
3. The governing body must determine that the appointment is necessary to prevent stoppage of public business or requires specialized skills. For counties, this means that the Board of Supervisors must take action.

4. The appointment may only be made once and cannot be extended for any reason.

Retired annuitants under §21224 have fewer rules:

1. The position may not be open-ended. This is in addition to the firm 960 hour limit.
2. The appointing power has to determine that the appointment is necessary to prevent stoppage of public business or requires specialized skills. It may seem like this is identical to the requirement above related to appointed positions under 21222 (h). However, in this case the authority is held by anyone with the power to hire employees, and does not need official action by the governing body or board.

While complicated, there are many reasons counties and other public employers may want to consider hiring retired annuitants. In addition to the Government Codes discussed above, CalPERS has released a guide to the process (while geared towards employees, it is still helpful for listing out rules and regulations).

# A Closer Look At The Restrictions On Hiring Retirees (And Also The Exceptions!)

By Retirement Blogger on August 9, 2016



*This blog post was authored by Danny Y. Yoo.*

CalPERS issued a Circular Letter on July 12, 2016, which provided information on its compliance review process and its most common findings, including **employing** retired annuitants. In our practice, we have also observed some confusion surrounding the specifics on how to hire a retired annuitant. Let's take a look at the restrictions on hiring retired annuitants, and more importantly, the exceptions to those restrictions.

First of all, the general rule is that an agency cannot hire a retired annuitant to work for your agency without reinstating that individual back into CalPERS.

This may sound incorrect because you know of agencies (maybe even yours!) that have hired retired annuitants. The California Public Employees' Retirement Law and Public Employees' Pension Reform Act of 2013 do outline **exceptions** to the general rule. It is through these exceptions that agencies have been able to hire retired annuitants. The two common exceptions are found in Government Code sections 21221(h) and 21224. However, when an agency is utilizing either one of these exceptions, it must be aware of the strict and complicated requirements associated with these exceptions.

## REQUIREMENTS COMMON TO SECTION 21221(H) AND 21224 APPOINTMENTS

Whether your agency appoints a retired annuitant to a vacant position under Section 21221(h) on an interim basis or hires an annuitant for a limited duration pursuant to Section 21224 for extra help, the following restrictions apply to both types of employment:

1. **The retiree may only work a combined total of 960 hours for all contracting agencies.** If the retiree is working or has worked for two or more agencies that contract with CalPERS, the total combined hours cannot exceed 960 hours in a fiscal year. Please be aware if the retiree is working for you and any other CalPERS agency.

2. **The compensation shall not exceed the maximum monthly based salary paid to other employees performing comparable duties as listed on a publicly available pay schedule for the vacant position divided by 173.333.**Your agency is limited in how much it can pay a retiree. The maximum rate is set by the publicly available pay schedule, and your agency cannot pay the retiree more than that rate.

3. **The retiree shall not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate.**Your agency must only pay the retiree the hourly rate, as discussed above. As a retiree, he or she cannot receive any benefits, such as health insurance, vacation days, or personal use of a company vehicle.

4. **The appointment must not be any sooner than 180 days after the retiree's retirement date, unless there is an exception.**There are exceptions to the 180-day wait period, and the two exceptions used most by our clients are the firefighter or public safety officer exception and the critically needed position exception, applicable to non-sworn employees. If your agency is using the "critically needed position" exception, the governing body must certify the nature of the position and the necessity to fill a critical need. This certification and resolution should be received by CalPERS before the retiree's hire date. Please note that certification for a "critically needed position" is different from the certification that the appointment requires "specialized skills."

Also, note that these exceptions to the 180-day wait period are not available to retirees who accept an incentive to retire.

5. **If the retiree is under normal retirement age, there must be a bona fide separation in service.**A bona fide separation requires: (1) no pre-determined agreement between the employer and the member to work after retirement; and (2) there is a 60-day separation from employment. Please note that there are no exceptions to this 60-day separation. This means that even if the retiree can meet an exception of the 180-day wait period, *if he or she is under normal retirement age*, he or she must still serve a 60-day wait period.

6. **The retiree cannot have received any unemployment insurance payments for retired annuitant work for any public employer within 12 months prior to the appointment date.**The retiree must certify in writing to your agency that he or she did not receive any unemployment insurance payments within 12 months prior to the appointment for previously retired annuitant work with *any* CalPERS employer.

## REQUIREMENTS FOR SECTION 21221(H) APPOINTMENTS

Appointments under Section 21221(h) are interim appointments into vacant positions. In general, this exception is used for upper-level positions because the appointment must be made by the agency's governing board. The requirements for a Section 21221(h) appointment are as follows:

1. **The appointment must be an interim appointment of limited duration.**The appointment must have a start and end date. It should not be left open-ended or indefinite. Note that this is different from the 960-hour limit discussed above.

2. **The appointment must occur during recruitment for a permanent appointment.**Your agency should be conducting open recruitment during the period of the interim appointment. If there is no longer an ongoing recruitment for whatever reason, the agency may need to terminate the interim appointment.



3. **The governing body must deem that the appointment requires specialized skills or is necessary during an emergency to prevent stoppage of public business.** Under Section 21221(h), even though the authority to make interim appointments may be delegated to an individual, the statute requires that the governing body deem that the appointment requires specialized skills or is during an emergency. For many of your agencies, the governing body is a board or a council.

4. **The appointment can only be made once.** The retiree cannot be appointed to the same position twice. This also means the retiree's appointment cannot be extended, even if he or she has not worked 960 hours in a fiscal year.

## REQUIREMENTS FOR SECTION 21224 APPOINTMENTS

Appointments under Section 21224 are for "extra help," such as eliminating a backlog, working on a special project, or performing work that is an excess of what permanent employees are able to do. This exception should not be used to fill a vacant position. The requirements for a Section 21224 appointment are as follows:

1. **The appointment must of limited duration.** Similar to above, the appointment must have a start and end date, and it should not be left open-ended or indefinite.
2. **The appointing power must deem that the appointment requires specialized skills or is during an emergency to prevent stoppage of public business.** Under Section 21224, the *appointment may be made by anyone with the power to hire persons for employment.*

As you can see, these requirements require analysis on the individual retiree and the work that will be performed. If your agency is considering hiring a retired annuitant, seek legal counsel to ensure that your agency is in compliance with the law to avoid potential ramifications.

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## Frequently Asked Questions

### State Retirees

#### 1. What is the Boomerang?

The Boomerang program is a centralized database of retired state employees that have identified an interest in accepting temporary employment as a retired annuitant within a state department. State departments can use the Boomerang program to identify potential applicants for retired annuitant employment opportunities.

#### 2. Am I eligible to work as a retired annuitant for the State of California?

Eligibility to work as a retired annuitant is based on a number of factors related to your employment with the State of California. To determine if you are eligible, refer to the California Public Employees Retirement System (CalPERS) booklet, "Working After Retirement" for specific information. Additionally, the CalPERS Website ([www.calpers.ca.gov](http://www.calpers.ca.gov)) may also contain updated law changes that might affect your ability to work after retirement. You should refer to these resources for additional information.

#### 3. If I am receiving disability retirement benefits, can I still work as a retired annuitant?

Any retiree that is receiving disability retirement benefits is required to request permission from CalPERS to work while receiving these benefits. Government Code Section 21228 enables a retiree to continue to receive his/her disability benefits, if the position is significantly different from the one from which he/she disability retired. Once the hiring department has determined they are interested in offering you a retired annuitant position, the Personnel Office will work with the retiree and CalPERS to obtain the necessary documentation and approvals. If you are also receiving Social Security disability benefits, you should check with the Social Security Administration to determine what affect your employment as a retired annuitant might have on those benefits.

#### 4. If I am receiving or have received unemployment benefits within the last 12 months, can I still work as a retired annuitant?

Per Government Code Section 21224, a retired annuitant cannot return to State employment if he/she has received unemployment insurance compensation from any employer that provided retirement benefits under the Public Employees Retirement System (PERS) during the 12-month period prior to an appointment as a retired annuitant.

· If you have received unemployment insurance payments in the last 12 months, based on prior

employment as a retired annuitant with the State of California or any other employer that provided you retirement benefits under PERS, you are not eligible to return to State service at this time.

· If you are currently working as a retired annuitant for a State department and it is determined that you did receive unemployment insurance benefits, your department will terminate your employment at the end of the current pay period. You will not be eligible to return to work as a retiree annuitant for 12 months after your termination.

**5. Can I work as a retired annuitant for any state department, or just the one from which I retired?**

A State of California retiree can work for any state department.

**6. What classifications can I work/apply for as a retired annuitant?**

If you register in the Boomerang program, the hiring state department may contact you for positions that you might qualify to be considered for employment. However, generally, you can be appointed to the same, a lower, or closely related classification. Ultimately, the department's Personnel Office will be responsible for determining your eligibility for appointment.

**7. Will all state departments use the Boomerang program to hire retired annuitants and can I work at a department that does not use it?**

The Boomerang program is available to all state departments. However, retirees may still seek and apply for retired annuitant vacancies at any state department by visiting the Department of Human Resources (CalHR) website to search for Retired Annuitant Jobs.

**8. Do I have to register in the Boomerang program to be hired as a retired annuitant?**

Not all state departments will choose to use the Boomerang program. However, the Boomerang program serves as a centralized resource that participating state departments may use to identify individuals who are interested in working as a retired annuitant. Retired annuitant jobs may also continue to be posted on the Department of Human Resources (CalHR) Web site at [www.CalCareers.ca.gov](http://www.CalCareers.ca.gov).

**9. Why should I register, what are the benefits?**

The greatest benefit is that the database is a centralized resource for participating state departments to identify retirees who want to return to work on a temporary basis. You can identify how you want to be contacted, your availability to work, your skills and experience which may ensure you are only contacted for the types of work you are interested in accepting.

**10. Who will see my personal information and what information do I have to provide?**

Only authorized persons will be able to access the Boomerang program. Typically, this will be the department's Personnel Office staff and hiring supervisors. Personnel Office staff will be able to view all of the personal information input by the retiree. Hiring supervisors will be able to view all of the same information. You can be assured that the state is very committed to ensuring the

security of your personal information. The Boomerang program uses security and encryption technology to protect your information from unauthorized access and complies with all privacy and public records laws. While you do not have to provide all of the information requested, some of the information is required to be included in the Boomerang program. When you register for the Boomerang program, you will note that all data fields that are required will be marked with an asterisk (\*). These fields contain your personal information that enable us to verify your eligibility to work as a retired annuitant, and those necessary to contact you for employment opportunities. While some of the information, such as your skills and employment preferences (\*e.g., days and hours, work locations) are not mandatory, they will assist hiring supervisors in matching you with vacancies. Therefore, if you choose not to fill in this information, your name may not appear when hiring supervisors conduct searches for individuals that possess the particular skills and employment preferences they are seeking for their positions.

**11. How can I find available jobs?**

State departments will continue to post retired annuitant job opportunities on the Department of Human Resources website at [CalCareers.ca.gov](http://CalCareers.ca.gov). You may choose to browse retired annuitant opportunities on the website or wait until you are contacted by a hiring state department using the Boomerang program.

**12. How will I be contacted, and who will be contacting me?**

Participating state departments will utilize the Boomerang program to locate potential applicants. Either the department's Personnel Office or a hiring supervisor that has the hiring need will contact you. You will have the ability to select your preferred method of contact (e.g., telephone, e-mail, etc.). You may also log into the Boomerang program to update and change your contact information and preferred method of contact, at any time.

**13. When and how often will I be contacted?**

As hiring opportunities become available, state departments will use the Boomerang program to identify potential retirees that match the classification, skills and employment preferences the hiring supervisor has selected for their position. The frequency of when and how often you are contacted will depend on the availability of jobs for the classification, skills and locations you have indicated interest in being considered for employment.

**14. What if I am not contacted?**

It may be possible that you are not contacted for retired annuitant employment based on a number of factors, such as the limited number of positions for your previous classification, your stated availability for employment, and the temporary employment needs of state departments. However, you may wish to review your employment preferences to determine if you have limited the scope of your interest to the degree that affects your being considered for retired annuitant positions. You may also seek out retired annuitant opportunities by checking jobs posted on the Department of Human Resources website at [CalCareers](http://CalCareers).



**15. What is the hiring process and will I have to be interviewed?**

The hiring process will vary by department; however, you may be contacted when a position is available that meets your employment options. You may also be asked to submit a state application form (this may be needed by the department to verify your eligibility to work as a retired annuitant) or resume. You will likely be asked to appear for an interview to discuss the specifics of the position (e.g., duties to be performed, work location and hours, etc.). In some instances, the hiring department may accomplish this through a telephone interview.

**16. Will I need to submit an application?**

The hiring state department has the discretion of requesting the retiree to submit an application package, including a state application (STD 678). Log into your CalCareer account, click on the Application Templates (STD 678) tab to complete your state application. This may be necessary for the department to verify your previous employment history and determine your eligibility for hire.

**17. How many hours can I work as a retired annuitant?**

Employment as a retired annuitant is limited to 960 hours per fiscal year (July - June) for any CalPERS employer (e.g., state department, university, etc.). This limit applies to the retiree, and not each appointment. Therefore, if you work for more than one department or multiple jobs within the same department, combined, they may not exceed the yearly maximum. You should refer to the California Public Employees Retirement System (CalPERS) booklet, "Working After Retirement" for specific information.

**18. Is there a minimum number of hours I must work?**

There is no minimum number of hours that you must work, only a maximum number that you cannot exceed per year – 960 hours per fiscal year (July - June). Depending on the needs of the hiring department and your availability, the hiring supervisor will estimate the number of hours they anticipate your services will be needed.

**19. Can I work for more than one Department?**

A retired annuitant may work for any state department, either concurrently or at different times. However, the retiree is still limited to 960 maximum hours in a fiscal year (July - June).

**20. How will my salary be determined?**

Your salary will be based on the classification you are being hired into. It is at the discretion of the hiring department to offer you any salary within the minimum and maximum of the classification that you are otherwise qualified to receive.

**21. How will working as a retired annuitant affect my retirement benefits?**

The maximum number of hours an individual can work as a retired annuitant was established by CalPERS to protect individuals from affecting their benefits. Therefore, it is imperative that you work closely with the hiring department(s) to ensure you do not exceed 960 hours per fiscal year.

(July - June). If you also work for other non-CalPERS employers, you should contact CalPERS and/or the Social Security Administration to determine if other types of employment will affect your benefits.

**22. Am I eligible for any benefits?**

A retired annuitant appointment is a temporary position and does not entitle you to receive any additional benefits.

**23. When do I get paid for the hours I have worked?**

While the actual date a retired annuitant receives his/her paycheck may vary, it generally takes approximately 10 business days after the end of the pay period to receive payment.

**24. What will my deductions be?**

The deductions may vary based upon your circumstances, but do not include retirement contributions, health benefits and other types of miscellaneous deductions covered by your retirement check issued by CalPERS. You should discuss this with the hiring department's Personnel Office to ensure you understand which deductions are mandatory or elective for your situation.

**25. Will I have to pay into social security?**

If you are currently receiving social security retirement benefits, you will not have any deductions for social security. However, there may be some instances where some of your wages may be subject to social security withholding. It is recommended that you discuss this with the hiring department's Personnel Office and the Social Security Administration if you work for more than one employer.

**26. Will the time I work as a retired annuitant count towards my retirement benefits?**

A retired annuitant does not accrue additional state service credit or benefits working as a retired annuitant.

**27. Will I earn vacation and sick leave credits for the time I work as a retired annuitant?**

A retired annuitant does not qualify to earn vacation, sick leave or other types of leave credits.

**28. Will I get paid for holidays?**

A retired annuitant does not get paid for any holiday for which he/she does not actually work.

**29. Will I get paid for travel?**

If the position for which you are hired requires travel, you will be reimbursed for business-related expenses as established by the Department of Personnel Administration. Whether or not you get paid for any time you are on travel status will depend upon the situation. You should consult with the hiring supervisor to determine whether or not travel is involved or if you will be paid for any travel time.

**30. Why can't I see the "Conditions of Use" from the registration page?**

The "Conditions of Use" feature on the Boomerang web site requires that your system allows pop-up windows. If you are unable to view the "Conditions of Use" information, you may have a pop-up blocking program running on your computer. A pop-up blocker is any program that is designed to prevent pop-up ads from appearing while you browse the Internet. In order to read the Boomerang "Conditions of Use", you may need to temporarily disable your pop-up blocker.

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