



December 7, 2022

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

Sent Via Email: [Regulation\\_Coordinator@calpers.ca.gov](mailto:Regulation_Coordinator@calpers.ca.gov)

**RE: Comments on Proposed Rulemaking - Office of Administrative Law File Number Z-2022-0607-10; 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**

Dear Mr. White:

The League of California Cities (Cal Cities)<sup>1</sup> respectfully requests consideration of several comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

Earlier in 2022, Cal Cities requested several amendments to the previous version of these regulations, which generated significant concern. We are pleased that many of those concerns have been addressed. However, further clarification and additional flexibility is still needed.

The updated regulations still restrict employers from granting retirees an extension beyond 48 months if the request is not submitted within 12 months of that original 48 months. If a retiree is needed for even a very short time after their original appointment has elapsed, they would not be granted an extension.

Additional amendments would give public agencies — particularly those in rural areas or working on highly technical projects — the flexibility needed to best serve their communities. Cal Cities proposes amendments to retain the existing extension structure but allow for reasonable flexibility and clarity that is consistent with the staffing demands of cities.

To avoid disruptions in public services provided to Californians statewide, Cal Cities urges CalPERS to make the following amendments to proposed regulation 574.1(a)

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<sup>1</sup> Cal Cities is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities monitors state and federal legislation of concern to cities and identifies legislation, including proposed rules and regulations, that have statewide significance.



because it is not reasonably necessary to effectuate the purposes of Government Code section 21224:

- 1. Section 574.1(a)(6): Amend proposed subdivision (a)(6) to remove the 12-month limited window following the expiration of the extensions to allow appointment exemptions to be requested after the 48 months have elapsed.**

Government Code section 21224 states in relevant part that:

“(a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration.”

Nothing in the text of the statute indicates an intent to limit when such appointments may occur, only that such appointments may not occur for more than a “limited duration.” However, by requiring that exemptions be requested 12 months after the extensions of up to 48 months, local agencies would be restricted and limited as to when they would be able to request exemptions for retired annuitants. This requirement does not find support in the plain text of Government Code section 21224, and the record fails to identify what public purpose such a requirement would serve.<sup>2</sup>

To conform to the intent of Government Code section 21224, Cal Cities respectfully requests that proposed subdivision (a)(6) be amended to allow exemptions to be requested after the initial 48-month limited duration period beyond the 12 months currently in the regulations. These clarifications would retain the existing extension structure but allow for reasonable flexibility in extensions consistent with the real-world staffing demands of cities. These changes are critical because they would allow for the needed flexibility local agencies require to adequately serve their community.

Cal Cities recommends the following amendment:

“The written request for an exemption must be received by CalPERS for review ~~within twelve consecutive months~~ following the end of the second extension period under paragraph (3).”

- 2. Section 574.1(a)(6): Amend to provide that if the Board fails to act within the 60-day period, the request for exemption is deemed approved. This change would guard against delays at the Board level.**

Cal Cities recommends the following amendment:

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<sup>2</sup> Gov. Code § 11349.1, subd. (a)(1).



"...The board shall grant or deny the exemption request within 60 days of receiving the request, which must include records reflecting all of the certifications required in subparagraphs (B) and (C) below, as applicable. If the board fails to take action within 60 days of receiving the request, the request shall be deemed approved. The retired person may not continue serving in the appointment beyond the end of the forty-eight consecutive month period or any subsequent twelve consecutive month period authorized under a previous board-approved exemption until the board approves an exemption for the appointment as prescribed below."

- 3. Section 574.1(a)(6)(B): Amend to clarify that the Board is under a mandatory duty to approve the request if the certifications are made. "Applicable conditions" is a phrase that is not otherwise used and could be interpreted to refer to something other than the required certifications.**

Cal Cities recommends the following amendment in the introduction to subparagraph (B):

"The board ~~will~~shall grant one of the exemptions described in subparagraph (A) above per appointment if the applicable ~~conditions~~ certifications in this subparagraph and subparagraph (C) below are ~~met~~ made and submitted. The CalPERS-covered public employer's governing body must certify by resolution at a public meeting each of the items in subparagraphs (i) through (viii) below, and CalPERS must receive records reflecting both those certifications and the certifications required in paragraph (3) of this subdivision for each prior extension approved pursuant to that paragraph, if applicable. The exemption may not be placed on a consent calendar."

### **Conclusion**

Cal Cities appreciates the significant positive changes that have been made to these proposed regulations and the opportunity to provide additional comments. To further improve this proposed regulation, Cal Cities requests the additional amendments to ensure cities can continue to deliver critical services in their communities using the specialized skills, for example, of retired first responders or seasonal employees. Please do not hesitate to contact me at [jpina@calcities.org](mailto:jpina@calcities.org) about Cal Cities comments.

Respectfully,

A handwritten signature in blue ink that reads "Johnnie Pina".

Johnnie Pina  
Legislative Affairs, Lobbyist  
League of California Cities