



July 27, 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

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)¹ respectfully requests consideration of the following comments regarding the above referenced rulemaking, which seeks to define "limited duration" employment as used in Government Code sections 7522.56, 21224, and 21229.

Proposed regulation 574.1(a) substantially alters cities' longstanding practice of hiring CalPERS retirees in "extra help positions" by defining "limited duration" as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered employer, with certain exceptions. Unless modified, the definition will hinder cities' ability to fill critical positions that are relied upon intermittently for the provision of public services, including, for example, first responders or seasonal employees who possess specialized skills. Such a change is particularly alarming at a time when cities are facing significant labor disruptions and hiring challenges at all levels.

To avoid disruptions in public services provided to Californians statewide, and for the reasons stated below and in the letters submitted by the California State Association of Counties and California Special Districts Association, Cal Cities urges CalPERS to amend proposed Regulation 574.1 as follows:

1. Amend proposed section 574.1(a)(1) to clarify that retirees may be appointed to extra help positions by their former employers to perform work that is substantially similar to work they performed for that employer before retirement;

¹ 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.

2. Clarify the process by which the CalPERS board will grant an exemption under proposed section 547.1(a)(7);
3. Amend proposed subdivisions(a)(3), (a)(4), (a)(5) and (a)(7) to allow the appointment extensions and exemptions contemplated by proposed section 574.1(a) to be made or requested after the initial twenty-four consecutive month limited duration period has expired; and
4. Allow local agencies to place appointment extensions on their consent calendar.

A. Cal Cities urges CalPERS to make the following amendments for clarity and consistency.

Administrative regulations must be both clear and consistent with existing law.² Unfortunately, proposed regulation 574.1(a) fails to meet these requirements on two counts: first, proposed section 574.1(a) is not easily understood by the regulated community and potentially conflicts with existing law; second, proposed section 574.1(a)(7) fails to inform the regulated community how the regulation will be applied.

- 1. Proposed section 574.1(a)(1) should be amended to clarify that retirees may be appointed to extra help positions by their former employers to perform work that is substantially similar to work they performed for that employer before retirement.**

Proposed section 574.1(a)(1) is difficult to parse. It is, therefore, subject to multiple interpretations. One interpretation prohibits a retiree from being appointed by the city from which they retired to an extra help position if they would be performing work that is substantially similar to work they performed before retirement (Interpretation 1). An equally plausible interpretation allows such an appointment for one limited duration period (Interpretation 2).

If Interpretation 1 accurately represents the intent of CalPERS in adopting the proposed regulation, the regulation is inconsistent with Government Code section 21224, which provides “a retired person may serve” in such a position for a limited duration if the statutory requirements are met. This interpretation would run contrary to the purpose of hiring retired annuitants by not allowing for the retiree to use their expertise and years of experience at the local agency. This would be detrimental to cities, inconsistent with the law, and generally bad public policy.

If Interpretation 2 accurately represents the intent of CalPERS in adopting the proposed regulation, Cal Cities urges CalPERS to clarify this intent by substituting the following for proposed section 574.1(a)(1):

(1) For purposes of this subdivision, an appointment occurs when a retired person performs work for a CalPERS-covered employer. A retired person may not be appointed to perform work under Government Code sections 7522.56, 21224,

² Gov. Code § 11349.1, subs. (a)(3) and (a)(4).



and 21229 that is substantially similar to work performed for the same CalPERS-covered employer in a previous appointment, unless it is within twenty-four consecutive months of that appointment, or any applicable extension described in this subdivision, or is otherwise allowed by this subdivision.

2. Proposed section 547.1(a)(7) should be amended to clarify the process by which the CalPERS Board will grant an exemption.

While Cal Cities applauds CalPERS' foresight in allowing cities to request an exemption under proposed section 547.1 (a)(7), the proposed regulation lacks critical details: Will the CalPERS Board itself or will CalPERS staff be charged with granting such exemptions? Will CalPERS respond to extension requests within a set amount of time? Will a city need to wait until the next CalPERS board meeting for an extension to be granted? If staff is charged with granting extension will there be a mechanism for the CalPERS board to rescind staff's decision? Without understanding these critical details, it is impossible for Cal Cities to comment on the impacts or effectiveness of this regulation. Given the critical role local agencies play in the delivery of public services, the answers to these questions could significantly impact the regulated community and Californians at large.

B. Cal Cities urges CalPERS to make the following amendment to proposed regulation 574.1(a) because the proposed regulation is not reasonably necessary to effectuate the purposes of Government Code section 21224.

3. Proposed subdivisions (a)(3), (a)(4), (a)(5), and (a)(7) should be amended to allow appointment extensions and exemptions to be requested after the initial twenty-four consecutive month limited duration period, or any applicable extension, has expired.

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 extensions or exemptions be requested by the end date of an appointment or extension, as applicable, proposed regulation 574.1 excludes appointments of limited duration that happen to begin after the expiration of the initial twenty-four month period or any applicable extension. 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.³

³ Gov. Code § 11349.1, subd. (a)(1).



To conform to the intent of Government Code section 21224, Cal Cities respectfully requests that proposed subdivisions (a)(3), (a)(4), (a)(5), and (a)(7) be amended to allow appointment extensions and exemptions to be requested after the initial twenty-four consecutive month limited duration period, or any applicable extension, has expired. 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.

C. Cal Cities urges CalPERS to make the following amendments to proposed regulation 574.1(a) because they would be as effective in carrying out the purpose of the proposed action, but less burdensome.⁴

4. Proposed section 574.1(a)(3) should be amended to allow local agencies to place appointment extensions on their consent calendar.

The mandate under proposed section 574.1(a)(4)(A), which prohibits an appointment extension from being placed on a public agency's consent calendar would be administratively burdensome, especially for some cities that could have many retired annuitants working in their city at any given time. The use of retired annuitants is a widespread practice and as a general matter, routine appointments for positions, just like nearly all other personnel matters, do not go through the process of being placed on a non-consent portion of the city council meeting agenda. Determining which agenda items get assigned to the consent calendar should be left to the governing body, not CalPERS.

We therefore request that the prohibition be removed from the regulations.

Conclusion

Cal Cities appreciates the opportunity to provide comments on this proposed rulemaking action. Please do not hesitate to contact me at jpina@calcities.org with any questions about Cal Cities comments.

Respectfully,

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

Johnnie Pina
Legislative Affairs, Lobbyist
League of California Cities

⁴ Gov. Code § 11346.5(a)(13).