

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

Proposed Adoption of Section 574.1 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

Definition of Limited Duration Employment

This Addendum to the Initial Statement of Reasons explains the purpose and necessity of the changes to the proposed regulation that are being made available after the 45-day comment period conducted from June 17, 2022 to August 1, 2022, and during the 15-day comment period conducted from December 1, 2022 to December 16, 2022.

PURPOSE

The purpose of the changes made to the proposed regulation is to respond to public comments received during the 45-day comment period and further clarify the proposed regulation. CalPERS amended the proposed regulation as follows:

- Working after retirement appointments (Section 574.1(a))
 - Amended section 574.1(a) to clarify that the limit is 24 consecutive months per appointment, even if a retired person does not work in each month of the 24 consecutive month period, and regardless of how many hours the retired person works in those months. The amended language also changed “CalPERS-covered employer” to “CalPERS-covered public employer” starting with this subdivision and throughout the proposed regulation to clarify that “CalPERS-covered employer” was intended to cover all “CalPERS-covered public employers” as specified in existing statutes. (Hereinafter, “employer” refers to applicable CalPERS-covered public employers.)
 - Amended section 574.1(a)(1) to clarify the definition of start date of the 24 consecutive month limit in the definition of limited duration.
 - Amended section 574.1(a)(2) to clarify that the appointment end dates that employers must report to CalPERS include end dates for post-retirement appointment extensions and any additional extensions authorized under an approved exemption.
 - Amended section 574.1(a)(3) to remove the requirements regarding the date by which an employer must extend a post-retirement appointment.
 - Amended section 574.1(a)(3)(A) and added sections 574.1(a)(3)(A)(i) through (vii) to include additional criteria that the employer’s governing body must certify when approving a post-retirement appointment extension, as well as removing the prohibition on the appointment extension being placed on a consent calendar.
 - Added section 574.1(a)(3)(B)(iii) to specify the Senate Committee on Rules or the Assembly Rules Committee as the governing body for legislative post-retirement appointments.

- Amended section 574.1(a)(4) to clarify when the extension periods start and that a retired person cannot continue to serve in the post-retirement appointment beyond the 24 consecutive month period or 36 consecutive month period until the employer satisfies the conditions specified in the proposed regulation.
 - Amended section 574.1(a)(6) to specify the process and timeframes for CalPERS to review requests for exemptions and specify that a retired person cannot continue to serve in the post-retirement appointment until the exemption request is approved.
 - Amended sections 574.1(a)(6)(A)(i) and (ii) to conform with amendments to section 574.1(a)(6) and clarify that the exemption option if a post-retirement appointment does not exceed 120 hours per fiscal year is continuous, specify that the 12 consecutive month exemption is continuous regardless of how many months or hours in those months the retired person served during that extension period, and changed the timeframe for requesting a subsequent exemption.
 - Amended section 574.1(a)(6)(B) to specify the requirements for an employer to request an exemption.
 - Added sections 574.1(a)(6)(B)(i) through (viii) to include additional criteria that the employer's governing body must certify when approving a post-retirement appointment exemption.
 - Added section 574.1(a)(6)(C)(iii) to specify the Senate Committee on Rules or the Assembly Rules Committee as the governing body for legislative post-retirement appointments.
 - Amended section 574.1(a)(8) to clarify what constitutes a new post-retirement appointment in the definition of limited duration.
- Working after retirement appointments (Section 574.1(b))
 - Added section 574.1(b) to account for collective bargaining agreements that explicitly provide the duration of permissible employment for the retired person, not to exceed 60 consecutive months. This additional language also specifies that the appointment duration is consecutive regardless of how many months or hours in those months the retired person served in the appointment during that appointment duration. Any employer and retired person subject to this subdivision are not subject to subdivision (a) of this proposed regulation.
 - Added section 574.1(b)(1) to specify the definition of start date of the post-retirement appointment subject to this subdivision.
 - Added section 574.1(b)(2) to specify employers must report the specified end date not to exceed the duration defined in the applicable collective bargaining agreement or 60 consecutive months from the appointment start date, whichever is less, and provide CalPERS a copy of the applicable collective bargaining agreement specifying the duration of that post-retirement appointment.

- Added section 574.1(b)(3) to specify the start and end dates for post-retirement appointments in effect prior to the effective date of this subdivision.
- Added section 574.1(b)(4) to specify that a retired person serving in a post-retirement appointment in accordance with this subdivision cannot serve in another post-retirement appointment with the same employer subject to this regulation.
- Added section 574.1(b)(5) to specify the consequences for a violation of this subdivision.
- Temporary upgrade pay appointments (Section 574.1(c))
 - Amended section 574.1(c) to clarify the 24 consecutive month limit is continuous regardless of how many months or hours in those months the individual serves in the upgraded position/classification during that 24 consecutive month period.
 - Amended section 574.1(c)(1) to clarify the definition of the start date of the 24 consecutive month limit in the definition of limited duration.
 - Added section 574.1(c)(2) to clarify that an individual may serve in the same upgraded position/classification more than once within the 24 consecutive month period.
 - Added section 574.1(c)(3) to clarify that an individual may serve in the same upgraded position/classification more than once and when a new 24 consecutive month period is initiated.
 - Added section 574.1(c)(3)(A) to reincorporate and amend previous section 574.1(b)(1) to account for potential periods of vacancy before an individual is appointed to an upgraded position/classification or when an employer needs to rotate appointments to an upgraded position/classification between two or more individuals.
 - Added section 574.1(c)(3)(B) to account for situations when an individual is temporarily appointed to an upgraded position/classification when the permanent appointee is on approved leave.
- Amended throughout for conforming language, and general renumbering and reorganizing of paragraphs

NECESSITY

Section 574.1(a)

Amending this paragraph is necessary to clarify that the limit is 24 consecutive months per appointment, even if a retired person does not work in each month of the 24 consecutive month period, and regardless of how many hours in those months the retired person served in the appointment during that 24 consecutive month period. CalPERS also changed “CalPERS-covered employer” to “CalPERS-covered public employer” starting with this subdivision and throughout the proposed regulation. This amendment is necessary to clarify that “CalPERS-covered employer” was intended to cover all “CalPERS-covered public employers” as specified in existing statutes.

Section 574.1(a)(1), previously section 574.1(a)(2)

Amending this paragraph is necessary to clarify that the appointment start date is the first day the retired person serves any hours in the appointment or the effective date of the proposed subdivision (a) for existing post-retirement appointments, whichever is later. The amended language establishes a uniform appointment start date for all post-retirement appointments and reduces the risk of an appointment exceeding the limited duration defined under this subdivision.

Section 574.1(a)(2), previously section 574.1(a)(3)

Amending this paragraph is necessary to clarify that the appointment end dates that employers must report include post-retirement appointment extensions and extensions authorized under approved exemptions, thereby ensuring that employers, retired persons, and CalPERS are aware of the end date of an appointment extension to reduce the risk of an appointment exceeding the limited duration defined under this subdivision.

Section 574.1(a)(3), previously section 574.1(a)(4)

Amending this paragraph is necessary to remove the requirement that employers must extend the appointment by the end date of the initial appointment or the end date of the first extension, as applicable, providing employers flexibility to extend a post-retirement appointment at any time during the respective extension period.

Section 574.1(a)(3)(A), previously section 574.1(a)(4)(A)

Amending this paragraph is necessary to:

- Reduce the employer's administrative burden by removing the requirement that the appointment extension may not be placed on a consent calendar.
- Increase transparency and ensure the employer's governing body certifies the extension criteria specified in subparagraphs (i) through (vii) of subparagraph (A) of paragraph (3) of this subdivision.
- Conform with reorganizing and numbering of the extension criteria specified in subparagraphs (i) through (vii) of subparagraph (A) of paragraph (3) of this subdivision.

Section 574.1(a)(3)(A)(i)

Adding this paragraph is necessary to provide flexibility for employers that do not have formal duty statements for post-retirement appointments. The amended language requires employers to provide the position title in addition to a description of duties to be performed as described in subparagraph (ii) of subparagraph (A) of paragraph (3) of this subdivision.

Section 574.1(a)(3)(A)(ii)

Adding this paragraph is necessary to provide flexibility for employers that do not have formal duty statements for post-retirement appointments. The amended language is necessary to increase transparency regarding the duties that are required to be performed by the retired person during the extension period.

Section 574.1(a)(3)(A)(iii)

Adding this paragraph is necessary to ensure employers identify the reason the extension is needed and to increase transparency regarding that necessity.

Section 574.1(a)(3)(A)(iv), previously included in section 574.1(a)(4)(A)

Reorganizing and renumbering this paragraph is necessary to conform with amendments to subparagraph (A) of paragraph (3) of this subdivision. Changing “work” to “duties” is necessary to conform with subparagraph (ii) of subparagraph (A) of paragraph (3) of this subdivision. In addition, it was necessary to amend the language to remove the word “satisfactorily” to eliminate any ambiguity regarding the meaning of that word.

Section 574.1(a)(3)(A)(v)

Adding this paragraph is necessary to increase transparency and ensure employers establish a plan to transition the duties to non-retired employees or another retired person.

Section 574.1(a)(3)(A)(vi)

Adding this paragraph is necessary to increase transparency as well as conform with amendments to paragraph (2) of this subdivision.

Section 574.1(a)(3)(A)(vii), previously included in section 574.1(a)(4)(A)

Reorganizing and renumbering this paragraph is necessary to conform with amendments to subparagraph (A) of paragraph (3) of this subdivision.

Section 574.1(a)(3)(B)(i), previously included in section 574.1(a)(4)(C)

Reorganizing and renumbering this paragraph is necessary to conform with amendments to subparagraph (A) of paragraph (3) of this subdivision.

Section 574.1(a)(3)(B)(ii), previously included in section 574.1(a)(4)(B)

Reorganizing and renumbering this paragraph is necessary to conform with amendments to subparagraph (A) of paragraph (3) of this subdivision.

Section 574.1(a)(3)(B)(iii)

Adding this paragraph is necessary to specify the Senate Committee on Rules or the Assembly Rules Committee as the governing body for post-retirement appointments with the legislature in alignment with existing statutes and for purposes of completing the certifications specified in subparagraphs (i) through (vii) of subparagraph (A) of paragraph (3) of this subdivision.

Section 574.1(a)(4), previously included in sections 574.1(a)(5) and 574.1(a)(9)

Amending this paragraph is necessary to clarify that the first and second 12 consecutive month extension periods commence immediately following the conclusion of the 24 consecutive month period and 36 consecutive month period, respectively, even if a retired person does not work in each month of the extension period, regardless of how many hours in those months the retired person served in the appointment during that

period, and regardless of whether or when the employer extended the appointment. The amended language is also necessary to ensure employers and retired persons are aware that the retired person cannot continue to work in the post-retirement appointment beyond the end of the 24 or 36 consecutive month periods described in this paragraph without an approved extension in accordance with paragraph (3) of this subdivision.

Section 574.1(a)(5), previously section 574.1(a)(6)

Amending this paragraph is necessary to conform to amendments to paragraph (3) and paragraph (6) of this subdivision.

Section 574.1(a)(6), previously included in sections 574.1(a)(7), 574.1(a)(7)(A), and 574.1(a)(9)

Amending this paragraph is necessary to:

- Provide additional clarity that requesting the exemption is upon an employer's determination that the appointment is needed beyond the 48 consecutive month period.
- Provide employers flexibility by changing the deadline for when CalPERS must receive the exemption request. Changing the deadline from by the end date of the second extension to within 12 consecutive months following the end of the second extension period still provides a time limit for when the employer can no longer extend the post-retirement appointment and ensures the post-retirement appointment cannot resume at any time.
- Specify CalPERS will grant or deny any exemption request within 60 days of receipt of the request and all supporting documents specified in subparagraph (B) of paragraph (6) of this subdivision. This amended language is necessary to inform employers about the timing of CalPERS' exemption review for planning purposes. Employers will be able to plan the timing of their governing body review and approval, as well as CalPERS' review and approval to meet their business needs. The amended language is also necessary to ensure employers are aware that CalPERS may deny an exemption request based upon the supporting documents submitted.
- Reorganize, renumber, and conform to the language previously included in paragraph (9) of this subdivision.

Section 574.1(a)(6)(A), previously section 574.1(a)(7)(B)

Amending this paragraph is necessary to conform with amendments to paragraph (6) of this subdivision.

Section 574.1(a)(6)(A)(i), previously section 574.1(a)(7)(B)(i)

Amending this paragraph is necessary to conform with amendments to paragraph (6) of this subdivision and to clarify this exemption option is a continuous extension.

Section 574.1(a)(6)(A)(ii), previously sections 574.1(a)(7)(A)(ii) and 574.1(a)(7)(B)(ii)

Amending this paragraph is necessary to conform with amendments to paragraph (6) of this subdivision and to:

- Ensure employers and retired persons understand that this exemption is for 12 consecutive months, even if a retired person does not work in each month of the extension period and regardless of how many hours in those months the retired person served during that period.
- Provide employers flexibility by changing the deadline for when CalPERS must receive subsequent exemption requests. Changing the deadline from by the end date of the subsequent extension to within 12 consecutive months following the end of the most recent extension period still provides a time limit for when the employer can no longer extend the post-retirement appointment and ensures the post-retirement appointment cannot resume at any time.

Section 574.1(a)(6)(B), previously section 574.1(a)(7)(A)

Amending this paragraph is necessary to:

- Increase transparency and ensure that CalPERS receives records reflecting that the employer's governing body certifies the exemption criteria specified in subparagraphs (i) through (viii) of subparagraph (B) of paragraph (6) of this subdivision.
- Conform with reorganizing and renumbering of the exemption criteria specified in subparagraphs (i) through (viii) of subparagraph (B) of paragraph (6) of this subdivision.

Section 574.1(a)(6)(B)(i)

Amending this paragraph is necessary to provide flexibility for employers that do not have formal duty statements for post-retirement appointments. The amended language requires employers to provide the position title in addition to a description of duties to be performed as described in subparagraph (ii) of subparagraph (B) of paragraph (6) of this subdivision.

Section 574.1(a)(6)(B)(ii)

Amending this paragraph is necessary to provide flexibility for employers that do not have formal duty statements for post-retirement appointments. The amended language is necessary to increase transparency regarding the duties that are required to be performed by the retired person during the exemption period.

Section 574.1(a)(6)(B)(iii)

Adding this paragraph is necessary to ensure employers identify the reason the exemption is needed and to increase transparency regarding that necessity.

Section 574.1(a)(6)(B)(iv), previously included in part through section 574.1(a)(7)(A)(i)

Adding this paragraph is necessary to:

- Increase transparency as to why another retired person is unable to perform the duties because after 48 consecutive months there may be another retired person that has the necessary skills to perform the duties required of that post-retirement appointment.
- Reorganize, renumber, and conform with amendments to subparagraph (B) of paragraph (6) of this subdivision.

Section 574.1(a)(6)(B)(v)

Adding this paragraph is necessary to increase transparency and ensure employers made a good faith effort to transition the duties to another individual and justify the reason one or more of the duties could not be transitioned.

Section 574.1(a)(6)(B)(vi), previously section 574.1(a)(7)(A)(iii)

Reorganizing and renumbering this paragraph is necessary to conform with amendments to subparagraph (B) of paragraph (6) of this subdivision. Changing “work” to “duties” is necessary to conform with subparagraph (ii) of subparagraph (A) of paragraph (6) of this subdivision. This paragraph also adds language providing employers an option for justifying why a recruitment could not be completed. This option is necessary to ensure employers made a good faith effort in evaluating its ability to complete a recruitment for the duties to be performed by the retired person.

Section 574.1(a)(6)(B)(vii)

Reorganizing and renumbering this paragraph is necessary to increase transparency as well as conform with amendments to subparagraph (B) of paragraph (6) of this subdivision.

Section 574.1(a)(6)(B)(viii), previously included in section 574.1(a)(7)(A)(i)

Adding this paragraph is necessary to conform with amendments to subparagraph (B) of paragraph (6) of this subdivision.

Section 574.1(a)(6)(C)(i), previously included in section 574.1(a)(7)(A)(i)

Reorganizing and adding this paragraph is necessary to conform with amendments to subparagraph (B) of paragraph (6) of this subdivision.

Section 574.1(a)(6)(C)(ii), previously included in section 574.1(a)(7)(A)(i)

Reorganizing and adding this paragraph is necessary to conform with amendments to subparagraph (B) of paragraph (6) of this subdivision.

Section 574.1(a)(6)(C)(iii)

Adding this paragraph is necessary to specify the Senate Committee on Rules or the Assembly Rules Committee as the governing body for post-retirement appointments with the legislature in alignment with existing statutes and for purposes of completing the certifications specified in subparagraphs (i) through (viii) of subparagraph (B) of paragraph (6) of this subdivision.

Section 574.1(a)(7), previously section 574.1(a)(8)

Renumbering this paragraph and any references contained therein is necessary to conform with amendments to this subdivision.

Section 574.1(a)(8), previously section 574.1(a)(1)

Moving the definition of appointment from paragraph (1) of this subdivision to paragraph (8) of this subdivision is necessary for ease of clarity and structural flow. In addition, amending this paragraph is necessary to:

- Clarify what constitutes a new post-retirement appointment. This clarification is necessary as employers interpreted the original language to mean that the retired person could not perform the same duties in a limited duration post-retirement appointment as they did in their position prior to retirement, which was not CalPERS' intent.
- Specify that duties between two or more post-retirement positions with the same employer cannot overlap. Specifying that duties cannot overlap between limited duration post-retirement appointments for the same employer is necessary to ensure that a retired person does not continue performing the same duties for the same employer indefinitely. The amended language is also necessary to ensure employers and retired persons are aware of what constitutes a new limited duration post-retirement appointment, which reduces the risk of an appointment exceeding the limited duration defined under subdivision (a) of the proposed regulation.

Section 574.1(a)(9), previously section 574.1(a)(10)

Renumbering this paragraph is necessary to conform with amendments to this subdivision.

Section 574.1(b)

Adding this paragraph is necessary to account for collective bargaining agreements that explicitly provide the duration of permissible employment for the retired person. The language establishes a limited duration for post-retirement appointments as the duration provided in the applicable collective bargaining agreement or 60 consecutive months, whichever is less. The language also clarifies that even if a retired person does not work in each month of the duration established in the collective bargaining agreement, and regardless of how many hours the retired person works in those months, the post-retirement appointment is limited to the duration established in this subdivision.

Section 574.1(b)(1)

Adding this paragraph is necessary to clarify that the appointment start date is the first day the retired person serves any hours in the appointment under this subdivision. The language establishes a uniform start date for all post-retirement appointments under this subdivision and reduces the risk of the appointment exceeding the limited duration defined under this subdivision.

Section 574.1(b)(2)

Adding this paragraph is necessary to ensure employers, retired persons, and CalPERS are aware of the end date of an appointment under this subdivision to reduce the risk of an appointment exceeding the limited duration defined under this subdivision. This paragraph is also necessary to ensure employers provide CalPERS a copy of the applicable collective bargaining agreement specifying the duration of that post-retirement appointment to justify the specified duration.

Section 574.1(b)(3)

Adding this paragraph is necessary to establish applicable start and end dates for post-retirement appointments pursuant to this subdivision that were in effect prior to the effective date of this subdivision. This proposed language is necessary to ensure employers, retired persons, and CalPERS are aware when the post-retirement appointment ends and reduces the risk of the appointment exceeding the duration pursuant to the applicable collective bargaining agreement.

Section 574.1(b)(4)

Adding this paragraph is necessary to ensure that a retired person serves no more than once in a post-retirement appointment subject to this regulation for that particular employer.

Section 574.1(b)(5)

Adding this paragraph is necessary to place retired persons and employers on notice of the consequences of a retired person serving in an appointment under this subdivision that violates the requirements of this subdivision, as stated in Government Code sections 7522.56, 21202, and 21220, as applicable.

Section 574.1(c), previously section 574.1(b)

Renumbering this paragraph is necessary to conform with amendments to this subdivision. Amending this paragraph is necessary to clarify that the limit is 24 consecutive months, even if the individual does not work in each month of the 24 consecutive month period, and regardless of how many hours in those months the individual served in the upgraded position/classification during that 24 consecutive month period. It is also necessary to clarify that the limit is 24 consecutive months for an individual to serve in an upgraded position/classification, rather than by appointment to an upgraded position/classification.

Section 574.1(c)(1), previously section 574.1(b)(2)

Renumbering this paragraph is necessary to conform with amendments to this subdivision. Amending this paragraph is necessary to clarify that the first day the individual serves any hours in the upgraded position/classification or the effective date of this subdivision, whichever is later, initiates time counted towards the 24 consecutive month limit for purposes of reporting temporary upgrade pay to CalPERS. The amended language establishes a uniform date for initiating time counted and reduces the risk of an employer reporting compensation to CalPERS for time exceeding that limit.

Section 574.1(c)(2)

Adding this paragraph is necessary to address employer's business needs and account for situations where an individual may rotate back into the upgraded position/classification within the 24 consecutive month period and before the employer permanently appoints an individual to the position.

Section 574.1(c)(3), previously included in section 574.1(b)(1)

Adding this paragraph is necessary to clarify that an individual may serve in the same upgraded position/classification more than once and when a new 24 consecutive month period is initiated.

Section 574.1(c)(3)(A), previously included in section 574.1(b)(1)

Reorganizing and numbering this paragraph is necessary to remove "immediately" prior to "subsequent" in reference to appointments to account for potential periods of vacancy before an individual is appointed to an upgraded position/classification or when an employer needs to rotate appointments to an upgraded position/classification between two or more individuals for various reasons. The original language did not account for these situations and CalPERS did not intend to exclude temporary upgrade pay in those situations from being reportable.

Section 574.1(c)(3)(B)

Adding this paragraph is necessary to account for situations when an individual is temporarily appointed to an upgraded position/classification when the permanent appointee is on an approved leave. The original language did not account for this situation and CalPERS did not intend to exclude temporary upgrade pay in that situation from being reportable.