

763 EMPLOYMENT OF RETIRED MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Education Code Section

88034. Notwithstanding the provisions of subdivision (c) of Section 88033, a retired classified school employee may be employed by a community college district, but only in accordance with the provisions of Article 5 (commencing with Section 21150) of Chapter 8 of Part 3 of Division 5 of Title 2 of the Government Code.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

Government Code Sections

21221. A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system, as follows:

(a) As a member of any board, commission, or advisory committee, upon appointment by the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate, director of a state department, or the governing board of the contracting agency. However, the appointment shall not be deemed employment within the meaning of Division 4 (commencing with Section 3200) and Division 4.5 (commencing with Section 6100) of the Labor Code, and shall not provide a basis for the payment of workers' compensation to a retired state employee or to his or her dependents.

(b) As a school crossing guard.

(c) As a juror or election officer.

(d) As an elective officer on and after September 15, 1961. However, all rights and immunities which may have accrued under Section 21229 as it read prior to that section's repeal during the 1969 Regular Session of the Legislature are hereby preserved.

(e) As an appointive member of the governing body of a contracting agency. However, the compensation for that office shall not exceed one hundred dollars (\$100) per month.

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(f) Upon appointment by the Legislature, or either house, or a legislative committee to a position deemed by the appointing power to be temporary in nature.

(g) Upon employment by a contracting agency to a position found by the governing body, by resolution, to be available because of a leave of absence granted to a person on payroll status for a period not to exceed one year and found by the governing body to require specialized skills. The temporary employment shall be terminated at the end of the leave of absence. Appointments under this section shall be reported to the board and shall be accompanied by the resolution adopted by the governing body.

(h) Upon interim appointment by the governing body of a contracting agency to a vacant position during recruitment for a permanent appointment and deemed by the governing body to require specialized skills or during an emergency to prevent stoppage of public business. A retired person shall only be appointed once to this vacant position. These appointments, including any made concurrently pursuant to Section 21224 or 21229, shall not exceed a combined total of 960 hours for all employers each fiscal year. The compensation for the interim appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule for the vacant position divided by 173.333 to equal an hourly rate. A retired person appointed to a vacant position pursuant to this subdivision shall not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate. A retired annuitant appointed pursuant to this subdivision shall not work more than 960 hours each fiscal year regardless of whether he or she works for one or more employers.

(i) Upon appointment by the Administrative Director of the Courts to the position of Court Security Coordinator, a position deemed temporary in nature and requiring the specialized skills and experience of a retired professional peace officer.

21229. (a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by a school employer or by the Trustees of the California State University 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. These appointments shall not exceed a combined total of 960 hours for all employers each fiscal year. The compensation for the appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule

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divided by 173.333 to equal an hourly rate. A retired person appointed pursuant to this section shall not receive any benefits, incentives, compensation in lieu of benefits, or other forms of compensation in addition to the hourly rate. A retired annuitant appointed pursuant to this section shall not work more than 960 hours each fiscal year regardless of whether he or she works for one or more employers.

(b) (1) This section shall not apply to a retired person otherwise eligible to serve without reinstatement from retirement, if during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment. The retired person shall not be subject to Section 21202 or subdivision (b) of Section 21220.

21232. On and after January 1, 2013, a person who has retired for disability and has not attained the mandatory age for retirement for persons in the employment in which he or she will be employed, and whom the board finds is not disabled for that employment, may be so employed by any employer without reinstatement from retirement if the position is not the position from which this person retired or a position in the same member classification. The person's disability retirement pension shall be reduced during this employment to an amount that, when added to the compensation received, equals the maximum compensation earnable by a person holding the position that he or she held at the time of retirement. This employment shall terminate upon the person's attainment of the mandatory retirement age for persons in that employment. A person employed under this section shall not be concurrently employed under this article.

21233. (a) A person who has retired for disability shall not be employed, pursuant to this article or Section 7522.56, by any employer without reinstatement from retirement if the position is either of the following:

(1) The position from which the person retired.

(2) A position that includes duties or activities that the person was previously restricted from performing at the time of their retirement.

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(b) If a person who has retired for disability is employed by an employer without reinstatement pursuant to this article or Section 7522.56, the employer shall provide the board, in a form and manner determined by the board, the nature of the employment and the duties and activities of the position for which the person retired for disability will be employed.

(c) This section shall not apply to a person employed by an employer pursuant to Section 21232.

7522.56 (a) This section shall apply to any person who is receiving a pension benefit from a public retirement system and shall supersede any other provision in conflict with this section.

(b) A retired person shall not serve, be employed by, or be employed through a contract directly by, a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement, except as permitted by this section.

(c) A person who retires from a public employer may serve without reinstatement from retirement or loss or interruption of benefits provided by the retirement system upon appointment by the appointing power of a public employer either during an emergency to prevent stoppage of public business or because the retired person has skills needed to perform work of limited duration.

(d) Appointments of the person authorized under this section shall not exceed a total for all employers in that public retirement system of 960 hours or other equivalent limit, in a calendar or fiscal year, depending on the administrator of the system. The rate of pay for the employment shall not be less than the minimum, nor exceed the maximum, paid by the employer to other employees performing comparable duties, divided by 173.333 to equal an hourly rate. A retired person whose employment without reinstatement is authorized by this section shall acquire no service credit or retirement rights under this section with respect to the employment unless he or she reinstates from retirement.

(e) (1) Notwithstanding subdivision (c), any retired person shall not be eligible to serve or be employed by a public employer if, during the 12-month period prior to an appointment described in this section, the retired person received any unemployment insurance compensation arising out of prior employment subject to this section with a public employer. A retiree shall certify in writing to the employer upon accepting an offer of employment that he or she is in compliance with this requirement.

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(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(f) A retired person shall not be eligible to be employed pursuant to this section for a period of 180 days following the date of retirement unless he or she meets one of the following conditions:

(1) The employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body of the employer in a public meeting. The appointment may not be placed on a consent calendar.

(2) (A) Except as otherwise provided in this paragraph, for state employees, the state employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed state employment position before 180 days have passed and the appointment has been approved by the Department of Human Resources. The department may establish a process to delegate appointing authority to individual state agencies, but shall audit the process to determine if abuses of the system occur. If necessary, the department may assume an agency's appointing authority for retired workers and may charge the department an appropriate amount for administering that authority.

(B) For legislative employees, the Senate Committee on Rules or the Assembly Rules Committee certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and approves the appointment in a public meeting. The appointment may not be placed on a consent calendar.

(C) For employees of the California State University, the Trustees of the California State University certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and approves the appointment in a public meeting. The appointment may not be placed on a consent calendar.

(3) The retiree is eligible to participate in the Faculty Early Retirement Program pursuant to a collective bargaining agreement with the California State University that existed prior to January 1, 2013, or has been included in subsequent agreements.

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(4) The retiree is a public safety officer or firefighter hired to perform a function or functions regularly performed by a public safety officer or firefighter.

(g) A retired person who accepted a retirement incentive upon retirement shall not be eligible to be employed pursuant to this section for a period of 180 days following the date of retirement and subdivision (f) shall not apply.

(h) This section shall not apply to a person who is retired from the State Teachers' Retirement System, and who is subject to Section 24214, 24214.5, or 26812 of the Education Code.

(i) This section shall not apply to (1) a subordinate judicial officer whose position, upon retirement, is converted to a judgeship pursuant to Section 69615, and he or she returns to work in the converted position, and the employer is a trial court, or (2) a retiree of the Judges' Retirement System I or the Judges' Retirement System II who is assigned to serve in a court pursuant to Section 68543.5.

7522.57 (a) This section shall apply to any retired person who is receiving a pension benefit from a public retirement system and is first appointed on or after January 1, 2013, to a salaried position on a state board or commission. This section shall supersede any other provision in conflict with this section.

(b) A person who is retired from a public retirement system may serve without reinstatement from retirement or loss or interruption of benefits provided that appointment is to a part-time state board or commission. A retired person whose employment without reinstatement is authorized by this subdivision shall acquire no benefits, service credit, or retirement rights with respect to the employment. Unless otherwise defined in statute, for the purpose of this section, a part-time appointment shall mean an appointment with a salary of no more than \$60,000 annually, which shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

(c) A person who is retired from the Public Employees' Retirement System shall not serve on a full-time basis on a state board or commission without reinstatement unless that person serves as a nonsalaried member of the board or commission and receives only per diem authorized to all members of the board or commission. A person who serves as a nonsalaried member of a

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board or commission shall not earn any service credit or benefits in the Public Employees' Retirement System or make contributions with respect to the service performed.

(d) A person retired from a public retirement system other than the Public Employees' Retirement System who is appointed on a full-time basis to a state board or commission shall choose one of the following options:

(1) The person may serve as a nonsalaried member of the board or commission and continue to receive his or her retirement allowance, in addition to any per diem authorized to all members of the board or commission. The person shall not earn service credit or benefits in the Public Employees' Retirement System and shall not make contributions with respect to the service performed.

(2) (A) The person may suspend his or her retirement allowance or allowances and instate as a new member of the Public Employees' Retirement System for the service performed on the board or commission. The pensionable compensation earned pursuant to this paragraph shall not be eligible for reciprocity with any other retirement system or plan.

(B) Upon retiring for service after serving on the board or commission, the appointee shall be entitled to reinstatement of any suspended benefits, including employer provided retiree health benefits, that he or she was entitled to at the time of being appointed to the board or commission.

(e) Notwithstanding subdivisions (c) and (d), a person who retires from a public employer may serve without reinstatement from retirement or loss or interruption of benefits provided by the retirement system upon appointment to a full-time state board pursuant to Section 5075 of the Penal Code or Section 1718 of the Welfare and Institutions Code.

- A. Any employee who retired as a member of the Public Employees' Retirement System (PERS) may be employed in accordance with Government Code Sections 21221, 21229, 7522.56, and 7522.57 provided that:
1. The assignment of the retired person is approved and certified as a critical need by the requesting division head or college president who requests the assignment. For the purpose of this rule, critical need shall be defined as either an emergency situation which would prevent the college or division from conducting necessary classroom education or providing vital services necessary to the educational process or the retired employee possesses specialized knowledges, skills, and abilities essential to the performance of work of a limited duration. Assignments can provide coverage for work of limited duration such as work to eliminate a backlog, work on a special

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project, and work that is in excess of what regular staff can do. Furthermore, assignments can also provide coverage for a vacant position where an active recruitment for a permanent replacement is in progress.

2. Requests for the employment of a retiree shall be submitted on PC Form 763 to the Personnel Director for final approval.
3. The retired person certifies that they understand that employment is limited to a maximum of 120 full-time working days or 960 hours in a fiscal year with the District and any other employer subject to the provisions of Government Code Sections 21221, 21229, 7522.56, and 7522.57 and that employment is discretionary with the authority who makes the assignment.
4. The assignment does not commence within 180 days of the retired person's date of retirement unless one of the following conditions is met:
 - a. The District certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days has passed, and the appointment has been approved by the District's governing body in a public meeting.
 - b. The retiree was already employed as a retired annuitant prior to January 1, 2013.

A retired person who accepts a retirement incentive upon retirement shall not be eligible for employment within the 180-day waiting period.

5. A retired person hired in a "vacant position" in accordance with government code section 21221 paragraph (h) shall only be appointed once to that vacant position.

B. Retired persons who are employed by the District shall be compensated as follows:

1. A retired person who is employed in the class from which they last held permanent status shall be placed on:
 - a. The flat rate of the class, if applicable, or
 - b. The step of the schedule attained at the time of retirement, or
 - c. The hiring step for the class, whichever is higher.
2. A retired person who is employed in a class lower than from which they last held permanent status shall be placed on:
 - a. The flat rate of the class, if applicable, or

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- b. The step of the schedule that provides a rate equal to or next below the rate they would be entitled to if reinstated in the former class, or
- c. The hiring step for the class, whichever is higher.

Overtime work shall be compensated in accordance with the provisions of Rule 596, OVERTIME.

- C. Retired persons assigned under the provisions of this rule shall not be granted leaves, other than a paid industrial accident leave as provided in Paragraph B. of Rule 804, LEAVE RESULTING FROM INDUSTRIAL ACCIDENT OR INDUSTRIAL ILLNESS.
- D. Retired persons shall not receive any benefits, differentials, incentives, compensation in lieu of benefits, or other forms of compensation in addition to their hourly rate.
- E. A retired person shall not be eligible for employment with the District if any unemployment insurance compensation arising out of prior employment with a public employer was received by the retired person during the previous 12-month period. If a retired person accepts an appointment after receiving unemployment insurance compensation, that employment must be terminated by the last day of the current pay period, and the retiree will not be eligible for reappointment thereafter for 12 months.
- F. A person retired for disability who has not attained the mandatory age for retirement applicable to persons in the position in which he or she will be employed, and whom the District finds not disabled for that employment, may be employed without reinstatement from retirement in a position other than the classification from which they retired. The employment shall end upon the person meeting the mandatory retirement age for persons in the employed position.
- G. A person retired for disability shall not be employed without reinstatement from retirement if the position in which they would be employed is either of the following:
 - 1. The position from which the person retired.
 - 2. A position that includes duties that the person was previously restricted from performing at the time of retirement.

This provision does not apply to persons employed in a manner as described under paragraph F.

- H. Provisions of this rule outlined in paragraph A.3. and A.4. may be suspended under certain conditions by a Governor's executive order.