

Summary of Public Comments Received During the 45-Day Comment Period, Proposed Responses, and Copies of Public Comments Received

Definition of “Work Days”

Comment 1.1 Summary:

The comment pertains to the definition of “work days” and whether the work days include paid holidays.

Proposed Response:

The proposed amended regulation references Government Code (GC) section 20630 when describing work days. Per GC section 20630, compensation includes payment for time worked during normal working hours as well as paid time off, including but not limited to holidays, sick leave, and vacation.

CalPERS is making no changes to the regulation in response to this comment. The proposed amended regulation addresses how to calculate classified school members’ full-time equivalent (FTE) payrates and does not provide a new definition of “work days” but references current GC.

Impact of Working Less Than 12 Months

Comment 1.2 Summary:

The comment expresses concern regarding the impact of working less than 12 months and requests consideration for the work year of those members.

Proposed Response:

The proposed amended regulation describes how school employers determine FTE payrates for purposes of reporting to CalPERS, regardless of whether the classified school member’s earnings are based on a 40-hour work week. By incorporating a classified school member’s annual base salary, number of work days per year, and number of hours in a work day, the FTE calculations defined in the proposed amendment take into consideration classified school members that work less than 12 months per year and/or less than 40 hours per week.

CalPERS is making no changes to the regulation in response to this comment. The proposed amended regulation is intended to address how school employers calculate classified school members’ FTE payrates, including those classified school members who work less than 40 hours per week and 12 months per year.

Reporting Payrate

Comment 1.3 Summary:

The comment contains a question about reporting payrate for exempt employees and whether CalPERS is requesting a monthly or daily payrate.

Proposed Response:

For purposes of reporting a classified school member’s FTE payrate, there is no differentiation between exempt and non-exempt classified school members. Exempt or non-exempt employees’ payrates may be reported on an hourly, daily, or monthly basis, so long as the payrate reported is the FTE payrate and calculated as described in the regulation language.

CalPERS is making no changes to the regulation in response to this comment. The proposed

amended regulation defines how to determine a classified school member's hourly, daily, and monthly FTE payrates.

Impact of Working Varying Number of Work Days Per Year

Comment 2.1 Summary:

The comment expresses concern that the conversion factor of 173.3333 when calculating a classified school member's monthly FTE payrate may, impact contributions, affect fairness, and raise potential "gift of public funds" issues.

Proposed Response:

The proposed amended regulation describes how school employers determine FTE payrates for purposes of reporting to CalPERS, regardless of whether the classified school member's earnings are based on a 40-hour work week. To calculate a classified school member's monthly FTE payrate, the proposed amended regulation takes into consideration that GC section 20636.1 defines full-time employment as 40 hours per week and there are 52 weeks in a year, which is equivalent to 173.3333 hours per month (40 hours per week x 52 weeks per year ÷ 12 months per year = 173.3333 hours per month). Using a single, uniform conversion factor of 173.3333 in the proposed amended regulation is necessary and consistent with the intent of GC section 20636.1 to standardize reporting among school employers and eliminate classified school members potentially being treated inequitably because of employer discretion in reporting. The proposed amended regulation ensures school employers report correct payrates to CalPERS and makes no changes to contribution requirements or reporting requirements for classified school members' earnings. CalPERS does not make gifts of public funds; CalPERS provides only those benefits required by the Public Employees' Retirement Law (PERL). The proposed amended regulation is consistent with the requirements imposed on CalPERS by the PERL.

CalPERS is making no changes to the regulation in response to this comment. The proposed amended regulation is intended to address how school employers calculate classified school members' FTE payrates, including those classified school members who work less than 40 hours a week and varying number of work days per year, consistent with the requirements of GC section 20636.1.

Impacts on Equal Payment Method

Comment 2.2 Summary:

The comment expresses concern that the proposed amended regulation may create difficulties with reporting FTE payrates for school districts who use an equal payment method for classified school members.

Proposed Response:

CalPERS is making no changes to the regulation in response to this comment. The proposed amended regulation does not affect the equal payment reporting method or otherwise change reporting requirements for classified school members' earnings. The proposed amended regulation describes how school employers determine classified school members' FTE payrates for purposes of reporting to CalPERS under GC sections 7522.34, 20630, 20635.1, 20636.1, and 20967.

Public Comments Received

A copy of the comments received are included in the subsequent pages.

Aoki, Kelli

From: Regulation Coordinator
Sent: Monday, April 22, 2024 10:11 AM
To: Hanson, Brad; Aoki, Kelli
Subject: FW: [**External**] - Proposed regulation

Public comment received for your review.
//AP

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From: Winterle, Christine <cwinterle@palomar.edu>
Sent: Monday, April 22, 2024 10:09 AM
To: Regulation Coordinator <Regulation_Coordinator@CalPERS.CA.GOV>
Subject: [**External**] - Proposed regulation

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Just a few comments.
The text says “work days” it would be helpful to define this, is it inclusive of paid holidays? Also, I think this could negatively impact those who may be 10 month or 11 month employees? Is there consideration regarding a work year for those employees and ensure the new calculation doesn’t impact this. Also for exempt employees, are you requesting a monthly rate only or daily rate?

[Text of Proposed Regulation](#)

Thank you
Christine Winterle
Director, Human Resources
Palomar College

Title 2. California Public Employees' Retirement System (CalPERS)

Proposed Amendment of Article 4, Section 574 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

574. Definition and Reporting of Full-Time Employment

(a) Each employer may determine the number of hours that constitute the normal work period or periods for full-time employment for its employees, provided that such periods must satisfy the applicable requirements of subsection (b) or subsection (c) in order to be considered full-time for the purposes of this section. Each employer shall notify CalPERS of the normal work period or periods which the employer considers to be full-time, and such periods are to be established for all employees in the same "group or class of employment" within the meaning of the Public Employees' Retirement Law and the regulations thereunder.

(b) Except as set forth in subsection (c), for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation, "full-time" employment means a minimum of 34 hours per calendar week, or a minimum of 67 hours bi-weekly, 72 hours semi-monthly, 133 hours quadri-weekly, or 144 hours monthly.

(c) For purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation for classified members, "full-time" employment means 40 hours per week; payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable or pensionable compensation for all months of the year in which work is performed. ~~"Classified members" means members who retain membership under this system while employed with a school employer in positions not subject to coverage under the Defined Benefit Program under the State Teachers' Retirement System.~~

(1) For purposes of reporting a classified member's full-time payrate, an employer shall report the classified member's hourly, daily, or monthly full-time equivalent (FTE) payrate. The FTE payrates shall be calculated to the nearest cent and shall be determined as set forth below. The number of work days per year and the number of hours in a work day shall include days and hours during which the member is excused from work as set forth in Government Code section 20630. Overtime and compensation based on overtime shall be excluded.

(A) The classified member's hourly FTE payrate shall be determined by dividing the classified member's annual base salary by the number of work days per year, then dividing the result by the number of hours in a work day.

(B) The classified member's daily FTE payrate shall be determined by dividing the classified member's annual base salary by the number of work days per

year, dividing the result by the number of hours in a work day, then multiplying the result by 8.

(C) The classified member's monthly FTE payrate shall be determined by dividing the classified member's annual base salary by the number of work days per year, dividing the result by the number of hours in a work day, then multiplying the result by the result of multiplying 52 by 40 then dividing by 12.

(2) For purposes of this subsection, "classified members" means members who retain membership under this system while employed with a school employer in positions not subject to coverage under the Defined Benefit Program under the State Teachers' Retirement System.

Authority Cited: Government Code sections 7522.02, 20120, 20121, 20122, 20123, and 20124.

Reference: Government Code Sections 7522.34, 20305, 20630, 20635, 20635.1, 20636, 20636.1, and 20967.

Wong, Valerie

From: Regulation Coordinator
Sent: Wednesday, June 5, 2024 11:06 AM
To: Hanson, Brad; Wong, Valerie
Subject: FW: [**External**] - Open Comment - Proposed Amendment to CalPERS Section 574
Attachments: RCOE DFS Comment on Proposed Amendment to CalPERS Section 574 Full Time Employment 06042024.pdf

FYI.

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From: Cindy Livers <CLIVERS@rcoe.us>
Sent: Tuesday, June 4, 2024 3:11 PM
To: Regulation Coordinator <Regulation_Coordinator@CalPERS.CA.GOV>
Cc: Reyna Philp <rphilp@rcoe.us>; Leticia Garcia <lgarcia@rcoe.us>; Jeffrey A. Vaca <jvaca@rcoe.us>
Subject: [**External**] - Open Comment - Proposed Amendment to CalPERS Section 574

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Good afternoon:

With regard to the CalPERS proposed regulatory action pertaining to the definition and reporting of “Full-Time Employment,” please see the attached comments to be considered.

If you have any questions regarding this submission, please direct your communications to:

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Thank you for the opportunity to provide comment.

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Comment on Proposed Amendment to CalPERS Section 574 ("Full-Time Employment")

This document provides comments on the proposed amendment to Section 574 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations, which defines "Full-Time Employment".

Concerns with Proposed Definition:

The Board of Administration of the California Public Employees' Retirement System (CalPERS) proposes to explicitly define how to calculate a classified member's full-time equivalent payrate, and the proposed language states that the "Monthly FTE pay rate shall be determined by multiplying the classified member's hourly FTE pay rate by 173.3333," which equates to 260 days or 2,080 hours per year. While this simplifies calculations in some years, it presents issues for the following reasons:

Inconsistency with Workday Reality: Our analysis of the next 50 years reveals only 12 out of 50 years have precisely 260 workdays or 2,080 hours. The majority of years (76%) will have 261 (2,088 hours) or 262 (2,096 hours) workdays.

Employee Contribution Disparity: Defining a full-time year as 260 days conflicts with Government Code 20636.1, which defines full-time employment as 40 hours per week and requires reporting compensation for all months worked. In years exceeding 260 days, employees may earn and contribute for more hours than reflected in the monthly pay rate. This raises concerns about fairness and potential "gift of public funds" issues.

Recommendations:*Allow Flexibility in Monthly Pay Rate Calculation:*

We recommend revising the amendment to allow for monthly pay rates calculated using a more realistic number of workdays, up to 262. This aligns with Government Code 20636.1 and ensures contributions and monthly pay rates reflect actual earnings and workweeks.

Excess Contribution Handling:

If the 260-day limit is enforced, for years exceeding 260 but within the 40-hour limit, a mechanism is needed to address excess contributions paid on the additional 1 or 2 days worked as these contributions may not be relevant to final compensation.

Payroll and Reporting Considerations:

The proposed 260-day basis may create difficulties for Local Education Agencies (LEAs) using the level payment method for classified staff salaries. This method simplifies payroll by providing a uniform amount each pay period. Calculating a 260-day monthly rate while needing to adjust for additional days in some years would be counterintuitive and require extra processing for accurate retirement reporting.

Conclusion:

We urge CalPERS to consider these issues and revise the amendment to ensure accurate reflection of workdays, fair contribution practices, and easier implementation for LEAs using the level payment method.