

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes amending section 574, "Definition of Full-Time Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (hereinafter referred to as CCR section 574) and the title of section 574 to "Definition *and Reporting* of Full-Time Employment." By proposing this regulatory amendment in this Article, CalPERS seeks to describe how a classified member's full-time payrate shall be reported to CalPERS in accordance with Government Code (GC) section 20636.1. The proposed regulatory amendment would explicitly define how to determine a classified member's hourly, daily, and monthly full-time equivalent (FTE) payrates and provide clarity and uniformity for CalPERS, its classified members, and CalPERS-covered school employers in reporting a classified member's full-time payrate to CalPERS.

II. WRITTEN COMMENT PERIOD

Any interested person, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period has been established as commencing on April 22, 2024 and closing at 11:59 p.m. on June 6, 2024. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted by e-mail to Regulation_Coordinator@calpers.ca.gov or mailed to the following address:

Andrea Peters, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942720
Sacramento, CA 94229-2720
Telephone: (916) 795-3038

III. PUBLIC HEARING

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days before the close of the written comment period. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and the room can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

V. AUTHORITY AND REFERENCE

Under GC section 20121, the Board has authority to make rules as it deems proper. GC sections 20630, 20635.1, 20636.1, and 20967 govern compensation, overtime compensation, and compensation earnable for classified members.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

GC section 20636.1 defines full-time employment for classified members as “40 hours per week” and further states that “payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed.” Under GC section 20636.1, “classified members” means members who retain membership under CalPERS while employed with a CalPERS-covered school employer in positions not subject to coverage under the Defined Benefit Program under the State Teachers’ Retirement System.

In 2019, CalPERS promulgated CCR section 574 to define “full-time” employment for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation. Consistent with GC section 20636.1, the regulation provides that full-time employment for classified members means 40 hours per week.

While GC section 20636.1 and CCR section 574 standardized the definition of full-time employment for classified members, it is necessary to describe how CalPERS-covered school employers determine full-time payrates for purposes of reporting payrates to CalPERS. For example, some CalPERS-covered school employers report classified members’ earnings as payrate, but the earnings are not based on a 40-hour work week. Since GC section 20636.1 explicitly defines full-time employment as 40 hours per week, the full-time payrate reported to CalPERS must be based on a 40-hour work week regardless of whether the classified member works 40 hours per week.

CalPERS allows CalPERS-covered employers to report full-time payrates as hourly, daily, or monthly. By proposing this regulatory amendment, the Board seeks to explicitly define how to determine a classified member’s hourly, daily, and monthly FTE payrates. This proposed regulatory amendment is intended to benefit CalPERS, its classified members, and CalPERS-covered school

employers by providing clarity and uniformity for reporting a classified member's full-time payrate to CalPERS.

Consistency Evaluation

CalPERS conducted a review for any related state regulation and found that there are no other state regulations defining how a CalPERS-covered school employer shall report a classified member's hourly, daily, or monthly FTE payrate to CalPERS for purposes of reporting a classified member's full-time payrate in accordance with GC section 20636.1. Therefore, CalPERS has determined that the proposed regulatory amendment is not inconsistent or incompatible with existing regulations.

VII. PRE-NOTICE CONSULTATION WITH THE PUBLIC

No pre-notice consultation was done with the public, as all public comments and hearing requests can be submitted during the written comment period.

VIII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small businesses because it applies only to CalPERS-covered school employers and classified members.

IX. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Board has made the following initial determinations:

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory amendment does not impose any mandates on local agencies or school districts. CalPERS already requires CalPERS-covered employers to report the full-time payrates for their employees to CalPERS. This proposed regulatory amendment describes how CalPERS-covered school employers shall determine the hourly, daily, and monthly FTE payrates for purposes of reporting a classified member's full-time payrate to CalPERS in accordance with GC section 20636.1.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory amendment will not result in any costs or savings to any state agency.
- C. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory amendment will not result in any costs to any local agency or school district. CalPERS already requires CalPERS-covered employers to report the full-time payrates for their employees to CalPERS. This proposed regulatory amendment describes how CalPERS-covered school employers shall determine the hourly, daily, and monthly FTE payrates for purposes of reporting a classified

member's full-time payrate to CalPERS in accordance with GC section 20636.1.

- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory amendment does not impose any nondiscretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory amendment will not result in costs or savings in federal funding to the State of California.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory amendment will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** CalPERS is not aware of any cost impacts that a representative private person or business would incur in reasonable compliance with the proposed regulatory amendment because the proposed regulatory amendment only applies to CalPERS, CalPERS-covered school employers, and classified members and does not impose new costs on school employers.
- H. **RESULTS OF THE ECONOMIC IMPACT ANALYSIS:** The proposed regulatory amendment is not intended to create or eliminate jobs within California; and will not (1) create new businesses or eliminate existing businesses within California; (2) affect the expansion of businesses currently doing business within California; (3) affect the health and welfare of California residents, worker safety, or the State's environment. The proposed regulatory amendment serves only to describe how CalPERS-covered school employers shall determine the hourly, daily, and monthly FTE payrates for purposes of reporting a classified member's full-time payrate to CalPERS in accordance with GC section 20636.1.
- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory amendment will have no effect on housing costs.
- J. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500 THROUGH 17630:** There are no costs to any local agency or school district which must be reimbursed in accordance with GC section 17500 through section 17630.

X. CONSIDERATION OF ALTERNATIVES

In accordance with GC section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be:

- more effective in carrying out the purpose of the proposed action,
- as effective as, and less burdensome to affected private persons than the proposed action, or
- more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at a public hearing or during the written comment period.

XI. CONTACT PERSON

Please direct inquiries concerning the proposed administrative action to:

Andrea Peters, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942720
Sacramento, CA 94229-2720
Telephone: (916) 795-3038
Regulation_Coordinator@calpers.ca.gov

The backup contact person for the proposed action is:

Melissa Ilusorio, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942720
Sacramento, CA 94229-2720
Telephone: (916) 795-3038
Regulation_Coordinator@calpers.ca.gov

Please direct requests for copies of the proposed amended text of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to the Regulation Coordinator at the contact information listed above.

XII. AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDED REGULATION, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 400 Q Street, Sacramento, CA 95811. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed amended text of the regulation, and the Initial Statement of Reasons. Copies may be obtained

by contacting the CalPERS Regulation Coordinator at the contact information listed in Section XI.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at: <https://www.calpers.ca.gov/page/about/laws-legislation-regulations/regulatory-actions>.

XIII. AVAILABILITY OF CHANGED OR MODIFIED TEXT

After receiving comments from the public and considering all timely and relevant comments received, the Board may adopt the proposed regulatory amendment substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed amended text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the amended regulation as revised. Please send requests for copies of any modified regulation to the attention of the CalPERS Regulation Coordinator at the contact information listed in Section XI. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

XIV. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the CalPERS Regulation Coordinator at the contact information listed in Section XI.