

# 2026 Employee Benefits Webinar



HansonBridgett

## Public Agency Employers

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# Agenda

**Fringe Benefits and Tax Reporting Update**

**Health and Welfare Plan Update**

**Qualified Plan Update**

**CalPERS**

# **Fringe Benefits and Tax Reporting Update**

# New OBBBA Overtime Deduction

- Above-the-line federal income tax deduction for qualified OT compensation
- Effective 2025-2028, up to \$12,500 (\$25,000 if joint return) w/ phase-out
- Qualified OT compensation- required under the FLSA & exceeds regular rate
- Applies only .5 portion of 1.5 times pay beyond a 40-hour workweek
- Does not apply to:
  - Overtime required only by state law or paid voluntarily
  - Employment taxes – employers must still withhold federal income tax
- Employers must report qualified OT compensation separately on Form W-2
  - 2025 transition rule – may reasonably approximate separate accounting
  - No changes to 2025 Form W-2; draft 2026 Form W-2 – use Box 12, Code TT

# New OBBBA Overtime Deduction (con't)



## **FLSA rules for calculating overtime apply:**

Applies only to non-exempt employees

Determination must be based on workweek

DOL rules re regular rate and hours worked apply



## **Notice 2025-62 – IRS guidance re employer overtime reporting**

Relief from failure to file/furnish penalties for 2025 if no separate accounting

IRS encourages employers to provide separate accounting via box 14 or statement



## **Notice 2025-69 – IRS guidance re employee claim for overtime deduction**

If no separate accounting, must make reasonable effort to determine amount

Provides reasonable methods, depending on circumstances, employees can use

# OBBA Fringe Benefit Impact

- **Qualified Transportation Fringe Benefits (OBBA, Section 70112)**
  - Tax-free employer-provided reimbursements for qualifying commuter bicycle expense – frozen in 2018
  - Reinstatement of tax-free benefit was expected starting 2026
  - Effective January 1, 2026: OBBA permanently eliminates tax-free treatment of employer-provided bicycle expense reimbursements
- **Employer Provided Moving Expenses (OBBA, Section 70113)**
  - Income Exclusion frozen in 2018
  - Effective January 1, 2026: Favorable tax treatment permanently eliminated
    - Limited exception for U.S. Armed Forces and Intelligence Community

# OBBBA Tax Reporting Threshold Changes

- **Increased Payment Threshold for Information Reporting Payments to Certain Payees (OBBBA, Section 70433)**
  - Applies to payments reported on Form 1099-MISC, Form 1099-NEC and Form W-2G.
  - Effective January 1, 2026, reporting thresholds are increased as follows:
    - Form 1099-MISC and 1099-NEC: \$600 → \$2,000
    - Form W-2G: \$1,200/\$1,500 → \$2,000
  - New built-in annual inflation adjustment.



# Permanent extension of tax-free employer student loan repayment assistance



- Employers can directly or indirectly pay for its employees' student loan up to \$5,250 and recipient employee will not recognize income up to the limit if Code section 127 requirements are satisfied
- Effective for payments made after December 31, 2025
- Adjusted for inflation for payments made in any taxable year beginning after 2026

# Excise Tax Applicable to Tax-Exempt Entities

- OBBBA expanded Code Section 4960 21% excise tax on tax-exempt entities for compensation paid in excess of \$1 million
- Expanded definition of “Covered Employee”
  - Any employee (not just top 5) employed after 2016
  - Once covered, always covered
- Any compensation paid by related organizations is aggregated
- Effective after December 31, 2025

# Health and Welfare Plan Update

# One Big Beautiful Bill Act – HSA Relief

- Individuals maintain HSA eligibility when HDHP provides first-dollar telehealth and remote care services coverage
- Direct primary care (DPC) service arrangements are excluded from being HSA disqualifying coverage and DPC fees are a qualified medical expense
- IRS Notice 2026-5 provides guidance on these changes

# **Affordable Care Act update**

# Executive Order 14216

## Fertility Benefits

- Executive Order 14216, issued February 18, 2025, establishes a federal policy to expand access to in vitro fertilization (IVF) and reduce cost barriers to treatment
- The DOL, HHS and IRS issued FAQs clarifying how fertility benefits may be offered as excepted benefits
  - Independent, non-coordinated excepted benefits
  - Limited excepted benefits



# Independent, Non-coordinated Excepted Benefits

- Three requirements

Benefits are offered under a separate insurance arrangement

Benefits are not coordinated with any group health plan from the same plan sponsor, and

Benefits are paid without regard to whether other health coverage applies

- An employer is not required to offer a traditional group health plan
- Because the benefits must be provided under a separate policy of insurance to fit within this exception, **the coverage cannot be offered as a self-insured arrangement**

# Limited Excepted Benefits

- Under existing regulations, an employer may offer an excepted benefit HRA (EBHRA) that reimburses an employee's out-of-pocket costs related to fertility benefits as a "limited excepted benefit"
  - The benefits cannot be an integral part of a group health plan and must comply with the limit on the amount that can be made newly available to each participant for each plan year and other EBHRA qualification rules
- An employer may offer benefits for coaching and navigator services to help employees understand their fertility options under an EAP that otherwise qualifies as a limited excepted benefit

# ***Faulk Co. v. Kennedy, 5th Cir., No. 25-10773***

- ACA imposes a penalty (ERSP) when
  - An employer does not offer minimum essential coverage for substantially all full-time employees and
  - At least one employee is enrolled in coverage in the marketplace – such enrollment is certified to the employer under ACA section 1141
- Certification is made on IRS Letter 226-J
- Faulk Co. argued certification must be made by HHS not IRS and the Fifth Circuit agreed
- Are all IRS Letters 226-J now invalidated? Employers can argue yes

# IRS Notice 2025-15: Form 1095-B and Form 1095-C

- Employers may post a notice that is clear, conspicuous and accessible that employees may request a copy of Form 1095-C
- Similar rule for insurers with respect to fully-insured plans
- Notice must be posted by January 31, plus the automatic 30-day extension
- Notice must be furnished on request no later than the January 31 due date or thirty days after the employee's request



# ***Kennedy v. Braidwood Management, Inc.,* 606 U. S. \_\_\_\_ (2025)**

- Employers challenged the appointment of members to the US Preventive Services Task Force by the Secretary of HHS and argued Task Force members must be appointed by the President with the advice and consent of the Senate
- Specifically, employers wanted to avoid covering preventive services at no cost as required by the ACA
- US Supreme Court held that Task Force members are “inferior officers” and as such may be appointed by the Secretary
- Thus, leaving in place the authority of the Task Force to determine preventive services under the ACA

# 2026 Affordability Percentage Adjustment

Code Section	4980H(a)	4980H(b)	36B(b)(3)(A)(i)
Description	Coverage not offered to 95% of (or all but 5) full-time employees: No offer penalty	Coverage offered, but unaffordable or is not minimum value: Affordability penalty	Premium credits and affordability safe harbors
2026	\$3,340	\$5,010	9.96%
2025	\$2,900	\$4,350	9.02%

# No Surprises Act update

# No Surprises Act Update

- Recent victories for plans and insurers in provider lawsuits to vacate IDR awards
  - Last November, the 11<sup>th</sup> Circuit Court of Appeals rejected an air ambulance company's bid to vacate NSA IDR award. See *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 2025 WL 3222820 (11<sup>th</sup> Cir. 2025)
  - Last June, the 5<sup>th</sup> Circuit Court of Appeals rejected an air ambulance company's bids to overturn IDR awards in two consolidated SB disputes. See *Guardian Flight, LLC v. Medical Evaluators ASO LLC*, No. 24-20051 (5<sup>th</sup> Cir. 2025); Guardian Flight, LLC v. Aetna Health, Inc., No. 24-20204 (5<sup>th</sup> Cir. 2025); in January SCOTUS declined to review
- Recent victory for providers in lawsuit to overturn HHS QPA regs
  - Last May, the 5<sup>th</sup> Circuit Court of Appeals granted TMA's motion for en banc hearing vacating 2024 panel decision upholding QPA methods
- Tri-agencies issue guidance extending enforcement discretion re QPA
  - FAQs About Consolidated Appropriations Act, 2021 and Affordable Care Act Implementation Part 71

# **Mental Health Parity and Addiction Equity Act (MHPAEA)**

# Enforcement of MHPAEA Stayed

ERISA Industry Advisory Committee (ERIC) challenged the enforcement of the final rule under the MHPAEA as arbitrary capricious

The Department of Justice announced on May 12, 2025 that enforcement of the MHPAEA final rule would be stayed pending reconsideration

# Update HIPAA Privacy Notice by February 16, 2026

- All HIPAA Privacy Notices should be updated to include Part 2 Rules related to information regarding protection of substance-use disorder records
- Revised Privacy Notice should be distributed within 60 days by mailing or by posting
- HHS has not posted a sample revised notice

# Proposed Healthcare Plan

- The White House announced a healthcare plan, which would require action by Congress
  - Lower drug prices
  - Lower insurance premiums
  - Hold insurance companies accountable
  - Maximize price transparency



# **Health and Welfare Plan Limits**

# Increased Dependent Care Assistance Program (DCAP) Limit

- Code section 129 is amended to increase the dependent care FSA limit to \$7,500 (or \$3,750 for married couples filing separately) from \$5,000 (or \$2,500 for married couples filing separately)
- The new limit is not indexed for inflation
- The first time the DCAP limit was increased since its inception in 1986

# 2026 Health & Welfare Plan Limits

## Health FSAs, EBHRA, Qualified Transportation Fringe Benefit & Qualified Parking Limits

Health Flexible Spending Accounts	2025	Trend	2026
Maximum salary deferral limit	\$3,300	Up	\$3,400
Health FSA Carryover limit	\$660	Up	\$680

Dependent Care Flexible Spending Accounts – Annual Contribution Limits	2025	Trend	2026
Maximum salary deferral (single taxpayers and married couples filing jointly)	\$5,000	Up	\$7,500
Maximum salary deferral (married couples filing separately)	\$2,500	Up	\$3,750

EBHRA; Qualified Transportation & Parking Limits	2025	Trend	2026
Maximum amount made newly available for the plan year for Excepted Benefit Health Reimbursement Arrangements (EBHRA)	\$2,150	Up	\$2,200
Qualified mass transportation fringe benefit & Qualified commuter parking (monthly limit)	\$325	Up	\$340

# 2026 Health & Welfare Plan Limits

## High Deductible Health Plans (HDHP) and Health Savings Accounts (HSA)

<b>HDHP – Maximum annual out-of-pocket limit (excluding premiums)</b>	<b>2025</b>	<b>Trend</b>	<b>2026</b>
Self-only coverage	\$8,300	Up	\$8,500
Family coverage	\$16,600	Up	\$17,000
<b>HDHP – Minimum annual deductible</b>	<b>2025</b>	<b>Trend</b>	<b>2026</b>
Self-only coverage	\$1,650	Up	\$1,700
Family coverage	\$3,300	Up	\$3,400
<b>HSA – Annual contribution limit</b>	<b>2025</b>	<b>Trend</b>	<b>2026</b>
Self-only coverage	\$4,300	Up	\$4,400
Family coverage	\$8,550	Up	\$8,750
Catch-up contributions (age 55 or older by the end of the year)	\$1,000	Same	\$1,000

# Qualified Plan Updates

# **SECURE 2.0 Act**

# Qualified Plan Updates – SECURE 2.0 ACT

- **Super Catch-Up (SECURE 2.0 Act, Section 109)**
  - Effective January 1, 2025, higher catch-up limit applies at Age 60 through 63
  - Optional Feature – 401(k), 403(b) and governmental 457(b) plans
- **Mandatory Roth Catch-Up Contributions (SECURE 2.0 Act, Section 603)**
  - Age-50 Catch-Ups & Super Catch Catch-Ups made by higher paid participants must be made as designated Roth contributions
    - FICA “wages” greater than \$145,000 for the preceding calendar year
  - Notice 2023-62 – 2-year freeze on original effective date (January 1, 2024).
  - Rules Apply to 401(k), 403(b) and governmental 457(b) plans



# Qualified Plan Updates – SECURE 2.0 ACT

- **Final Catch-Up Regulations Address Unanswered Questions (TD 10033)**
  - Clarifies “FICA wages” means Form W-2, Box 3
  - “Deemed Election” concept added to facilitate compliance
  - Correcting violations of the mandatory Roth Catch-Up requirements:
    - Correct using EPCRS correction method available for elective deferral errors
    - Two additional correction methods available to plans that implement deemed elections (Form W-2 method and Roth In-Plan Rollover method)
    - Consistency requirements for choice of correction methods
  - Coordination with special catch-ups in 403(b) and governmental 457(b) plans
  - 403(b) Plan Universal Availability and Super Catch-Ups (Age 60 through 63)

# Qualified Plan Updates – SECURE 2.0 ACT

- Effective Dates for Operational Compliance:
  - Super Catch-Ups for Age 60 through 63 available as of January 1, 2025
  - Mandatory Roth Catch-Up Rules – Effective as of January 1, 2026
  - Final Regulations – Effective as of January 1, 2027
    - Good faith compliance required in 2026
- Plan Amendment Deadlines:<sup>\*</sup>
  - Most Plans – December 31, 2026
  - Plans Subject to Collective Bargaining – December 31, 2028
  - Governmental Plans – December 31, 2029 (later date may apply)

# Qualified Plan Updates – SECURE 2.0 ACT

- **Notice 2026-13 (January 15, 20206) – Updated 402(f) Rollover Notices**
  - IRS Updates 402(f) Safe Harbor Rollover Notices for SECURE 2.0 Act Changes:
    - Includes list of exemptions from the 10% early distribution penalty
    - Reflect new RMD rules for surviving spouses; eliminate reference to specific RMD age; clarify RMD rules don't apply to distributions from designated Roth accounts
    - Increases the automatic cash-out threshold and auto-rollover cap to (\$7,000)
    - Addresses tax treatment of distributions from governmental plans to eligible public safety retirees to pay for health and long-term care insurance
    - Address Pension-linked Emergency Savings Accounts (PLESAs) distributions
  - Important to update existing rollover notices to reflect Notice 2026-13 guidance

# Qualified Plan Updates – SECURE 2.0 ACT

- **IRS Required Amendments Lists (Notice 2024-82 and 2025-60)**
- Notice 2024-82 Required Amendments List
  - Required Law Changes:
    - Code § 415 limit for certain employees of a rural electric cooperative plan
    - Family attribution changes for controlled group/ affiliated services group test
  - Plans with the following optional plan features:
    - SECURE Act (§102, §103 and §113) – Safe harbor plan auto-enrollment changes, qualified birth/ adoption distributions,
    - American Miners Act (§104) – Age 59 ½ distributions from pension plans
    - CARES Act (§2022 & §2023) – Covid-related distributions, 2020 RMD waivers

# Qualified Plan Updates – SECURE 2.0 ACT

- Notice 2024-82 Required Amendments List (con't)
  - SECURE 2.0 Act (§ 311, §401, §604, §348, §127, §115 and §314) – limit repayment of qualified birth/ adoption distributions to 3-years, allows employer matching and NEC to be made as Roth contributions, technical amendment to 401(k) safe harbor rules, cash balance plan pay credits/ variable interest rate credits, pension-linked emergency savings accounts, and emergency personal expense and domestic abuse victim distributions
  - Amendment Deadlines
    - Most Plans – December 31, 2026
    - Collectively Bargained Plans – December 31, 2028
    - Governmental Plans – December 31, 2029



# Qualified Plan Updates – SECURE 2.0 ACT

- Notice 2025-60 Required Amendments List
  - Required Law Changes:
    - SECURE Act (§114 and §401) – Increase RBD age and Modification to RMD rules for designated beneficiaries
      - » Amendment Deadline – Same as deadlines in prior slide
    - Extension of partnership and trust attribution rules to Parent-Sub controlled group rules
      - » December 31, 2027, for most plans
  - No discretionary law changes listed

# **Defined Contribution Plan Investment Issues**

# Alternative Plan Investments

- **2020 – (Trump 1.0) DOL Information Letter re Private Equity**
  - Nothing per se impermissible by offering private equity in QDIAs (managed funds)
- **2021 – (Biden) Supplemental Statement**
  - **Discouraged** fiduciaries from using private equity
- **2022 – (Biden) Compliance Assistance Release 2022-01 re Cryptocurrency**
  - **Warns** fiduciaries must exercise “extreme care” before offering crypto options
- **2025 – (Trump 2.0) Compliance Assistance Release 2025-01 re Crypto...**
  - Eliminates prior warning & advises risks and benefits are like any other investment
- **2025 – (Trump 2.0) Administration Rescission of Supplemental Statement**
  - Effectively rescinds 2021 Supplemental Statement discouraging private equity

# Alternative Plan Investments (cont.)

- **August 2025 - Executive Order**

- Proposes to broaden investment opportunities for retirement plans that lack access to investments available to wealthy investors
- Directs DOL and SEC to issue guidance that safely bolsters such opportunities
- **Encourages** retirement plans to consider offering:



- **January 2026 - Proposed DOL Rule re Alternative Investments Sent to White House**

- Refresher on fiduciary duties as applied to alternative investments

# **DOL Advisory Opinion 2025-04A**

# DOL Advisory Opinion 2025-04A

- DOL Advisory Opinion re how a guaranteed lifetime income product can be used as QDIA
- At issue was a custom target date fund that starts with a typical diversified investment allocation strategy and then shifts assets into secure income using variable annuities that offer guaranteed lifetime payments
- DOL concludes this GLI strategy can qualify as a QDIA as long as it otherwise satisfies the requirements of a QDIA, like any other qualified custom target date fund

# Executive Order 14366

# Proxy Voting and ESG Updates

## December 2025 Executive Order 14366

- Directs DOL to rewrite ERISA proxy voting rules
- Instructs the DOL to consider issuing rules to limit the use of ESG and DEI considerations in fiduciary decision making for retirement plans, including proxy voting
- May require fiduciaries to justify proxy votes more explicitly based on financial returns, not social or political considerations

## 2026 Proposed Legislation re ESG Investing

- Severely restrict fiduciaries from considering ESG factors unless they directly affect financial performance
- Passed the House on January 15, 2026, by a 213–205 vote

# **DOL Drops Appeal Defending 2024 Fiduciary Rule**

# DOL Drops Appeal Defending 2024 Fiduciary Rule

- Effectively halts Biden-era effort to expand when financial professionals are treated as ERISA fiduciaries
- In brief, as a reminder, the 2024 rule would have broadened the definition of fiduciary to include:
  - Investment Broker advice
  - Insurance Agent advice
  - Rollover advice
  - Annuity purchase advice



# **Qualified Plan Updates - Miscellaneous**

# Rev. Rul. 2025-15 (July 16, 2025): Tax Reporting Uncashed Benefits Checks

- Must report the distribution on Form 1099-R in the year the check was issued (even if goes uncashed)
- No correction is made to the original Form 1099-R if the check is reissued and cashed in a subsequent year
- No tax withholding or reporting obligation if the subsequently issued check is less than or equal to the amount of the original distribution
- If subsequent check is a larger amount (e.g., due to accrued earnings), perform ITW on the difference between the two checks
  - Report the difference on Form 1099-R if  $> \$10$
  - If  $< \$10$ , no Form 1099-R reporting requirement

# Retirement Plan Litigation

# ***Los Angeles County Employees Retirement Ass'n v. County of Los Angeles 2024 102 Cal.App.5th 1167, 1183, review granted***

- LACERA filed a writ of mandate that sought to compel the County to include in its salary ordinance employment classifications and salaries established by LACERA for investment and IT employees it had hoped to hire.
  - The trial court denied the writ based largely on *Westly v. Board of Admin.* (2003) 105 Cal.App.4th 1095, which held that Proposition 162 (a voter initiative passed in 1992 that amended Cal. Const. art. 16, § 17) did not grant CalPERS the power to set employment classifications and salaries for its employees
  - The trial court also held CERL was ambiguous regarding which body—LACERA or the County—“decides the job classification and compensation of [retirement system] personnel” and interpreted that ambiguity in accordance with the broader holding in *Westly*
  - LACERA appealed

# **LACERA v. County of Los Angeles (con't)**

- **Court of Appeal reverses.**
  - Holds that the CERL gives LACERA responsibility for managing retirement system and Cal. Const. art. 16, § 17 (i.e., Proposition 162) give LACERA “plenary authority” over the “administration of the system”
    - » This plenary authority includes the power to hire necessary personnel and set compensation and *Westly*’s contrary holding is not persuasive.
    - » The CERL requires the Board to include LACERA’s employment classifications and salaries in the County’s salary ordinance.
  - The County petitioned the Supreme Court for review



# ***LACERA v. County of Los Angeles (con't)***

- **The Supreme Court** grants review and has identified following as questions presented:
  - Does the board of a county public employee retirement system established under the CERL have authority under the California Constitution and relevant statutes to create employment classifications and set salaries for employees of the retirement system?
  - Does Government Code section 31522.1 impose a ministerial duty on a county board of supervisors to include in the county's employment classifications and salary ordinance the classifications and salaries adopted by the board of a county public employee retirement system for employees of that system?
  - Do Proposition 162 and CERL override a county board of supervisors' constitutional authority to establish civil service classifications, set salaries, and maintain a civil service system for county employees under article XI of the California Constitution?

# ***LACERA v. County of Los Angeles (con't).***

- **Current status**
  - Until Supreme Court weighs in, trial courts can exercise their discretion and choose to apply either *Westly* or *LACERA*
  - The matter is fully briefed, but oral argument is not yet set.

## **Potential implications.**

- Significant and highly uncertain—both as to substance (many possible routes) and scope (limited to CERL or broader?)

# ***Ventura Cnty. Employees' Ret. Assn. v. Crim. Just. Att'ys Assn. of Ventura Cnty. (2024) 98 Cal.App.5th 1119, review granted***

- VCERA filed a lawsuit to confirm that its exclusion of compensation for accrued, but unused, hours of annual leave exceeding employees' calendar year allowance from pension calculations was legal, following the ACERA decision—which broadly challenge the PEPRA legislation, effective January 1, 2013
- **Court of Appeal** affirms the trial court
  - The clear intent behind PEPRA required the exclusion to prevent pension spiking and relied on language in ACERA (that the plaintiffs argued was dicta) stating that "By limiting the inclusion of cashed out leave time to that 'earned and payable' in a '12-month period,' subdivision (b)(2) and (4) prevent this practice."

# ***VCERA v. Crim. Justice Att'ys Assn. of Ventura Cnty. (cont.)***

- **The Supreme Court** (to the surprise of some) grants review:
  - This framing is very narrow and appears somewhat unfavorable to VCERA:
    - “Does Government Code section 31461, subdivision (b)(2) exclude payments for accrued, but unused hours of annual leave that would exceed the maximum amount of leave that was earnable and payable in a calendar year.”
  - Fully briefed, but oral argument is TBD

# 2026 plan limits

# 2026 Qualified Plan Limits

Retirement Plan Limits	2025	Trend	2026
Elective deferral limit for 401(k), 403(b), and eligible 457(b) plans	\$23,500	Up	\$24,500
The catch-up contribution limit for those aged 50 or older	\$7,500	Up	\$8,000
Optional catch-up contributions for those aged 60-63	\$11,250	Same	\$11,250
Dollar limit on annual benefit under a defined benefit plan	\$280,000	Up	\$290,000
Dollar limit on annual allocations under a defined contribution plan	\$70,000	Up	\$72,000
Annual compensation limit	\$350,000	Up	\$360,000
Threshold for "highly compensated employee" status used in nondiscrimination testing	\$160,000	Same	\$160,000
Threshold for "key employee" status for officers used in performing "top-heavy" testing	\$230,000	Up	\$235,000

Social Security Wage Base	2025	Trend	2026
Social Security Maximum Taxable Earnings	\$176,100	Up	\$184,500

# **California Public Employees Retirement System (CalPERS)**

# **Circular Letter 200-037-25**

## **Membership Enrollment for Part-Time Employees**

- Employers have an obligation to monitor and enroll employees into CalPERS
- Generally, an employee is:
  - Hired in a permanent/full-time position,
  - Already a CalPERS member, or
  - Hired into a part-time position working 20 or more hours per week for more than 12 months
- Except as provided above, an employee hired into a part-time position must be enrolled into CalPERS by the first day of the first pay period of the month following the month in which the employee:
  - Works 125 days in a fiscal year (if paid on a daily or per diem basis); or
  - Works 1,000 hours in a fiscal year (if an hourly employee)

# **Circular Letter 200-037-25**

## **Membership Enrollment for Part-Time Employees**

- Hours counted toward the 1,000-hour threshold:
  - All compensated hours, regular hours, overtime, paid holidays, used sick leave, used vacation, and any hours an employee would have worked if were not subject to furlough
- Consequences of late reporting:
  - Late enrollment fees,
  - Contributions, and
  - Penalties (\$500 per employee)

# **Circular Letter 200-021-25**

## **Post-Retirement of CalPERS Retired Annuitants – Leave of Absence or Interim Vacant Position**

- Clarifies rules regarding employment of retired annuitants (RAs) to temporarily fill positions for permanent employees on a leave of absence or vacant positions on an interim basis during recruitment for a permanent appointment
- Requirements for Leave of Absence Appointments
  - Appointment must be approved with a resolution in an open meeting (not on consent calendar) indicating:
    - The position is available because of an LOA granted to a person on payroll status for a period not to exceed one year; and
    - The position requires specialized skills, and the RA filling the position has the required specialized skills
  - Resolution must be filed with CalPERS prior to appointment
  - Employment must be terminated at the end of leave of absence and no more than 1 year
  - Appointment is generally for single/unique positions (e.g., city manager, police chief, director, other managerial/executive positions)

# **Circular Letter 200-021-25**

## **Employment of CalPERS Retired Annuitants – Leave of Absence or Interim Vacant Position**

- Requirements for Interim Vacant Appointments
  - Position requires specialized skills and the RA filling the position has the specialized skills or is appointed during an emergency to stoppage of public business
  - The RA can only be appointed only once to the same position
  - There must be an open recruitment to permanently fill the vacant position
  - The RA cannot receive any benefits, incentives, compensation in lieu of benefits, or other forms of compensation in addition to the hourly rate
  - The appointment should be approved with a resolution in an open meeting (not on consent calendar)
  - Generally used for single/unique positions

# **Circular Letter 200-021-25**

## **Employment of CalPERS Retired Annuitants – Leave of Absence or Interim Vacant Position**

- Requirements for both Leave of Absence Appointments and Interim Vacant Appointments:
  - The appointment cannot exceed a combined total of 960 hours in a fiscal year for all CalPERS employers
  - The hourly rate of pay for the employment must not be less than the minimum, nor exceed the maximum paid by the employer to employees performing comparable duties, divided by 173.333
  - The RA must not earn any service credit or retirement rights with respect to the employment, absent reinstatement
  - The RA is not reemployed within 180 days of the RA's retirement, unless the RA did not receive any incentive to retire, and the appointment is:
    - Certified by the employer as necessary to fill a critically-needed position before 180 days have passed, and
    - Approved by the employer's governing body at a public hearing (not on consent calendar)

# **Circular Letter 200-021-25**

## **Employment of CalPERS Retired Annuitants – Leave of Absence or Interim Vacant Position**

- The RA has not received unemployment compensation arising out of any prior employment subject to these requirements with the employer during the 12-month period preceding the appointment
- Failure to satisfy these rules may result in:
  - Retroactive reinstatement
  - CalPERS requiring the RA to repay CalPERS for all retirement benefits received since the retroactive reinstatement date
  - Member make-up contributions plus interest retroactive to the reinstatement date
  - Employer make-up contributions plus interest retroactive to the reinstatement date

# Thank You!

