



Employment Law Update July 2012

SB 1021: More Changes Required for Retired Annuitant Contracts

By Kelly A. Trainer and Katy A. Suttorp

Historically, many CalPERS contracting agencies were able to provide for a smooth transition after departures of upper managers by contracting with retired annuitants under *Government Code* section 21221(h). Section 21221(h) had previously provided for the appointment of a retired annuitant for a limited duration to a position that required specialized skills or during an emergency to prevent stoppage of public business. However, earlier this year, AB 1028 took effect, amending section 21221(h) expressing limiting its use to the *interim* appointment of a retired annuitant *while recruitment for a permanent appointee was conducted* to a position that required specialized skills or during an emergency to prevent stoppage of public business. In addition, AB 1028 made clear that the compensation received by the retired annuitant could not exceed the "maximum published pay schedule for the vacant position." Further, AB 1028 provided that the contracting agency "shall appoint a retired person only once under" section 21221(h). Finally, while section 21221(h) had always had a 12-month limitation on appointments, AB 1028 further provided that the interim appointment could not continue under *Government Code* section 21224 or 21229.

Complicating matters further, on June 27, 2012, the Governor enacted SB 1021 entitled "Public Safety" taking effect immediately by its terms. Buried in legislation dealing with a variety of administrative matters such as establishing a \$20 fee for attorneys wishing to appear by telephone in civil litigation, are significant changes to section 21221(h). Importantly, SB 1021 imposes three major changes on the content of contracts entered into with retired annuitants hired under section 21221(h).

Attorney Spotlight



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Ms. Trainer has an extensive counseling practice, concentrating on preventive measures of employment and labor law. In this regard, her practice has focused on revising personnel rules, updating specific policies, and advising human resources professionals on a variety of employment matters. She also serves as a neutral investigator for internal investigations of employment complaints, and conducts a variety of seminars and workplace trainings for employees on matters such as harassment prevention, disability discrimination, discipline and termination, and leaves of absence.

First, the salary of the retired annuitant is now subject to a codified formula. Specifically, section 21221(h) provides that the salary "shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a published pay schedule for the vacant position divided by 173.333 to equal an hourly rate.[1]

Second, the law now provides that a retired annuitant appointed pursuant to section 21221(h) "shall not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate.[2] CalPERS has yet to provide any additional guidance on the meaning of this provision, although CalPERS recently contacted some employers to advise of the passage of SB 1021 and of CalPERS' intent to issue a circular letter on the matter in the coming months. However, the plain language of the section states that a retired annuitant cannot receive any benefits, which would include many benefits that are commonly found in interim employment contracts, such as paid sick leave, cellular phone stipends, and automobile allowances.

Finally, where section 21221(h) had previously permitted the governing body of an agency employing a retired annuitant to obtain approval of an extension of temporary employment beyond 960 hours in a fiscal year from CalPERS, SB 1021 has removed that possibility. Section 21221(h), now provides that a retired annuitant appointed under section 21221(h) shall not work more than a combined total of 960 hours in any fiscal year, regardless of whether he or she works for more than one agency.[3]

For those agencies that do not currently employ any retired annuitants under section 21221(h), these changes will need to be reflected in any future contracts. However, a number of agencies have contracts currently in effect that are now in conflict with section 21221(h) - particularly the provisions regarding salary determination and fringe benefits. Neither the language of the bill nor the committee analysis provides any guidance as to the applicability of SB 1021 or its consequences for a contract currently in place. Notably, the bill does not expressly provide for any grandfathering of preexisting contracts or for a reasonable time period to come into compliance with the new legislation. The consequences of violating section 21221(h) involve at minimum, loss or interruption of retirement benefits, and at worst, reinstatement of the retired annuitant to the CalPERS system, which carries a cost to both the retired annuitant and to the employing agency.

We would advise that agencies immediately review their contracts with retired annuitants to determine if there are provisions that may now place the status of the retired annuitant in jeopardy and consult experienced legal counsel.

Attorney Spotlight



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Ms. Suttorp represents and counsels a wide range of employers, including private entities, municipalities, school districts, community college districts, and special districts, in numerous personnel matters, as well as conducting workplace investigations, drafting, revising and updating personnel rules and ordinances, and conducting and responding to wage and hour and CalPERS audits.



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[1] Public employers should be aware that SB 1021 also revised section 21224, which applies to the employment of a retired annuitant either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of a limited duration. Retired annuitants employed under section 21224 are also subject to the same salary formula as those employed under section 21221(h).

[2] This prohibition was also added to section 21224.

[3] This hours limitation was also added to section 21224.

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