

Section 1: **PURPOSE**

This policy is adopted for the purpose of providing a method that is consistent with CalPERS rules, state and federal law for CalPERS annuitants to work for the City following retirement. There are strict CalPERS rules about working after retirement and non-compliance could result in financial penalties to both the City and the Retiree.

Section 2: **POLICY**

It is the policy of the City of Manteca that annuitants **shall not** be hired if any of the following apply:

- If the general skills required for a temporary position are available in the marketplace.
- The hire is for the purpose of filling a vacant permanent part-time, intermittent or full-time position. Pursuant to CalPERS, this refers to approved budgeted positions.
- For seasonal work that reoccurs annually without a demonstrated inability to recruit non-retired persons.
- For “Extra Help” positions that are ongoing, and do not have an end date.
- If the annuitant has applied for unemployment during his/her retirement period.

Retirees **may** be hired with approval from the City Manager as follows:

- For work for a special project or temporary work of a limited duration that requires specialized skills.
- For extra help for positions requiring specialized skills where there is a demonstrated inability to recruit non-retired persons. This is subject to regular CalPERS limitations on hours and length of employment for annuitants and the annuitant may not be appointed to the position.
- Appointment of an annuitant as an interim to a vacant position during recruitment for a permanent appointment where position requires specialized skills or during an emergency to prevent stoppage of public business. This appointment can occur only once to this vacant position for a maximum of 960 hours in a fiscal year, and for no more than 12 months. The 960 hour limit includes all hours worked for any CalPERS agency.

Annuitants under the Normal Retirement Age

If an employee retires before the Normal Retirement Age, then he/she must wait 180 calendar days before returning to work for the City. No written or verbal agreement can be made prior to retirement that the City will hire the

annuitant back to do work as a retiree. If this occurs, the 60 days is considered a leave of absence and not a bona fide separation from service and the retiree will be re-instated as an active PERS member.

Annuitants who have reached Normal Retirement Age

Employees who retire at the Normal Retirement Age are able to return to City employment as a temporary employee without waiting 180 days.

Allowable Hours

PERS retirees may work up to 960 hours in a fiscal year for a PERS agency. Retirees who work more than 960 hours are subject to being returned to active status with PERS.

Retiree Status

Any retiree rehired by the City must be hired as a City temporary or interim employee and not an independent contractor, unless the retiree can satisfy the independent contractor test and supply liability insurance.

If hiring an annuitant as an independent contractor, the hiring department must receive advance approval from the Human Resources Department prior to offering to contract with a retiree.

Rate of Pay

All annuitants must be hired at an hourly rate of pay within the publicly posted base salary range of the class performing similar duties. No benefits, incentives, in lieu of pay or any other compensation in addition to the hourly rate of pay shall be paid. No exceptions are permitted.

Penalties

An annuitant hired without a bona fide separation from service, as required by PERS, or determined to be out of compliance with PERS rules may be retroactively reinstated to active membership in PERS retroactive to the first day of employment as a retiree.

Reinstatement to active membership without advanced approval from PERS will result in the employee reimbursing PERS for retirement allowance received during the unapproved employment time period. Payment of employee contributions for that time period and reimbursement to PERS for any administrative expenses, will be required should PERS determine the employee was at fault.

If a retiree is returned to active membership without the prior approval of PERS, the City will be required to pay the employer contributions for the period of unapproved employment, and to reimburse PERS of any administrative expenses, to the extent the City is found to be at fault.

Section 3: **DEFINITIONS**

- A. CalPERS California Public Employees Retirement System
- B. Annuitant is an individual who has retired from the CalPERS system (it is not necessary that the individual retire from the City of Manteca)
- C. Normal Retirement Age is defined as the age in the employee's retirement system benefit formula. For a 3% @ 50 retirement plan the Normal Retirement Age is 50. For a 2.7% @ 55 retirement plan, the Normal Retirement Age is 55. For a 2.0% @ 60 retirement plan, the Normal Retirement Age is 60.
- D. Bona Fide Separation in Service for the purposes of this policy is a separation of service of at least 60 calendar days.
- E. Extra Help Positions is defined as a temporary position.

Section 4: **REFERENCES**

- CalPERS Circular Letter 200-181-04 "Employment After Retirement with a CalPERS-Covered Employer"
- 200-003-12 "Information on AB1028 Changes to Employment"
- Senate Bill 1021 Administrative Bill enacting more changes when hiring CalPERS annuitants.

CalPERS Retiree Return to Work Eligibility Analysis

The City of Manteca and all returning retired annuitants must verify compliance with CalPERS eligibility requirements before annuitants are appointed to temporary employment.

Please read the information below carefully, complete the bottom portion of this form and submit the required documentation to the Human Resources Department to be considered for temporary employment with the City of Manteca.

The information below is taken directly from the CalPERS “Employment after Retirement” guide available at the CalPERS website: <http://www.calpers.ca.gov/>; if you require further clarification you may contact CalPERS at 1-888-225-7377 or Human Resources at 209-456-8700.

Eligibility to Work for a CalPERS Employer in a Temporary Capacity

CalPERS service retirees may seek temporary, limited-term employment as a “retired annuitant” without CalPERS approval. The following restrictions to employment apply:

Temporary appointment to perform specialized work of a limited duration: California Government Code Section 21224 allows a City to (re)hire a retired person because the retired employee has specialized skills needed in performing work of limited duration. Retired annuitants may be utilized in temporary “extra help” assignments – during an emergency to prevent stoppage of business or to perform work of limited duration – such as elimination of backlog, special projects, or work in excess of what permanent employees can do. Retirees should not be appointed to vacant permanent part-time, permanent intermittent, or permanent full-time positions, even if the hours worked will not exceed 960 hours per fiscal year. Retirees re-appointed to vacant permanent positions, even if keeping hours worked below 960 hours in a fiscal year, “will be subject to mandatory reinstatement from retirement.”

Bona fide separation requirement: Temporary employment as a “retired annuitant” with a CalPERS employer is not allowed if you are younger than the normal service retirement age, unless both of the following conditions are met:

- There is not verbal or written agreement to return to work as a “retired annuitant” between you and any CalPERS employer before you retired.
- There is a termination of employment (separation in service) for **180 days** between your retirement date and the date your temporary employment as a “retired annuitant” will begin.

Normal service retirement age for CalPERS purposes is the benefit formula age shown in your retirement formula, i.e., age 55 for the 2% @ 55 formula, age 60 for the 3% @ 60 formula, and 65 for the 1 ¼ % @ 65 formula. If your retirement allowance is based on more than one formula, regardless of when that formula was earned, the highest benefit age determines your eligibility.

For service retirees under normal retirement age, the only exception to this restriction is for specific emergency conditions as defined in Government Code section 8558. This bona fide separation (break) in service requirement is in California retirement law in order to comply with Internal Revenue Code (IRC) tax regulations which prohibit the in-service distribution of pension benefits.

Note: Temporary employment must remain under the 960-hour per fiscal year work limit. Both retiree and employer are responsible for monitoring compliance with this work limit. If the hours are exceeded, each will be held accountable for unlawful employment, the consequence of which can include penalties, fines, and mandatory reinstatement from retirement into active employment (membership) in the current position.

Part I: TO BE COMPLETED BY THE CalPERS SERVICE RETIREE

Full Name: _____

Position: _____

1. Did you retire from the City of Manteca? ☐ Yes ☐ No

Previous City of Manteca Employee ID (if applicable)

2. Did you work for more than one CalPERS employer? ☐ Yes ☐ No

If yes, what is the agency's retirement formula (list all CalPERS employers other than the City of Manteca)?

3. In the last 12 months have you received any unemployment insurance payments based on your previous employment as a retired annuitant with a State department? ☐ Yes ☐ No

4. In the past 12 months have you received any unemployment insurance payments based on prior employment as a retired annuitant with a PERS member agency: ☐ Yes ☐ No

Certification of Retired Annuitant:

I have read and understand the CalPERS circular letter dated January 26, 2012 with the subject line "Information on AB 1028 Changes to Employment After Retirement." I understand that I may only accept a temporary appointment by a CalPERS employer as a retired annuitant as specifically allowed by law. Failing to do so subjects me to monetary penalties in the form of reimbursement to CalPERS for all retirement allowances received during the unlawful employment and fines. I further understand that I may be subject to mandatory reinstatement to CalPERS membership in the category in which, and on the date which, the appointment began.

I accept any risks as it relates to actions taken by CalPERS with regard to my appointment as a retired annuitant. The City of Manteca has made no promises, guarantees, representations, or warranties, expressed or implied, with regard to my decision to seek a temporary appointment with the City as a retired annuitant. I agree to hold harmless the City from any and all claims, demands, and/or causes of action arising out of actions taken by CalPERS with regard to my appointment with the City as a retired annuitant.

I further understand that if I work for more than one CalPERS employer during a fiscal year, the total hours worked for all CalPERS employers are included within the 960 hours-per-fiscal-year maximum.

Employee Signature: _____

Date: _____

Part II: TO BE COMPLETED BY THE DEPARTMENT

California Government Code Section 21224(a) states the following:

“A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon temporary appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage or public business or because the retired employee has specialized skills needed in performing work of limited duration. These appointments shall not exceed a total for all employers of 960 hours in any fiscal year, and the rate of pay for the employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.”

1. Is this appointment Temporary, both in nature and in duration? The January 26, 2012 CalPERS Circular specifically states that “Retirees should not be appointed to vacant permanent part-time, permanent intermittent or permanent full-time positions even if the hours worked will not exceed 960 hours per fiscal year...”

☐ Yes

☐ No

2. When will the temporary assignment be completed?

3. Will the Temporary Employee perform one or more of the following tasks?

- Working on special project
- Eliminating a backlog
- Preventing stoppage of public business
- Performing work of limited duration
- Handling workloads in excess of what the Department’s permanent workforce can provide

☐ Yes

☐ No

(Note: An affirmative response would be consistent with CalPERS’ intent in allowing retirees to take temporary assignments with a CalPERS member agency)

4. Will the Temporary Employee be filling his/her former position, but on a part time basis?

☐ Yes

☐ No

(Note: An affirmative response would likely constitute a violation of CalPERS rules; hiring should not be pursued)

5. List Specialized Skills which justify warrant appointment of this individual retired annuitant (e.g. skills not available through a temporary employee who is not a PERS annuitant):

6. The following additional facts support the temporary appointment of the above named retiree (please attach a separate sheet if necessary):

Department Head’s Signature: _____

Date: _____

Part III: APPROVALS

I have reviewed the information provided on this form and find sufficient facts to support the eligibility for the retiree to work in a temporary capacity. The retiree is now eligible for consideration for temporary employment by the appointing authority.

Human Resources/Risk Management Director Signature: _____ Date: _____

City Manager Signature: _____ Date: _____