

# LIEBERT CASSIDY WHITMORE

# SPECIAL BULLETIN

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## With AB 1028, The Legislature Clarifies The Limits On Post-Retirement Work Opportunities For PERS Retirees

As of January 1, 2012, PERS retirees will have additional restrictions on their ability to work for PERS agencies. While AB 1028 affects several different Government Code sections, it is garnering the greatest attention for its changes to Government Code sections 21221(h) and 21224; the two statutes that address post-retirement work opportunities and restrictions for PERS service retirees with PERS agencies.

There is no doubt that AB 1028's changes in this area are important and must be followed, but they do not mark any monumental shift in philosophy. In fact, they are more a clarification of the current law rather than a drastic change in the law.

Government Code section 21221(h) is the section used when the retiree is to be appointed by the agency's governing body. It currently allows PERS retirees to be appointed for a limited duration to a position deemed by that governing body as requiring specialized skills or during an emergency to prevent stoppage of public business. A retiree can be appointed for a term not to exceed one year, AND may not work more than 960 hours in a fiscal year (July 1- June 30). There is an ability to exceed 960 hours in a fiscal year if a request is made to PERS before the 960 hour limit is exceeded and PERS does not deny the request. There is no mechanism to request that the one year term be exceeded. Section 21221(h) has generally been used to fill high level vacancies for positions that are appointed by the governing body, such as City Manager, Police Chief, Fire Chief, etc., with a retiree who is willing to work for a short period of time. This arrangement helps the agency fill that position while a permanent replacement is sought. However, section 21221(h) has not always been used solely for this purpose and the current statutory language does not explicitly limit it to that arrangement.

AB1028 simply takes the standard scenario described above and makes it the sole basis for post-retirement employment under the statute. Moreover, if there was any question about whether the one year limitation on post-retirement employment could be circumvented by simply reappointing the retiree to another one year term, AB 1028 explicitly prohibits subsequent appointments. Lastly, AB 1028 limits the retiree's compensation to the maximum published pay schedule for the vacant position.

Changes to Government code section 21224 are even more modest. This section does not require appointment by the governing body, but it does require appointments be for a limited term. Currently, these appointments implicitly required specialized skills for the post-retirement appointment to be lawful. That implication was derived from the heading of the section, although the plain language of the actual statute did not contain this requirement, only requiring the work to be in an emergency or because the retiree had needed "skills." AB 1028 adds the special skills requirement in the actual statutory language. It also reinforces the limited term restriction by added that the appointments shall be temporary. It made no other changes to that statute.

AB 1028 does not affect any of the other limitations on post-retirement work, such as those applicable to retirees who retired before reaching normal retirement age or the limitations applicable to retirees who recently received unemployment insurance.

### Note:

*This article was also published on the firm's **California Public Agency Labor and Employment Blog**. To view other blog posts, please visit [www.calpublicagencylaboremploymentblog.com](http://www.calpublicagencylaboremploymentblog.com).*

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