



Clarifying CalPERS Rules and Hiring, Reporting, and Working After Retirement

Steve M. Berliner, Partner
Liebert Cassidy Whitmore

Renee Ostrander, Chief
Employer Account Management Division, CalPERS

Agenda

- Employment
 - Temporary Employees
 - Independent Contractor vs Employee
- Compensation
 - Compensation Reportability
 - MOU Review & Self-Service Tools
- Working After Retirement
 - Rules
 - Consequences



Employment Relationships



Employment Relationships

Temporary Employees

- Third party/labor supplier employment
- Tend to be employees of the CalPERS agency and not the temporary agency

Independent Contractors

- Excluded from CalPERS membership
- Contract to provide a service or complete a task
- Utilizing a third-party employment agency does not create an independent relationship with employer
- Not subject to the contracting agency's control



Employment Relationships

Common Law Control Test

Primary Factors

- Who has the right to control the manner and means of accomplishing the desired result?
- Is control executed only as to the result of the work and not the means by which it is accomplished?

Secondary Factors

- Skills required
- Length of tenure
- Method of payment
- Part of regular business



Employment Relationships

Facts to Consider When Hiring

Category	Employee	Independent Contractor
Pay	Hourly or salary	Paid per project
Length of time on job	Continuing	Temporary. Work ends when project is completed
Equipment/Property	Use employer's	Uses their own



Employee Relationship

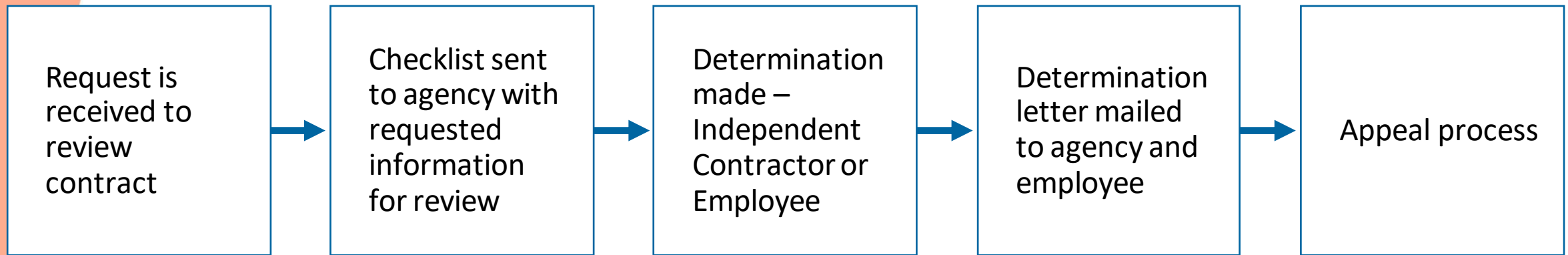
Independent Contractor

- Reach out to CalPERS **prior to hiring** an independent contractor if you have concerns
- Supporting documentation will be requested
- CalPERS will review using the Common Law Control Test



Employment Relationships

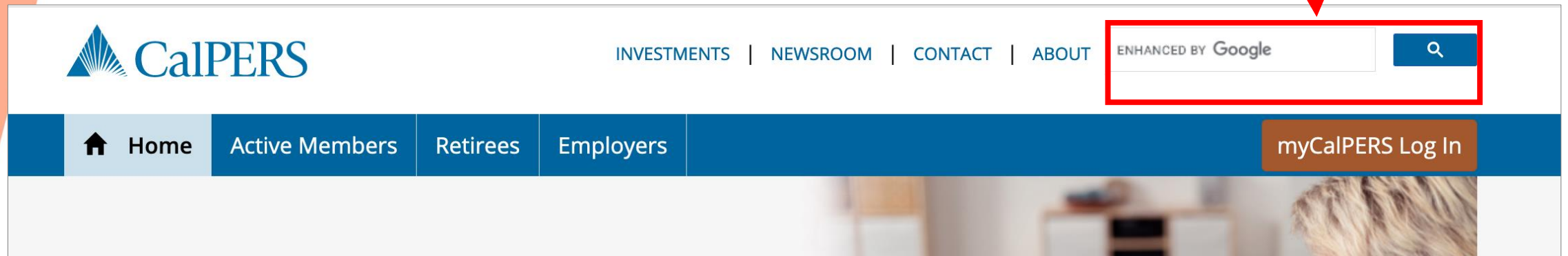
Independent Contractor Review Process



Employment Relationships

Independent Contractor Review Process

Type "Employee or Independent Contractor" in Search Box



The screenshot shows the top navigation bar of the CalPERS website. On the left is the CalPERS logo. To its right are links for INVESTMENTS, NEWSROOM, CONTACT, and ABOUT. A search box is located on the right side of the header, containing the text "ENHANCED BY Google" and a magnifying glass icon. A red rectangular box highlights the search box, and a red arrow points from the text "Type 'Employee or Independent Contractor' in Search Box" to the search box. Below the navigation bar is a dark blue horizontal menu with buttons for Home, Active Members, Retirees, and Employers. On the far right of this menu is a brown button labeled "myCalPERS Log In".



Compensation



Special Compensation/ MOU Language

Special Compensation

- Special skills, knowledge, abilities
- Normal working hours and normal duties
- Available to group or class
- Pursuant to labor policy or agreement
- Exclusively identified and defined under C.C.R. section 571/571.1



Special Compensation/ MOU Language

To make this benefit available to your employees, you need a **written labor policy or agreement**:



Duly approved in a public meeting pursuant to public meetings laws



Contains conditions for payment



Immediately accessible



Effective and revision dates



Does not reference another document



Special Compensation/ MOU Language

Items excluded for PEPRA Members:

- Bonus
- Off-salary schedule
- Management incentive
- FLSA – miscellaneous members only
- Uniform allowance
- Temporary upgrade
- Value of employer-paid member contributions



Special Compensation/MOU Language

How We Can Help You With MOU Language

CalPERS Review Available

- Submit your review request through our new webpage
- Receive a MOU language consultation
- Get assistance to facilitate discussions with labor

New Enhancements

- Language samples
- Response letter

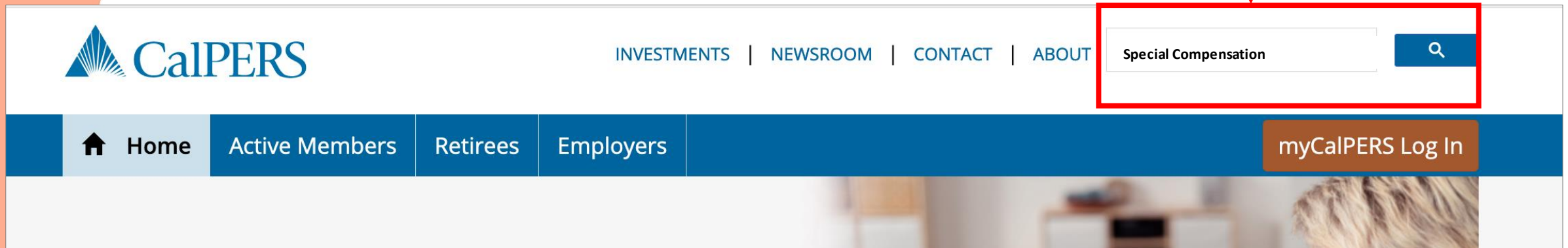


Special Compensation/ MOU Language

Online Resources

- Compliance & Compensation Reporting
- Special Compensation Reportability Table

Type **“Special Compensation”** in Search Box



The screenshot shows the top navigation bar of the CalPERS website. On the left is the CalPERS logo. To the right are links for INVESTMENTS | NEWSROOM | CONTACT | ABOUT. A search bar is located on the right side of the navigation bar, containing the text "Special Compensation" and a magnifying glass icon. A red box highlights the search bar, and a red arrow points from the text above to the search bar. Below the navigation bar is a dark blue menu with links for Home, Active Members, Retirees, and Employers, and a "myCalPERS Log In" button. The background of the page is a blurred image of a person's head and shoulders.



New Law – SB 278

Disallowed Compensation



New Law – SB 278

Disallowed Compensation

- Effective January 1, 2022 (GC 20164.5)
- Defines disallowable compensation on benefit adjustments that are not in compliance with the retirement law
- Applies to compensation reported for members of state, school, or a contracting agency
- Specifies what occurs when CalPERS determine disallowable compensation is reported
- The Employer may submit their labor policies and/or agreement to CalPERS for guidance and review within 90 days



New Law – SB 278

Criteria to be Considered Disallowed Compensation:

- Special Compensation item deemed disallowed was included in the Labor agreement or MOU
- Special Compensation item was reported to system and contribution submitted
- Member was not knowledgeable of non-compliance
- Non-compliance was identified after member's effective retirement date



New Law – SB 278

Items not considered Disallowed Compensation:

- Payroll corrections related to errors
- Lump Sum reporting
- Compensation item was reportable but cannot be used in the final compensation calculation
- Special Compensation reported solely in FC period
- Payrate denials



New Law – SB 278

Employer's Responsibilities

- Employers will be responsible for:
 - Paying CalPERS the full cost of any overpayment
 - Reimbursing the retiree a portion of the actuarial equivalent of any reduced retirement benefit as a penalty
- Penalty:
 - 20% penalty calculated difference between disallowed compensation and adjusted monthly allowance
 - 90% paid to the affected retiree, survivor, or beneficiary
 - 10% paid to CalPERS



New Law – SB 278

Retroactive Application of Procedures

- Any determinations made on or after January 1, 2017, if an appeal has been filed and administrative or legal remedies have not been exhausted



Post- Retirement Employment



Post-Retirement Employment

Working Without Reinstatement

Interim Appointment (GC 21221h)

- Resolution required prior to start; must have duration identified
- Cannot reappoint to same vacancy
- Must be an active recruitment

Extra Help (GC 21224)

- Limited duration, i.e. backlog, special project, excess work
- Special skills



Post-Retirement Employment

Restrictions

Break Prior to Return

- 180-day break
 - Some exceptions apply
 - Compulsory if retirement incentive received
- 60-day break if under Normal Retirement Age/Bonafide Separation
 - No verbal or written pre-arranged agreements
 - Highest age in all retiree's formulas (max 62 yrs)
 - Only exception is Governor's Executive Order for disaster



Post-Retirement Employment

Restrictions

Hours

- 960-hour limit
- Restarts every fiscal year
- All employers combined
- Only exception is Governor's Executive Orders

Pay

- Pay must be within current salary schedule
- No additional benefits



Post-Retirement Employment

Consequences of Unlawful Employment

- Reinstatement to active membership if a reportable position; inactive membership if a non-reportable position (SB 411 may apply)
 - Retirement ceases
 - Classic/PEPRA determination
 - COLA is reset
- Required repayment of all benefit payments during violation period
- COLA restarts at re-retirement
- Contributions required for service reported during violation period (if service is reportable)



Resources

Post Retirement Employment:

- Circular Letter
- Publications
- myCalPERS
- Working_After_Retirement@calpers.ca.gov

Employment Relationships:

- Employment Relationships Handout
- Membership_Reporting@calpers.ca.gov

Special Compensation/MOU Language:

- Circular Letter 200-013-17 and 200-064-14
- Public Agency & School Reference Guide
- MOU_Review@calpers.ca.gov

Steven M. Berliner, Partner

Liebert Cassidy Whitmore

6033 West Century Boulevard, 5th floor

Los Angeles, CA 90045

(310) 981- 2000

sberliner@lcwlegal.com



Questions

