



**California Special  
Districts Association**  
*Districts Stronger Together*

CalPERS Board of Administration – *Via U.S. Mail and Email*  
Lincoln Plaza North  
400 Q Street  
Sacramento, CA 95811

**RE: In the Matter of Reimbursement of Retirement Allowance Received During Periods of Employment in Violation of Working After Retirement Laws from: Tarlochan Sandhu, Margaret Souza, David Dowswell, Estate of Douglas Breeze, and City of Capitola, City of Alameda, Town of Los Altos Hills, Union City, City of Hughson, City of Dixon, and City of Atascadero, Respondents (OAH Case No. 202040541); Request to Designate January 23, 2026, Proposed Decision of Administrative Law Judge as Precedential.**

To the Honorable Members of the CalPERS Board of Administration:

The League of California Cities (hereinafter “Cal Cities”), the California State Association of Counties (hereinafter “CSAC”) and the California Special Districts Association (hereinafter “CSDA”) submit this letter in support of the request by respondents in the above referenced matter that the CalPERS Board of Administration (hereinafter “Board”) designate as precedential the January 23, 2026, Proposed Decision by the Office of Administrative Hearings Administrative Law Judge (“Proposed Decision”).

The Proposed Decision provides critically needed clarity regarding: (1) the statute of limitations applicable to any such inquiries by CalPERS staff; and (2) the required due process and proper scope of CalPERS’ staff authority in making determinations concerning the appropriate remedies applicable to a violation of the post-retirement work restrictions. Without the guidance provided by the Proposed Decision, our members, -- particularly smaller cities, counties and special districts -- will continue to be negatively impacted due to the inconsistent approach taken by CalPERS staff in these situations.

I. Statute of Limitations Under Government Code § 20164.

The Proposed Decision’s determination of the applicable statute of limitations in cases involving potential violations of the restrictions on post-retirement employees is soundly reasoned and clearly stated. Barring cases involving fraud, death or change in marital status, “the limitations period applicable to CalPERS’s effort to collect from any respondent in this matter is three years: three years after the date of overpayment by CalPERS to the retirees, or



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three years after the date that payment from the retirees or cities to CalPERS should have occurred.” (Proposed Decision, Legal Conclusions, ¶¶ 11-12, p. 56).

Designation of the Proposed Decision as precedential on this point will promote fairness, encourage prompt and clear action by CalPERS staff, and result in administrative and judicial efficiencies by preventing matters from lingering, as occurred in the instant matter. Clarity regarding the three-year statute of limitations is critical for Cal Cities, CSAC and CSDA members, as it assists with budgeting by eliminating uncertainty arising from post-retirement employment situations. Cities, counties and special districts often lack information concerning the post-retirement employment of their retirees with other agencies. The applicable statute of limitations provided in the Government Code appropriately prevents retroactive liability for agencies and retirees acting in good faith actions, potentially decades after the fact, as would have occurred under the position argued by CalPERS staff in the OAH hearing.

## II. The Proposed Decision Provides Important Guidance Regarding the Imposition of Remedies.

The Proposed Decision provides important procedural protections for retirees and public entities that contract with CalPERS. Government Code § 21202 provides that a CalPERS retiree found to have worked in violation of statutory post-retirement restrictions “*may* be reinstated to membership in the category in which, and on the date on which, the unlawful employment occurred.” (Emphasis added). The consequences of reinstatement can be significant, requiring reimbursement by the employee of retirement allowances received and contributions that should have been made during the period of violation. (Gov. Code, § 21220 subd. (b)). The public employer who participates in the violation may also be required to reimburse for contributions to the system that should have been made. (Gov. Code, § 21220, subd. (c)).

As the ALJ stated, “No statute or regulation prescribes specific criteria to govern when CalPERS should or should not exercise its discretionary reinstatement power.” (Proposed Decision, Legal Conclusions, ¶ 7, p. 54). Factual Findings 111-112 in the Proposed Decision demonstrate the need for clear guidance to CalPERS staff when considering the severe remedy of reinstatement. With respect to the multiple retirees involved in this matter, CalPERS staff made inconsistent statements and reimbursement demands without adequate evidentiary support, often without notice to the affected retirees. (Proposed Decision, Factual Finding ¶ 111, p. 39).

Although CalPERS placed the issue of the proper calculation of overpayments, service credits, contributions and health care in its Statement of Issues, CalPERS staff was unable at the OAH hearing to produce evidence or consistent testimony to support any of its inconsistent and excessive calculations. (Proposed Decision, Factual Finding ¶ 112, p. 39).



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In addition, although the determination that the retirees were common law employees occurred during early administrative proceedings, CalPERS staff and the Board's original 2021 decision appeared to view the arrangements as some kind of "subterfuge to hide the fact" that the retirees were the common law employees of the respective public employers. The Proposed Decision correctly found that no issue regarding retiree intent was raised in either the 2021 hearing's Statement of Issues or in the current proceeding, and CalPERS presented no evidence contradicting the retirees' clear testimony that they acted in good faith under the belief that their work constituted independent contractor relationships. (Proposed Decision, Factual Findings, ¶¶ 21, 48, 75, 98).

Critically, the Proposed Decision clarifies that the mere determination that a retiree has become a common law employee of a public entity does not mandate reinstatement by CalPERS. (Proposed Decision, Legal Conclusions, ¶ 53, p. 70). Rather, CalPERS has discretion under Government Code sections 21202 and 21220 to determine whether reinstatement is an appropriate remedy based on the facts of any individual. (Proposed Decision, Legal Conclusions, ¶¶ 13-15, pp. 56-57).

The Proposed Decision also reiterates CalPERS' burden under Government Code section 20160 to prove both the right to correction and the amount of any correction in an administrative hearing. (Proposed Decision, Legal Conclusions, ¶¶ 1, 2). Designation of the Proposed Decision as precedential will ensure this clear guidance governs future proceedings.

### III. Additional Reasons for the Designation of the Proposed Opinion as Precedential.

The decision should be made precedential for two additional important reasons. First, the decision mandates that CalPERS staff provide clear and consistent guidance to retirees and public agencies and confirms that any imposed remedies must be authorized by statute and supported by substantial evidence. Lacking transparency, CalPERS staff practices have, at times, appeared to create underground regulations and inconsistent processes that are not known to contracting agencies. Making this decision precedential will affirm the Board's expectation of transparency and consistency in the application of the laws CalPERS is charged with implementing.

In addition, given the existence of a Court of Appeal decision<sup>1</sup> addressing common law employment in this matter, failure to designate the Proposed Decision, which delineates the appropriate limits and consequences of the court's opinion, as precedential would create an imbalanced legal framework. If the *Sandhu* decision governs common law employment, then the limits on the remedies flowing from that determination must be equally established to provide

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<sup>1</sup> *Sandhu v. Board of Administration* (2025)108 Cal.App.5th 1048 (2025)



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clear guidance to CalPERS staff as well as contracting agencies and retirees. Absent precedential designation, public agencies will be forced to challenge future enforcement actions raising the same legal issues already addressed by the ALJ.

For the reasons stated above, Cal Cities, CSDA and CSAC support respondents' request that the Board designate the January 23, 2026, Proposed Decision in this matter as precedential.

RENNE PUBLIC LAW GROUP

Dated: 3/26/2026

By: 

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LEAGUE OF CALIFORNIA CITIES

Dated: 26/03/2026

By: *Sheri Chapman*  
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CALIFORNIA SPECIAL DISTRICTS ASSOCIATION

Dated: 26/03/2026

By: *Mustafa Hessabi*

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CALIFORNIA STATE ASSOCIATION OF COUNTIES

Dated: 26/03/2026

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# 2026-03-26 Letter to CalPERS Board

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