

# HELP NEWS

The Monthly Newsletter of Helping Employees Learn Prosperity (HELP)

## Job Rights Q&A

General Answers to advise you on your job & workplace

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May 2026

## Welcome!



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## Is Your Pension at Risk?

As war continues to disrupt the global economy, public employees may have questions about the financial security of their pension. In March, shortly after the Iran war began, CalPERS consulted with a geopolitical expert about the conflict's potential threats to the global economy and the fund's nearly \$600 billion in assets. Higher inflation was one of the risks identified as part of a protracted conflict. After listening to the analysis, though, CalPERS Board Members said the best course of action is to stay the course. This month, we discuss why local government employees do not need to be concerned about how current events might affect the finances of their pension plan.

### Pensions are a Defined Benefit

Most local government employees are enrolled in a "defined benefit" program with CalPERS or one of the county or local agency retirement systems. This means that the amount of money you receive at retirement is based on a pre-existing formula – and, once vested, it is legally protected. Even as the value of your plan's investment portfolio fluctuates, and even if the local agency you retire from suffers from financial distress, your retirement income from the pension system will not decrease. You will continue to receive your monthly defined benefit payments for the rest of your life.

The amount of your monthly pension check is based on your retirement formula, age, years of service, and final compensation. Final compensation is often your single highest year for Classic Members, or the average of your final three years for PEPRA Members. Your

retirement formula is identified in your Memorandum of Understanding and your employer’s contract with the pension system. For Classic Members, the percentage is typically between 2% and 3% (for retirements between ages 55 and 60). For PEPRA Members, the percentage is set by law (2% at age 62).

For example, if you are a Classic Member who retires at age 55 with 25 years of service, and a 2.7% retirement formula at age 55, your monthly pension check will be 67.5% (2.7 x 25) of your final compensation (typically your highest year of earnings). The benefit amount, once calculated, increases with annual cost of living adjustments in retirement.

**Pensions Systems are Built for the Long Haul**

Pension funds make investment decisions based on a long-term time horizon that spans decades and multiple market cycles. The pension systems are managed by investment teams that have the expertise and flexibility to help ensure the pension fund maintains a strong position even during challenging market conditions. When there is a steep drop in the stock market, for example, pension funds have the liquidity and the ability to meet their pension obligations without having to sell stock shares at depreciated prices. The fund can hold the investments and not realize the losses. When valuations recover, the value of the fund’s holdings will likely recover, too. For example, at the height of the Great Recession in 2008-2009, CalPERS lost nearly \$100 billion in market value of their holdings. The fund recovered those losses by 2013.

**Pensions are Funded Through Both Contributions and Investment Returns**

One reason pension funds are well positioned to withstand an inevitable stock market decline is because they receive regular ongoing cash contributions. This includes contributions from local government employers and employees. These ongoing cash contributions can be used to pay retiree benefits without having to sell underlying

investments. Pension funds also generate cash returns on the underlying investments, such as interest payments and dividends, which often are reinvested. However, when needed, pension funds can use the cash returns towards retiree benefit payments. Although this means the income returns are not being reinvested, it also means pension funds do not have to sell stocks or other investments at a loss to satisfy current obligations. Pension funds can wait for prices to readjust to an asset’s underlying value.

**CalPERS Case Study**

CalPERS, the largest public pension fund in the U.S., is a good illustration for how pensions systems operate. County and local agency pension systems function similarly.



CalPERS is responsible for the long-term economic health of 2.5 million CalPERS members. The CalPERS Board is elected by CalPERS members – i.e. active employees and retirees, who have contributed to the system and receive, or will receive, benefits. Investments are controlled by an investment team, not the CalPERS Board directly. The investment team considers different scenarios about how CalPERS should respond to changing markets. The CalPERS investment team follows a Total Portfolio Approach (see CalPERS Investments). This means that CalPERS managers across various asset classes work together to determine which asset class should receive more funds to produce better returns. CalPERS Chief Investment Officer Stephen Gilmore said a simple off-the-shelf reference portfolio of 75% stocks and 25% bonds is a good way of understanding and comparing the risk and return profile of the CalPERS fund.

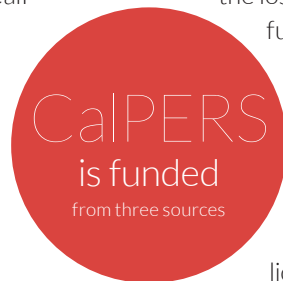
The average age of active CalPERS members is 45. The average age at retirement is 60. 59% of all service retirees receive \$3,500 per month or less. The average annual retirement payment is a little over \$45,000. There is currently a little over 983,000 active members and about 715,000 retirees.





Every public employee pension dollar paid to CalPERS retirees comes from three sources – investment earnings, member contributions, and employer contributions. Over a 20-year average, CalPERS investment earnings make up 55% of the fund balance, member contributions account for 11%, and employer contributions make up the remaining 34%. Using CalPERS' Fiscal Year 2024-2025 (the most recent published reports), investment income was \$61.4 billion, member contributions were \$6.8 billion, and employer contributions were \$23.4 billion, for a total of \$91.6 billion. On the expense side, pension payments accounted for \$34.6 billion. Contributions are nearly enough on their own (87%), without any investment income, to pay for current retirees' pension checks.

CalPERS also maintains a conservative asset allocation that includes a 30% allocation to fixed income investments (such as U.S. Treasury bonds). The total amount of fixed income assets in CalPERS' portfolio as of the Fiscal Year 2024-2025 is \$187.1 billion. CalPERS' allocation to publicly traded stocks (\$225.7 billion) is only 40%. This means that if the stock market were to drop significantly,



the loss in valuation affects only a minority of the fund's total. Other investments include real estate (15%), private equity (15%) and private credit (3.5%). These can be less liquid (i.e., it takes longer to sell the investment) and often come with higher fees, though they promise higher returns and may not correlate closely with returns from other investments like publicly traded stocks or bonds.

In recent years, some climate activists, public sector unions, and an advocacy group known as the Retired Public Employees Association (RPEA) have pushed CalPERS to divest from fossil fuel and private equity companies. CalPERS' position is that climate change presents financial risks to the fund, but it does not support divestment (though CalPERS did divest from South African companies in protest of apartheid). CalPERS has a climate action plan to invest in more sustainable companies. CalPERS has invested \$60 billion in climate solutions and is on track to reach a \$100 billion investment pledge by 2030. Critics have noted how that plan mislabels as "climate solutions" investments in major oil and gas companies, such as British Petroleum, Chevron, and ExxonMobil. As for private

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equity, RPEA has also raised concerns about high fees and lack of transparency of those investments, which makes it hard to determine if the actual returns justify the high fees.

Nonetheless, CalPERS takes a balanced approach that considers risk to the fund and not just investment returns. Marcie Frost, who has been the CEO of CalPERS since October 2016, said “[m]embers are not going to be satisfied unless they have confidence that the portfolio is going to be there to pay its benefits. We need to make sure we’re focused on returns with an appropriate amount of risk, because we’re long-term investors. We can’t take just short-term risk to boost the number momentarily.” During Frost’s tenure, CalPERS’ assets have grown by \$417 billion, and the funded status has increased from 68% to 80%. This rate reflects how much the fund has on hand to pay promised (not just current) benefits. The 80% threshold is a generally accepted and sound funding status rate. Frost said, “The real test is not how the fund performs now, in favorable markets, but whether the decisions that the board and the investment staff has made actually reduce long-term risk and costs during both good and bad cycles.”

**Conclusion**

Do you need to worry about your pension being safe? Generally, no, because the pension system was designed to adjust to the ups and downs of the economy. Even if the stock market drops by 50%, the paper loss will eventually recover, as it did in the Great Recession. Public employers and active members will continue to make ongoing contributions to the fund, which helps pay retiree benefits so that the pension fund does not have to sell assets like stocks when they depreciate in market value. Furthermore, a balanced portfolio that includes sizeable allocations to bonds and real estate (and possibly private equity and private credit) helps to reduce risk and maintain the funds’ value even during a bear market for stocks.

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## News Release - CPI Data

<p>The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.</p>	<p><b>3.3%</b> - CPI for All Urban Consumers (CPI-U) Nationally (Mar)</p> <p><b>3.1%</b> - CPI-U for the West Region (from Mar)</p> <p><b>3.4%</b> - CPI-U for the Los Angeles Area (from Mar)</p>	<p><b>2.5%</b> - CPI-U for San Francisco Bay Area (from Feb)</p> <p><b>3.1%</b> - CPI-U for the Riverside Area (from Mar)</p> <p><b>3.2%</b> - CPI-U for San Diego Area (from Mar)</p>
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## Paid Leave for Organ and Bone Marrow Donors

California law requires employers with 15 or more employees to provide paid leave for employees who donate an organ or bone marrow to another person.

The paid leave is up to 30 business days for an organ donation and up to 5 business days for a bone marrow donation in a 1-year period. Employers can require employees to first use up to 2 weeks of their own accrued paid leave for organ donation and up to 5 days of accrued paid leave for bone marrow donation. This includes vacation time. Healthcare benefits must be maintained during this period.

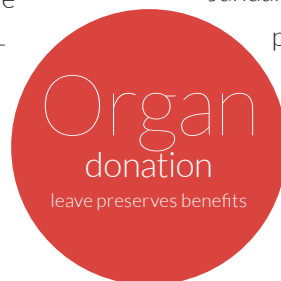
It is not considered a break in service. Employers must reinstate employees after organ donor leave unless the job is not available otherwise. Examples of this would

include an end of a limited-term assignment or temporary project, or a reduction in force (layoffs). The leave does not count against your entitlement under the California Family Rights Act ("CFRA"). You still have the right to a full 12 weeks of unpaid CFRA leave. Effective

January 1, 2020, the law changed to require em-

ployers to also give an additional 30 business days of unpaid leave in a 1-year period for the purpose of donating an organ to another person. This is measured from the date the employee's leave begins over the next 12 months. Employees must exhaust all available sick leave first and provide written verification of their organ donor status and the medical necessity for the organ donation.

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# Questions & Answers about Your Job

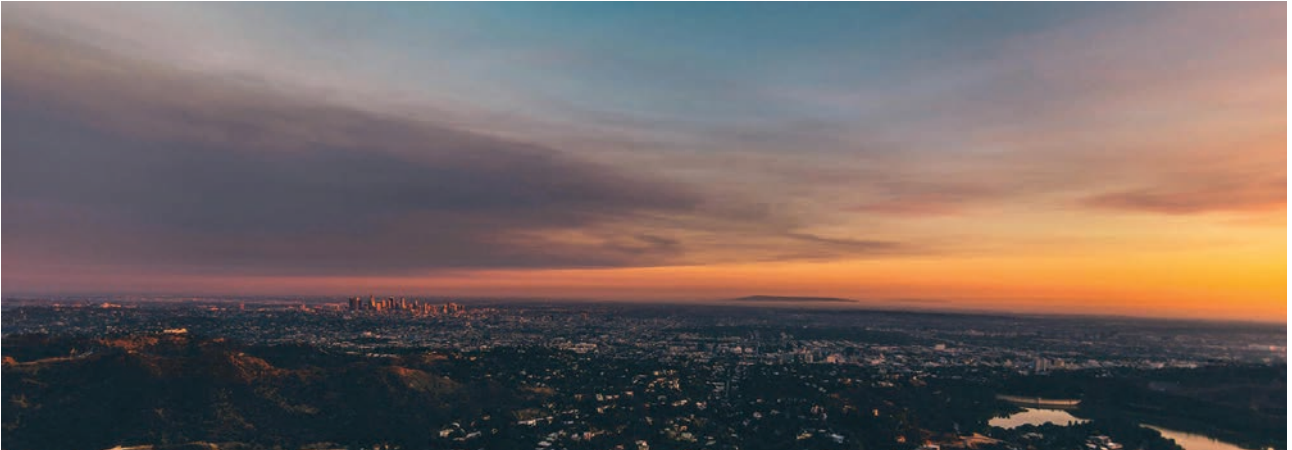
*Each month we receive dozens of questions about your rights on the job.  
The following are some GENERAL answers.  
If you have a specific problem, talk to your professional staff.*

**Question:** When is it appropriate for an employer to use performance improvement plans versus disciplinary action?

**Answer:** Performance Improvements Plans, commonly referred to as “PIPs”, are a performance management tool. A PIP is not a form of discipline but is often a precursor to discipline. Employers use a PIP in situations where an employee is experiencing performance issues. It is not typically used for misconduct or policy violations, but more when the employee is not completing some essential functions of the job. This is often due to an unusually slow

pace of work, consistent mistakes in completing the work, or other behaviors that impede the smooth operation of an employee’s work group. Employers often use PIPs to demonstrate the seriousness of the performance issue and give the employee a chance to improve before moving to formal discipline.

PIPs are often issued in conjunction with a performance evaluation that falls below standards. PIPs need to clearly lay out areas where an employee is not adequately performing a function of the job and provide the employee with an opportunity to improve in those specific areas. PIPs



need to be clear in the deficiencies, clear in the measurable goals to establish improvement, and clear in the duration over which the employee needs to improve (typically 60 to 90 days). PIPs can be extended if the employee does not meet the goals in the PIP. If an employee fails to improve in the areas identified in a PIP, then discipline can, and often will, be issued.

Disciplinary actions are issued in a broader array of situations beyond simply poor performance. Employers often move straight to discipline for misconduct or violations of work rules or policies. For example, an employer might issue a reprimand for failing to follow call-in procedures to report an absence, a suspension for violating safety standards, or termination for engaging in unlawful sexual harassment of others.

When used correctly, PIPs can help an employee focus on specific areas of the job and allow an employer to provide quick feedback on how to improve. Employers should generally take a progressive approach to employee discipline, starting with PIPs or other lower forms of discipline, to give an employee the opportunity to improve or correct their behavior. Unfortunately, PIPs are sometimes used by employers to “build a case” against an employee with the true aim to force an employee out or support pre-determined discipline.

PIPs do not trigger the same rights and protections of for-

mal discipline, which include pre-disciplinary notice of the action and an opportunity to respond, along with formal appeal rights after the fact. If you are issued a PIP, or any form of discipline, contact your employee organization for assistance.

**Question:** I work a 9/80 schedule with my regular day off (RDO) being every other Friday. On Monday, I was out on scheduled paid time off (PTO). On Tuesday, I requested to work 8 hours on Friday (my RDO day) and use only 1 hour of PTO for Monday. I want to preserve as much of my PTO as possible. Both my supervisor and manager said it was not allowed and that any hours worked on my RDO day would automatically trigger overtime even if I took PTO that same calendar week. They said there is no way to opt out of that. I read through our MOU and policies, and it does not clearly say that this is prohibited. Can management deny this request?

**Answer:** Essentially, your request is to shift your RDO from Friday to the Monday you scheduled PTO. This triggers two potential issues: 1) whether management MUST allow you to flex your schedule, and 2) whether your employer must pay you overtime pay if management allows the schedule shift.

Management may allow you to flex your schedule, but they are not required to do so, absent an established policy, ei-

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ther written in the MOU or department policy, or established through a consistent and authorized past practice. While your MOU may not prohibit flexing your schedule, this does not mean management must allow it.

Overtime requirements are established through the Federal Fair Labor Standards Act (FLSA) and your MOU. Your right to overtime pay under the FLSA cannot be diminished by the MOU, only enhanced. The FLSA requires overtime pay for any hours worked over 40 in a workweek. The FLSA allows the employer to set the FLSA workweek. This is straightforward for the standard 5/40 schedule (five eight hour days, totaling 40 hours in a week). The FLSA workweek for a 5/40 schedule is typically 12 am Sunday through 11:59 pm the following Saturday. For alternate schedules, such as the 9/80, it gets a bit trickier. For this schedule, you work 44 hours in the first calendar week and 36 hours in the following calendar week. If the employer used the standard FLSA workweek, this schedule would trigger 4 hours of overtime pay each week that you work 44 hours. The way around this is for the employer to set the FLSA workweek for a 9/80 schedule at halfway through the 8-hour day (e.g., 12 noon Friday through 11:59 am the following Friday). By splitting the 8 hours on your working Friday, the first 4 hours are counted in week one and the second 4 hours are counted in week two, resulting in two 40-hour workweeks and no regularly recurring overtime pay.

The problem with switching your regular day off (RDO) is that it can upset the clean split of 40 hours into two FLSA workweeks. For example, if you work 8 hours on your RDO Friday, the employer would be required to pay 4 hours at the overtime rate for both weeks, because you would have worked 44 hours each FLSA workweek. Your management is correct in that overtime pay under the FLSA is not waivable. Meaning, even if you agree not to receive overtime pay for those hours, your employer must still pay the overtime under the FLSA.

Typically, management is weary of flexing days on a 9/80 schedule because of the overtime pay concerns on a 9/80

schedule. Without an absolute right to flex your schedule, management may deny your request based on this concern.

**Question:** The City Clerk has asked me to complete an “affidavit of public records search” saying that I conducted a search of all my personal communication devices and/or accounts in response to a request for public records and to check a box as to whether I do or do not have responsive records. Am I required to provide this information that is asking about my personal communication device?

**Answer:** Yes. Public records in your personal accounts and devices are subject to the California Public Records Act (CPRA) when those records are relevant to a records request submitted to your public employer. In *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, the California Supreme Court ruled that “when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the CPRA.” Content that relates to City business, even if sent or received on personal devices and accounts, may be public records subject to disclosure under the CPRA.

If your employer has a reason to believe you may have records on your personal device that are relevant to a request, your employer may require that you conduct a search of your personal devices that is “reasonably calculated to locate responsive documents.” Your employer may also require that you sign an affidavit affirming whether you have records subject to the request. If the only records you have on your personal devices are records that are also on your City devices, ask your employer how they want you to respond to the affidavit.

**Question:** I am currently on unpaid leave. I requested leave. This last pay period included the holiday, which falls and was observed by the employer during my normally scheduled workday. My colleagues got the

day off with pay. However, I did not receive any pay for the holiday. Does the employer have to pay me for the holiday? I asked HR and they said past practice is that employees whose status is unpaid the day before and the day after a holiday do not receive pay for the holiday. There is nothing in our MOU about this, other than the holiday being a paid day off. Do I have any recourse?

**Answer:** It is common for employers to have a policy requiring employees to be on paid status before and after a holiday to receive the day off with pay. This language may be found in your MOU or a separate written policy. Even if the rule is not memorialized in writing, your employer may still be permitted to continue to apply the rule. However, the employer's practice should be regular and consistent over a long period of time. If it is a new practice, or a recent change in practice, your employee organization may be able to require your employer to negotiate over the change prior to it being implemented. This may include you being compensated for the day until the proper negotiation has occurred. Your employee organization can ask if the rule is written, how long it has been in effect, and if or when it has changed. However, if the rule was consistently applied for more than six months, and the employer's practice has not changed, then you likely do not have any recourse.

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