

Sonoma County Office of Education
Business Services

EXTERNAL PAYROLL AND FINANCE UPDATES
DEBUG MEETING: FEBRUARY 22, 2019

UPDATES:

Independent Contractors and ABC Test:

Please see attached Legal Update put out by Carl Corbin regarding New Test for classification of Independent Contractors dated 8/22/2018. I only recently was aware of this legal update while attending an HR Round Table meeting. Per the Legal Update, until state law clarifies whether the ABC test applies to claims not arising from California Wage Orders, it is recommended LEAs reevaluate their current independent contractor relationships to ensure compliance with the “ABC” standard.

CalPERS view on Independent Contractors:

- CalPERS retirees hired as an independent contractor are excluded from CalPERS membership only when correctly classified as an independent contractor
- **Third Party Employment:** Workers hired through a third party typically tend to be employees of the CalPERS agency and not the temporary agency. The reason being, individuals hired through a third party are usually hired to fill a position while an “employee” is on leave. As such, the control of that individual and work falls on the LEA and should be classified as an employee.
- CalPERS is devising a checklist and process for requesting a review of contract information for a determination because misclassification could potentially affect a retiree’s retirement benefit.

CalSTRS view on Independent Contractors:

- CalSTRS retired annuitants hired as an independent contractor are excluded from CalSTRS membership, but the annual earnings limit does apply.
 - o Complete SCOE’s CalSTRS Retiree Earnings Paid Through Accounts Payable form and send it along with a copy of paid invoice(s) to SCOE’s retirement desk (Alli Britton)
 - o Complete CalSTRS Form ES 732 Employer Certification of Independent Contractor Status and retain in the retiree’s file
- CalSTRS retired annuitants when working for a third party are excluded from the postretirement earnings limit as long as they meet the three requirement spelled out on pages 3 and 4 of Employer Directive 2018-01.

OASDI/Medicare Qualifications Chart:

At last month's DBUG meeting a copy of the OASDI/Medicare Qualifications Chart that has been used since 1991 was handed out. Since then we have received updated information from CalPERS, who is the official California State Social Security Administrator. It was stressed upon us across the state that the Section 218 Agreements are about the "position", not the "employee". As such, CalPERS is disputing the qualification chart shared last month at DBUG in respect to retirees and OASDI. CalPERS is seeking clarification with the SSA and IRS since they have the final decision on Social Security tax withholding and reporting matters. Until then, we will continue to apply OASDI for retirees according to the chart from 1991.

For everyone else, in IRS Publication 963 there is a Should Social Security and/or Medicare be withheld? determination tree (see attached). LEAs should use this official social security/medicare qualification tree for determining qualification for your positions according to your Section 218 Agreement.