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## State pension fund letter over courts' use of retirees stirs concern

By Emily Green

The letter landed with a thud, sparking an internal review by state court leaders and spurring one employee to quit her job on the spot.

In the January missive, state pension chieftains threatened to force employees to pay back potentially tens of thousands of dollars in allegedly double-dipped funds.

"It's cause for concern," said Hal Cohen, a staff attorney for Chief Justice Tani Cantil-Sakauye.

Another employee, who asked not to be named because of the ongoing investigation, was more blunt.

"They're scared and they don't know what's going to happen," the worker said. "It's really a horrible situation. Putting dedicated employees in this kind of turmoil and leaving them swinging."

CalPERS, the state's giant pension fund, threatened that an "unlawfully employed retiree" could be on the hook for the cost of their pension.

The letter went out to all "retired annuitants" - retired state employees who collect a pension and work for the state. The roughly 5,800 workers earn around \$110 million annually from the state on top of their pensions.

It's unclear whether such court employees violate the conditions laid out by CalPERS. But some appear to be skating a thin line, said government law specialists.

The CalPERS letter said retirees cannot be rehired for an indefinite period of time, and their position cannot be a part-time, regular staff position.

"A retired annuitant appointment should have a beginning date and an end date," the January letter states. "Limited duration work does not mean an indefinite appointment to a permanent part-time position."

The looming question is what "permanent" means.

Cohen, the staff attorney for the chief justice, has worked part time on the Chief Justice's staff since he retired eight years ago. Before that, he was a full-time staff attorney on the court for 37 years.

"It came as a surprise to me because the court has been following this same practice for a long time," Cohen said. "At this point, I'm just waiting to see what the court is going to do about it."

Another retired court employee is Beth Jay, who worked at the state Supreme Court for 33 years, retired in 2012 and returned as a part-time adviser to Chief Justice Tani G. Cantil-Sakauye the following year.

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##### State pension fund letter over courts' use of retirees stirs concern

A letter from the state's pension fund over the court's use of retired workers has sparked an internal review and prompted one employee to quit her job on the spot.

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Both Cohen and Jay have worked at the court longer than any of the sitting justices.

Municipal law attorney Joaquin Vazquez of Olivarez Madruga PC said CalPERS is trying to make clear that retired annuitants should fill temporary jobs for a limited duration.

"But nothing is clear in the statute when an appointment is no longer temporary," Vazquez said. "With that gray area, I think public agencies will take advantage of it as much as they can."

Some employees aren't taking a chance.

Linda Feldman, a retiree who worked as a part-time staff attorney for state Supreme Court Justice Ming Chin, quit her job earlier this month after receiving the letter, according to two sources. They said she didn't want to run the risk of having to pay back her pension. Feldman declined to comment.

In total, the state Supreme Court employs nine retired annuitants and the courts of appeal 24.

"To me, it's an absolute no-brainer," said former Chief Justice Ronald M. George, who was critical of any efforts to curtail the employment of retirees as staff attorneys.

"There is an advantage to using that experience that you don't have with somebody who is brand new." George said.

"I don't see any problem with their getting their pension which they have earned - it's not as if it's a gift - and in addition receiving additional compensation for work that they are willing to do."

In fact, courts have a financial incentive to keep on retirees.

The judiciary pays, at most, only a half-time salary and no longer has to pay pension and health care costs, which are being picked up by the state retirement system.

"Unquestionably, it is cheaper [for the entity]," said Richard Padilla, a municipal law attorney at Olivarez Madruga PC "You are not worrying about all these other perks and benefits that otherwise full time employees would be entitled to. The economics are certainly appealing."

But well-publicized cases of retired employees returning to their old jobs as highly paid consultants spurred a backlash against so-called double dipping. Unions argued for the elimination of retirees because, they said, it blocked opportunities for younger employees and made no sense at a time when rank and file employees were being cut.

With Gov. Jerry Brown's backing, the state Legislature passed a law in 2012 creating new guidelines for their employment.

CalPERS subsequently sent out a letter reiterating that retired workers should be temporary employees.

What's unclear is why the judiciary didn't begin an internal review until the 2014 letter, which reiterated the same guidelines. The one notable difference is that the 2014 letter laid out the penalties for failing to comply with the restrictions.

Peter Allen, the spokesman for the judiciary, declined to comment for the story.

Requests to CalPERS for comment were sent to its public information office, which did not respond as of press time.

Currently, CalPERS has given only "stern warnings," Padilla said. "I think if they start feeling people are being very recalcitrant and abusing it, you might start seeing a more aggressive enforcement response."

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