



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code:  Section:

[Up^](#) [Add To My Favorites](#)

**GOVERNMENT CODE - GOV**

**TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]** ( Title 2 enacted by Stats. 1943, Ch. 134. )

**DIVISION 5. PERSONNEL [18000 - 22980]** ( Division 5 added by Stats. 1945, Ch. 123. )

**PART 3. PUBLIC EMPLOYEES' RETIREMENT SYSTEM [20000 - 21716]** ( Part 3 repealed and added by Stats. 1995, Ch. 379, Sec. 2. )

**CHAPTER 3. Membership in System [20280 - 20356]** ( Chapter 3 added by Stats. 1995, Ch. 379, Sec. 2. )

**ARTICLE 2. Exclusions from Membership [20300 - 20309.7]** ( Article 2 added by Stats. 1995, Ch. 379, Sec. 2. )

**20300.** The following persons are excluded from membership in this system:

- (a) Inmates of state or public agency institutions who are allowed compensation for the service they are able to perform.
- (b) Independent contractors who are not employees.
- (c) Persons employed as student assistants in the state colleges and persons employed as student aides in the special schools of the State Department of Education and in the public schools of the state.
- (d) Persons employed as teacher assistants pursuant to Section 44926 of the Education Code.
- (e) Participants, other than staff officers and employees, in the California Conservation Corps.
- (f) Persons employed as participants in a program of, and whose wages are paid in whole or in part by federal funds in accordance with, Section 1501 et seq. of Title 29 of the United States Code. This subdivision does not apply with respect to persons employed in job classes that provide eligibility for patrol or safety membership or to the career staff employees of an employer.
- (g) All persons who are members in any teachers' retirement system, as to the service in which they are members of any teachers' retirement system.
- (h) Except as otherwise provided in this part, persons rendering professional legal services to a city, other than the person holding the office of city attorney, the office of assistant city attorney, or an established position of deputy city attorney.
- (i) A person serving the university as a teacher in university extension, whose compensation for that service is established on the basis of class enrollment, either actual or estimated, with respect to that service.
- (j) A person serving a California State University as a teacher in extension service, whose compensation for that service is established on the basis of class enrollment, either actual or estimated, with respect to that service.
- (k) A teacher or academic employee of the university or any California State University who is otherwise fully employed and who serves as a teacher or in an academic capacity in any summer session or intersession, for which he or she receives compensation specifically attributable to that service in summer session or intersession, with respect to that service.
- (l) A person who is employed under the California Senate Fellows, the Assembly Fellowship, the Judicial Administration Fellowship, or the Executive Fellowship programs.
- (m) Board members of the State Compensation Insurance Fund, including those appointed by the Governor.

(Amended by Stats. 2008, Ch. 322, Sec. 2. Effective January 1, 2009.)

**20301.** Except as otherwise provided in this section, any person who on October 1, 1963, is employed by the university, and is a member of any retirement system maintained by the university, or who after that date enters university employment, shall be excluded from membership in this system.

A university member who is separated from university employment due to layoff and who is reemployed by the university shall have the right to elect, in accordance with regulations of the board of regents, membership in this system in lieu of membership in any retirement system maintained by the university, if written notice of the election is filed with this system within 30 days after his or her reemployment.

Any member who is employed as a member of the police department or fire department of the university and who elects, in accordance with regulations of the board of regents, to become a sworn officer member of a retirement system of the university in that employment shall be excluded from membership in this system in that employment after the date upon which he or she becomes a member of the university system. The election shall not constitute a permanent separation from state service for purposes of a right to refund of accumulated contributions, but shall constitute a discontinuance of employment as a member of this system and entry into employment as a member of the university system within the meaning of Section 20895.

*(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)*

**20303.** (a) Persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or any political subdivision thereof and who are receiving credit in the other system for service are, as to that service, excluded from this system.

(b) (1) For the purpose of this section only, persons who are receiving pensions, retirement allowances, or other payments, from any source whatever, because of service rendered to an employer other than the state and while they were not in state service, are not, because of that receipt, members of any other retirement or pension system.

(2) For the purposes of this section only, persons who participate in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) or Chapter 8.6 (commencing with Section 19999.3) of Part 2.6 or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5, are not, because of that participation, members of any other retirement or pension system.

(3) For the purposes of this section only, persons who participate in a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code are not, because of that participation, members of any other retirement or pension system, so long as the contracting agency has received a ruling from the Internal Revenue Service stating that the money purchase pension plan and trust qualifies under Section 401(a) and furnishes proof thereof upon request by the board.

(4) For the purposes of this section only, persons who participate in a supplemental defined benefit plan maintained by their employer that meets the requirements of Section 401(a) of Title 26 of the United States Code are not, because of that participation, members of another retirement or pension system, provided that all of the following conditions exist:

(A) The defined benefit plan provided under this part has been designated as the employer's primary plan for the person.

(B) The supplemental defined benefit plan has received a ruling from the Internal Revenue Service stating that the plan qualifies under Section 401(a) of Title 26 of the United States Code, and has furnished proof thereof to the employer and, upon request, to the board.

(C) The person's participation in the supplemental defined benefit plan does not, in any way, interfere with the person's rights to membership in the defined benefit plan, or any benefit provided, under this part.

(5) For purposes of this section only, a person who elects membership pursuant to Section 20326 is deemed, with respect to service with the California National Guard, not to be a member of any other retirement or pension system.

*(Amended by Stats. 2007, Ch. 355, Sec. 6. Effective January 1, 2008.)*

**20304.** Notwithstanding Sections 20303 and 20894, nothing shall act to prohibit the receipt of credit in this system, nor the payment of benefits relating thereto, for service that is also being credited in the federal system, and persons shall not be excluded from this system as to the service that is being credited in the federal system.

*(Amended by Stats. 1996, Ch. 906, Sec. 28. Effective January 1, 1997.)*

**20305.** (a) An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless:

(1) He or she is a member at the time he or she renders that service and is not otherwise excluded pursuant to this article or by a provision of a contract.

(2) His or her position requires regular, part-time service for one year or longer for at least an average of 20 hours a week, or requires service that is equivalent to at least an average of 20 hours a week for one year or longer, unless he or she elects membership pursuant to Section 20325.

(3) His or her employment is, in the opinion of the board, on a seasonal, limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, and is compensated and meets one of the following conditions:

(A) The appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months, but full-time employment continues for longer than six months, in which case membership shall be effective not later than the first day of the first pay period of the seventh month of employment.

(B) The person completes 125 days, if employed on a per diem basis or, if employed on other than a per diem basis, completes 1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 125 days or 1,000 hours of service were completed. For purposes of this subdivision, "day" means each eight-hour period of employment worked by an employee paid on a per diem basis so that membership is effective after he or she has completed 1,000 hours of compensated service in a fiscal year.

(C) The person is employed by the Department of Forestry and Fire Protection in one of the positions that provide state safety membership pursuant to Section 20400 or state peace officer/firefighter membership pursuant to Section 20392.

(4) He or she is a temporary faculty member of the California State University and meets one of the following conditions:

(A) He or she works two consecutive semesters or three consecutive quarters at half-time or more, and is not otherwise excluded pursuant to this article, in which case, membership shall be effective with the start of the next consecutive semester or quarter if the appointment requires service of half-time or more.

(B) He or she works two consecutive semesters or three consecutive quarters at a minimum teaching load of six weighted units, and is not otherwise excluded pursuant to this article, in which case membership shall be effective at the start of the next consecutive semester or quarter, but not earlier than July 1, 2004, if the appointment requires service of six weighted units or more. This subparagraph does not apply to faculty members unless provided for in a memorandum of understanding agreed upon, on or after January 1, 2003, pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, or authorized by the Trustees of the California State University for employees excluded from collective bargaining.

(5) He or she is a member of the Board of Prison Terms, the State Personnel Board, or the State Air Resources Board and elects to become a member pursuant to Section 20320.

(6) He or she is participating in partial service retirement, pursuant to Article 1.7 (commencing with Section 19996.30) of Chapter 7 of Part 2.6.

(7) He or she is included by specific provision of the board relating to the exclusion of less than full-time employees.

(b) This section shall supersede any contract provision excluding persons in any temporary or seasonal employment basis and shall apply only to persons entering employment on and after January 1, 1975. Except as provided in Section 20502, no contract or contract amendment entered into after January 1, 1981, shall contain any provision excluding persons on an irregular employment basis.

*(Amended by Stats. 2009, Ch. 130, Sec. 19. (AB 966) Effective January 1, 2010.)*

**20306.** (a) Notwithstanding paragraph (1) of subdivision (a) of Section 20305, an employee participating in this system, other than a local safety member, who is credited with less than five years of state service and whose service falls below the minimum service prescribed by paragraph (2) of, or subparagraph (A) or (B) of paragraph (3) of, subdivision (a) of Section 20305 and who is eligible for membership in an alternate retirement plan established or maintained by the county superintendent of schools or the public agency pursuant to Article 1.5 (commencing with Section 53215) of Chapter 2 of Part 1 of Division 2 of Title 5, may participate in that plan in accordance with the following provisions:

(1) Eligibility to participate in an alternate retirement plan for an employee who is employed on or after July 1, 1997, or the effective date of the establishment of an alternate retirement plan, whichever is later, and who is represented by an exclusive bargaining representative shall be determined by the provisions of a memorandum of understanding executed between the public agency and the exclusive bargaining representative of the employee. That memorandum of understanding shall prescribe all of the terms and conditions under which the alternate plan is established including the employer and employee contribution rates.

(2) Eligibility to participate in an alternate retirement plan for an employee who is employed on or after July 1, 1997, or the effective date of the establishment of an alternate retirement plan, whichever is later, and who is not represented by an exclusive bargaining representative shall be determined by the public agency.

(3) Eligibility to participate in an alternate retirement plan established prior to July 1, 1997, for an employee who is employed prior to that date, or for plans established on or after July 1, 1997, for an employee who is employed prior to the date the plan is established, shall be determined by the employee in accordance with the following election procedures:

(A) The employer shall make available to each employee prior to October 1, 1997, or at least 90 days prior to the proposed effective date of the alternate retirement plan, whichever is later, information describing the employee's rights and responsibilities as a participant in either this system or the alternate retirement plan offered by the employer and describing the benefits provided by this system and that alternate retirement plan. The information shall include all of the terms and conditions under which the system and the alternate retirement plan are established including the employer and employee contribution rates.

(B) An employee who fails to make an election prior to January 1, 1998, or 90 days after being given the election opportunity, whichever is later, shall be informed by the employer by certified mail that the failure to make that election has been deemed an election to participate in the alternate retirement plan whenever his or her employment fall below the requirements prescribed by Section 20305.

(C) The employer shall maintain in its files a written acknowledgment by the employee that the employee received the information required under this section within the specified timeframe and shall maintain election results and election forms of employees.

(D) The employer shall notify the system as to the results of election by employees in the manner prescribed by the board.

(b) An employee's participation in the alternate retirement plan shall commence as soon as it is reasonable for this system to determine the member's qualifications pursuant to Section 20305. Employers shall submit all information deemed necessary for this system to make those determinations. Participation in the alternate retirement plan shall continue until the system determines that the employee's employment meets the conditions for membership in this system, whereupon the employee shall reenter membership in this system.

(c) Each county superintendent of schools may make the school districts in the county responsible for any administrative acts which may be necessary to implement this section. Any cost incurred by a county superintendent of schools in complying with this section shall be reimbursed on a proportional basis by those school districts in the county participating in an alternative retirement system.

*(Added by Stats. 1996, Ch. 1164, Sec. 1. Effective January 1, 1997.)*

**20309.** (a) A member of the system described in subdivision (b) who subsequently is employed to perform service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan, may elect to retain coverage by this system for that subsequent service. An election to retain coverage under this system shall be submitted in writing by the member to the employer on a form prescribed by the system within 60 days after the member's date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan. The employer shall retain a copy of the employee's signed election form and submit the original signed form to the system. A member who elects to retain coverage under this system pursuant to this section shall be deemed to be a school member while employed by a school employer.

(b) This section shall apply to a member of the system who either (1) was employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education within 120 days before the member's date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan or (2) has at least five years of credited service under this system.

(c) Any election made pursuant to this section shall become effective as of the first day of employment in the position that qualified the member to make an election.

(d) A member providing emergency teaching services pursuant to Executive Order No. N-3-22 is eligible to elect to retain coverage under this section, notwithstanding the requirements in subdivision (a). The exception in this subdivision does not exempt any individual from any other requirement for eligibility to make the election authorized by this section. The eligibility to elect to retain coverage as authorized by this subdivision shall remain in effect only until January 1, 2024.

*(Amended by Stats. 2022, Ch. 52, Sec. 100. (AB 181) Effective June 30, 2022.)*

**20309.5.** (a) Any person who is a member of the Defined Benefit Program of the State Teachers' Retirement Plan and who subsequently became employed, on or after July 1, 1991, and who continues to be employed by the state to perform service that requires membership in the Public Employees' Retirement System under Section 21071 and who meets the requirements of subdivision (b) of Section 22508.6 of the Education Code may elect to have his or her state service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan and excluded from coverage by the Public Employees' Retirement System.

(b) Upon an election being made pursuant to subdivision (a), the Public Employees' Retirement System shall transfer to the Teachers' Retirement Fund an amount equal to the actuarial accrued liability of the system for the service rendered by the person making the election on or after July 1, 1991, to the date of the election, inclusive. The actuarial accrued liability shall be calculated based on the actuarial assumptions of the system for the most recently completed actuarial valuation as of the date of the election.

*(Added by Stats. 2000, Ch. 402, Sec. 11. Effective September 11, 2000.)*

**20309.7.** (a) A person who was employed by a school employer before January 1, 2018, in a position that includes activities that meet the definition of creditable service under Section 22119.5 of the Education Code, and whose service in that position was reported to this system, shall continue to retain membership in this system and have his or her past and future service in that position credited to this system, if the person was not enrolled into the State Teachers' Retirement Plan for that same service and is not otherwise excluded from membership in this system.

(b) (1) A school member who performs service as described in subdivision (a), and who has not yet retired from this system, may elect to have all of their service, and subsequent service, in that position subject to coverage by the State Teachers' Retirement System and excluded from coverage by this system, if the member is not excluded from coverage by that system.

(2) If an election is made pursuant to this subdivision, all of the following shall apply:

(A) The election shall be made in writing on a form prescribed by this system and filed with this system on or before June 30, 2018, and copies of the election form shall be filed with the school employer and the State Teachers' Retirement System.

(B) A school member not subject to the California Public Employees' Pension Reform Act of 2013 shall not be subject to that act in the State Teachers' Retirement System.

(C) A school member subject to the California Public Employees' Pension Reform Act of 2013 shall be subject to that act in the State Teachers' Retirement System.

(3) The board shall be under no obligation to identify, locate, or notify persons who are eligible to make an election pursuant to this subdivision.

(4) An election made pursuant to this subdivision shall be irrevocable.

(c) A member described in subdivision (a) who becomes employed by the same or a different employer in a new position performing creditable service under Section 22119.5 on or after January 1, 2018, shall not have his or her service in that new position reported to this system unless that service is otherwise eligible for coverage by this system.

(d) This section shall not apply to a person who has made a valid election pursuant to either Section 20309 or 20309.5.

*(Added by Stats. 2017, Ch. 241, Sec. 4. (SB 525) Effective January 1, 2018.)*