

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

01/07/2016

2. Department

California Public Employees' Retirement System (CalPERS)

3. Organizational Placement (Division/Branch/Office Name)

Legal Office

4. CEA Position Title

Associate General Counsel, Litigation/Hearings and Human Resources

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

The CalPERS Public Employees' Retirement System (CalPERS) proposes to create a new Career Executive Assignment (CEA) position of, Assistant General Counsel, Legal Office (LEGO).

The Associate General Counsel (Litigation/Hearings and Human Resources) directs and oversees the Litigation/Hearings Unit of the Legal Office, comprised of attorneys who provide legal representation to CalPERS before the Office of Administrative Hearings and state and federal tribunals on all matters involving CalPERS' administration of pension and health benefits. The Associate General Counsel (Litigation/Hearings and Human Resources) also directs and oversees the attorneys who provide advice to the CalPERS Human Resources Division (HRSD) and the CalPERS Diversity Outreach Program and EEO Office (CDOP) and who provide representation to CalPERS on labor and employment matters.

6. Reports to: (Class Title/Level)

Deputy General Counsel

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain):

8. Organizational Level (Select one)

- 1st
- 2nd
- 3rd
- 4th
- 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The Associate General Counsel (Litigation/Hearings and Human Resources) directs and oversees the Litigation/Hearings Unit of the Legal Office, comprised of attorneys who provide legal representation to CalPERS before the Office of Administrative Hearings and state and federal tribunals on all matters involving CalPERS' administration of pension and health benefits. The Associate General Counsel (Litigation/Hearings and Human Resources) also directs and oversees the attorneys who provide advice to the CalPERS Human Resources Division (HRSD) and the CalPERS Diversity Outreach Program and EEO Office (CDOP) and who provide representation to CalPERS on labor and employment matters.

The Associate General Counsel (Litigation/Hearings and Human Resources) works closely with the Deputy General Counsel and with the staff that reports to him/her to ensure superior and timely representation of CalPERS in hearings and litigation matters, both defensively to protect trust assets and the integrity of the System, and offensively to aggressively collect monies owed to the System and to pursue restitution to the System in cases of fraud against the System. He or she takes a proactive approach to learn about novel and cutting edge developments in the law and ensures that these developments are put forward on behalf of CalPERS in litigation matters. He or she also works closely and partners with CalPERS executive and senior management staff on a wide variety of matters including new points of law, interpretation of governing constitutional provisions, and legal and policy issues in pending and threatened litigation and litigation strategy. Whereas the Deputy General Counsel will directly participate in organization-wide policies (for example, working with the Office of Enterprise Compliance as it implements its Compliance Plan and policies that affect the entirety of CalPERS) and will oversee the development of policies that affect particular areas of the organization, the Associate General Counsel (Litigation/Hearings and Human Resources) will directly participate in the development of policies and strategy affecting both offensive and defensive litigation. In addition, he or she will participate directly and serve as a legal and policy expert on policies affecting human resources and labor relations matters, including development and implementation of an investigations policy, an immigration policy, and revisions to the pre-employment screening policy. He or she serves as liaison to the CalPERS Finance and Administration Committee and the Performance, Compensation and Talent Management Committee, and serves as liaison to external legal counsel who are engaged to represent CalPERS in litigation matters in order to optimize the representation and financial expenditure and to ensure value to the organization and knowledge transfer to internal lawyers.

The legal work conducted by the Litigation/Hearings Unit is of the highest complexity in the area of litigation of all matters involving CalPERS benefit administration. The legal work conducted by the attorneys who advise HRSD and CDOP is of the highest sensitivity and complexity involving labor and employment legal advice and representation. The Associate General Counsel (Litigation/Hearings and Human Resources) has significant policy influence and involvement at the Executive and senior management level, recommending decisions regarding adoption and implementation of policy at the senior management level on matters including litigation of member benefits and employer and contracting agency appeals, and all CalPERS' labor and employment matters both in litigation and outside of litigation.

This position has responsibility to direct the representation of CalPERS in all litigation matters, to direct the legal advice provided to HRSD and CDOP, and to provide verbal and written legal advice to the CalPERS Board, executive and senior management staff on matters including litigation and labor and employment matters. The Associate General Counsel (Litigation/Hearings and Human Resources) also consults regularly with external legal counsel to ensure external legal counsel is working efficiently and optimally, and to ensure knowledge transfer to CalPERS internal lawyers on cutting edge legal developments in litigation. The consequences of errors are extreme in light of CalPERS' state constitutional authority and budget autonomy. For more than eight decades, CalPERS has built retirement and health security for state, school, and public agency members who invest their lifework in public service. Our pension fund serves more than 1.7 million members in the CalPERS retirement system and administers benefits for nearly 1.4 million members and their families in our health program, making us the largest defined-benefit public pension in the U.S. CalPERS' total fund market value currently stands at approximately \$285 billion. CalPERS also has over 3,000 employees and could face litigation from those employees if Human Resources policies are not legal. In addition, the Legal Office represents CalPERS in litigation at the administrative and court levels. The Legal Office currently represents CalPERS (or oversees representation by the Attorney General or outside counsel) in litigation that has a potential gain to CalPERS of \$82 million, or potential loss of \$10 million.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The Associate General Counsel position will provide better oversight and expertise to the areas indicated and will ensure superior legal advice and representation to CalPERS, which in turn ensures the integrity and soundness of the pension system and safeguards CalPERS' members' retirements and health benefits and our investments. The Associate General Counsel (Litigation/Hearings and Human Resources) directs and oversees the Litigation/Hearings Unit of the Legal Office, comprised of attorneys who provide legal representation to CalPERS before the Office of Administrative Hearings and state and federal tribunals on all matters involving CalPERS' administration of pension and health benefits. Their mission is extremely critical to ensuring the department accomplishes it's mission to provide effective services to our customer, members, and employees.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

Over the last several years, the Legal Office's caseload inventory has grown exponentially in terms of volume, dollar value, complexity, and political sensitivity. Overtime, the administrative appeal cases and process have become more complex. The cases require a great deal of time and effort from staff, as there is many facets to the appeal process. Personnel related cases have also increased in terms of numbers and complexity requiring higher level supervision over those functions. The addition of the Associate General Counsel position will allow us to effectively distribute, by subject areas of the law and areas of expertise, supervision of legal work and legal personnel among three Associate General Counsel peers, all of whom will report to the Deputy General Counsel. The Associate General Counsel position will directly participate in policy development in their respective areas of expertise (litigation and human resources) while the Deputy General Counsel will oversee these policy areas and remain primarily responsible for policies that affect the entirety of CalPERS. Currently, the areas of Investments and Hearings/Litigation are reporting to an Assistant Chief Counsel and Health, Operations and Human Resources are temporarily reporting either directly to the Deputy General Counsel or to the one Associate General Counsel. By making the supervisor of these subject areas a CEA, we will be able to add areas of supervision, and expect to be able to attract a larger candidate pool for these supervisory positions.

Currently, the salary range for the Assistant Chief Counsel position is too low to attract a robust candidate pool because of salary compaction. The salary compaction concerns will be exacerbated by the addition of Attorney V positions. In addition, the Attorney V positions must report to a CEA.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The Associate General Counsel (Litigation/Hearings and Human Resources) has significant policy influence and involvement at the Executive and senior management level, recommending decisions regarding litigation strategy and policy, both in terms of when to bring offensive litigation and how to defend litigation that is filed against the System, and recommending when to consider settlement. These policies affect service and disability retirement of 1.6 million members of CalPERS, and serve to protect the pension trust against fraud and pension spiking, for example, and further serve to carry out CalPERS' fiduciary duty to its members. In the area of Human Resources, the Associate General Counsel will be instrumental in advising the organization with regard to the development of new HR policies and revisions to existing policies such as the Pre-Employment Screening Policy and the internal Investigations Policy. This position will serve as the expert level advisor on policies surrounding Litigation/Hearings and Human Resources.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The CEA will have decision-making authority with respect to the attorneys who report to them and their areas of assignment. This position will provide the legal perspective and strategic counsel on department wide policies. This position will evaluate and determine the impact of the department's policies related to Litigation/Hearings and Human Resources, providing information and recommendations to higher levels within the Legal Office. Decisions with enterprise-wide impact or involving high visibility matters of interest to the enterprise as a whole will continue to be raised to a higher level within the division.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

The CEA will assist and advise the organization with respect to the development and the implementation of new policies. They will also assist and advise in the interpretation and implementation of existing policies. The types of policies are without limitation. Any policy that affects the employees of CalPERS or the members of the pension system or health benefits program would be a policy that would require the input of the attorneys in the Legal Office. The CEA will be the lead attorney to provide this input. This CEA will interact with the Executive Management Team on a continuous basis by providing recommendations on legal strategies, policies, program initiatives and politically sensitive legal issues in the areas of Litigation, Hearings, and Human Resources. In addition, this CEA will also advise upper level Legal Office management on matters that may result in negative impact to the department or on sensitive matters that may require elevation to the Board.