

CLIENT NEWS BRIEF

CalSTRS Election Remedy – CalSTRS Issues Clarifying e-Bulletin

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As specified in the November 25, 2013 Employer Information Circular, CalSTRS is currently allowing employers to use the employer correction statute (Education Code § 22308) to file an election form with a retroactive effective date. The retroactive election is allowed for any employee who was eligible to make such an election in the past but failed to do so because the employer did not provide the employee with the necessary information regarding his or her election rights. The deadline for submission is May 23, 2014, and we recommend all required documents be submitted prior to that date.

In our January 2014 Client News Brief (Number 9), we addressed several frequently asked questions regarding submission of the election form and required Justification Letter pursuant to the CalSTRS November 25, 2013 Circular. On January 27, 2014, CalSTRS issued an Employer Connect e-Bulletin further addressing the process and procedure for submitting these documents.

The CalSTRS e-Bulletin confirmed the following:

- **Who should submit the ES 372 Form and Justification Letter?** The Justification Letter must come from the current employer and the completed ES 372 Form should be submitted with the Justification Letter as an enclosure.
- **Should an ES 372 Form and Justification Letter be completed for retirees?** CalSTRS has indicated that forms and Justification Letters for retirees are not necessary at this time.
- **What is the proper effective date to be listed on the ES 372 Form?** The effective date to be listed on the ES 372 Form is “the date of the first position requiring membership in a different retirement system . . . after the member’s last position performing creditable service.” In most instances, this will be the first date the employee entered a position at the district-office level.
- **How much work history should be included in the Justification Letter?** The work history provided in the Justification Letter should begin with the current position and list all positions the employee held with all employers going back to the last school-site level position (i.e., the last position clearly providing creditable service).
- **What about employees who worked for more than one employer in a questionable position?** The current employer should submit one ES 372 Form and Justification Letter for each affected employee, even if the employee held a questionable position with more than one employer.



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The CalSTRS e-Bulletin provided new clarification regarding the following:



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

- **What is the role of the County Office of Education?** The CalSTRS e-Bulletin clarified that the County Office of Education's signature is not required if your district is a CalSTRS independent report source. However, for most districts the ES 372 Form is routed through the county offices. Therefore, we continue to recommend collaborating with your county office regarding procedures for securing appropriate county signatures on the form. Districts should factor in additional time to work with their respective county office and obtain the necessary signatures in time to submit the form prior to the deadline.
- **What type of statement regarding the reason for the employee's late election should be included in the Justification Letter?** The CalSTRS e-Bulletin provided general language regarding the reason statement. However, concern regarding liability of the district for making any such statement still exists. Accordingly, to address this concern and keep the statement simple, we continue to recommend using a statement similar to the following:

"Without admitting any fault or liability, the District certifies that the member was not offered the opportunity to timely complete the election form because the District believed that the member was performing creditable service in a certificated position and therefore the member was not provided the opportunity to complete a Form ES 372 at the time he/she changed positions."

- **Can the documents be faxed or emailed to CalSTRS?** Pursuant to the CalSTRS e-Bulletin, CalSTRS will now accept ES 372 Forms and Justification Letters via fax or email, as well as regular mail. The documents can be faxed to (916) 414-5476 or emailed through the CalSTRS Secure Employer Website (SEW). Forms and Justification Letters will still be accepted via regular mail as well at the P.O. Box number listed in the November 25, 2013 Circular.
- **Must provide notice to CalPERS.** The CalSTRS e-Bulletin notes at the end that a copy of the election shall also be filed with the "other public retirement system" (i.e., CalPERS). The authority for this requirement is contained in Education Code section 22509(b). To comply, we recommend carbon copying CalPERS on the Justification Letter.

A copy of the CalSTRS November 25, 2013 Circular can be found [here](#).

A copy of the CalSTRS Employer Connect e-Bulletin can be found [here](#).

If you have any questions about whether your position is performing creditable service work or questions about how to complete the election form, you may contact the CalSTRS Employer Services Helpline at (877) 277-5778 or feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).