



The State Bar of California

OPEN SESSION AGENDA ITEM 703 MARCH 2022

DATE: March 24, 2022

TO: Members, Board of Trustees

FROM: Vanessa Holton, General Counsel

SUBJECT: Approval of Exception to CalPERS 180-Day Wait Period for Appointment of Sarah Cohen as a Retired Annuitant under Government Code Section 21224

EXECUTIVE SUMMARY

To comply with the California Public Employee Retirement System (CalPERS) requirements, Board of Trustees action is required to waive the 180-day waiting period for the State Bar to appoint a former employee retired under CalPERS as a retired annuitant within 180 days of that individual's retirement date. Sarah Cohen retired from the State Bar as an Attorney IV, effective December 5, 2021. Ms. Cohen has unique institutional knowledge and specialized skills needed for operational continuity; thus, the State Bar seeks interim short-term assistance from Ms. Cohen during the 180-day waiting period.

BACKGROUND

The State Bar of California participates in the CalPERS retirement system. A CalPERS retiree can be appointed to work for the former employer as a retired annuitant. Under pension reform standards (see Government Code sections 7522.56 and 21224), the retired individual to be appointed must meet the following standards:

1. The individual must have specialized skills needed to perform work of limited duration;
2. The individual cannot work more than 960 hours in a fiscal year (July 1–June 30);
3. The contracted compensation rate cannot be less than the minimum nor exceed the maximum paid to other employees, if any, performing comparable duties;

4. Compensation must be limited to wage rates set forth in paragraph 3 above and not take the form of other nonwage benefits;
5. The individual cannot have received unemployment insurance benefits for prior retired annuitant work;
6. The individual cannot work as a retired annuitant within 180 days following their retirement date unless the governing board of the contracting entity certifies to a critical need for the individual's skills within this 180-day period, as set forth in the resolution passed during public session, which must then be filed with CalPERS; and
7. The individual must be the normal retirement age or older at the time of retirement.

DISCUSSION

Ms. Cohen worked for the State Bar from September 2016 to December 2021. During that time, she spent one year working in the Office of General Counsel, providing advice and counsel to the Governance in the Public Interest Task Force, the Office of Access & Inclusion, and the Legal Specialization program in the Office of Admissions. Ms. Cohen also reviewed attorney complaint closures as part of the Complaint Review Unit. Between 2017 and her retirement in December 2021, Ms. Cohen worked in the Office of Mission Advancement & Accountability as Board secretary; the manager and legal counsel to the Judicial Nominees Evaluation (JNE) Commission, and Review Committee of the JNE Commission; manager of the Trustees Nominating Committee; and manager of the subentity appointment process.

Prior to working with the State Bar, Ms. Cohen worked as counsel to the chair of the California Public Employment Relations Board (PERB) for five years, and as an attorney with the California Department of Industrial Relations for 17 years. As a result, she has extensive experience in labor and employment law and employer/labor relations.

The State Bar seeks Ms. Cohen's immediate assistance to fulfill the duties of a COVID-19 Specialist, and to assist with legal work in the Office of General Counsel due to lack of staff resources.

During the COVID-19 pandemic, the State Bar has continuously monitored the local, state, and federal health guidance pertaining to COVID-19 and has developed policies in response to that guidance. The State Bar developed a Healthy Office Plan, which requires regular updates to conform with changes in the law, as well as health and safety guidance. The State Bar has also implemented a Mandatory COVID-19 Vaccination policy, which requires the State Bar to evaluate religious and medical exemption requests from employees, examination proctors, the Board of Trustees and subentity members, and guests invited to the Board of Trustees or subentity meetings. Exemption requests are ongoing and require the State Bar to engage in an interactive process, to document whether each exemption request is granted or denied, to prepare Reasonable Accommodation Agreements, and to maintain records regarding those exemptions. The State Bar is also required to monitor and track periodic testing results for individuals with a vaccine exemption. Due to the changing nature of the pandemic, the State Bar anticipates that it will be required to continue to reevaluate and revise its COVID-19 policies, which requires legal analysis and project management skills.

Ms. Cohen's prior experience will allow her to provide immediate and critical assistance with respect to the State Bar's COVID-19 response and policies. Ms. Cohen's labor and employment experience, coupled with her institutional knowledge of the State Bar, make her uniquely qualified to assess legal issues and provide appropriate recommendations related to the State Bar's COVID-19 policies, which will support operational continuity. Similar to her prior roles with the State Bar, this position will require her to perform legal analysis, ensure policy compliance, and engage in project management. There is a critical need for this work as the Office of General Counsel currently has insufficient staff resources to support the COVID-19 work.

Furthermore, having previously worked with the Office of General Counsel, Ms. Cohen is uniquely qualified to immediately assist the Office of General Counsel with its current needs. Ms. Cohen is familiar with the legal issues that State Bar offices face and will be able to assist in promptly providing necessary legal analysis and recommendations.

Accordingly, the State Bar seeks to appoint Ms. Cohen as a retired annuitant within 180 days of her retirement.

Because of CalPERS restrictions on contracting with a CalPERS retiree, the State Bar is seeking a Board resolution certifying the critical need to appoint Ms. Cohen as a retired annuitant within 180 days of her retirement date, as required by CalPERS under Government Code sections 7522.56 and 21224. The resolution recommended for this Board is set forth in Attachment A.

FISCAL/PERSONNEL IMPACT

Ms. Cohen's hourly rate of pay as a retired annuitant would be \$87.37, based on the top of the salary range for an attorney III in the Office of General Counsel. The salary savings due to vacancies in the Office of General Counsel will cover the costs of employing Ms. Cohen as a retired annuitant. Staff does not anticipate that Ms. Cohen's retired annuitant appointment will have any significant impact on the State Bar's finances.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None – core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, adopts the resolution set forth in Attachment A and certifies that there is a critical need to appoint Ms. Cohen as a retired annuitant prior to the 180-day CalPERS waiting period.

ATTACHMENT LIST

- A.** Resolution for Exception to the 180-Day Wait Period, Government Code sections 7522.56 and 21224

**RESOLUTION
MARCH 24, 2022**

**RESOLUTION FOR EXCEPTION TO THE 180-DAY WAIT PERIOD
GOVERNMENT CODE SECTIONS 7522.56 and 21224**

WHEREAS, in compliance with Government Code sections 7522.56 and 21224, the State Bar of California Board of Trustees must provide CalPERS this certification resolution when hiring retirees before 180 days has passed since their retirement date; and

WHEREAS, Sarah Cohen retired under CalPERS as an attorney IV effective December 5, 2021;

WHEREAS, Government Code sections 7522.56 and 21224 prohibit the appointment of a CalPERS retiree as a retired annuitant earlier than 180 days after their retirement date without a certification resolution, such as this; and

WHEREAS, Government Code sections 7522.56 and 21224 provide that a certification resolution will not waive the 180-day wait period if the retiree has received any unemployment insurance benefits; and

WHEREAS, Ms. Cohen certifies that she has not and will not receive any unemployment insurance benefits; and

WHEREAS, the State Bar of California Board of Trustees and the State Bar of California certify that there is a critical need to hire Ms. Cohen as a retired annuitant soon after March 25, 2022, which is within 180 days of her December 5, 2021, retirement date; and

WHEREAS, no matters, issues, terms or conditions related to this appointment as a retired annuitant have been or will be placed on a consent calendar; and

WHEREAS, the appointment as a retired annuitant shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to the retiree is equal to the monthly base salary (\$15,144) paid to State Bar employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the hourly rate paid to Ms. Cohen for her work as a retired annuitant will be \$87.37; and

WHEREAS, Ms. Cohen has not and will not receive any other benefit, incentive, or compensation in lieu of benefits or other form of compensation in addition to this hourly pay rate;

THEREFORE, BE IT RESOLVED THAT the State Bar of California Board of Trustees hereby certifies the nature of the appointment as described herein and that this appointment is necessary to perform critically needed duties for the State Bar of California beginning soon after March 25, 2022.