The FISCAL REPORT an informational update

Volume 34 For Publication Date: September 05, 2014 No. 18

CalPERS Board Adopts Controversial Pensionable Compensation Regulation

Due to the implementation of the Public Employees' Pension Reform Act of 2013 (PEPRA), the California Public Employees' Retirement System (CalPERS) has been promulgating regulations to support the provisions of PEPRA.

In May 2014, CalPERS issued draft regulations for defining the types of compensation that can be counted toward the pension benefit for new members—generally those hired on or after January 1, 2013. This opened up the public comment period, during which time CalPERS received many comments, both in opposition and in support of the draft regulations. After reviewing the comments, CalPERS staff recommended to the Board that the regulations should be adopted as proposed.

The CalPERS Board adopted the regulations on a split vote, with Governor Jerry Brown's appointees voting against. Soon after, Governor Brown expressed his objections with this statement:

"Today CalPERS got it wrong. This vote undermines the pension reforms enacted just two years ago. I've asked my staff to determine what actions can be taken to protect the integrity of the Public Employees' Pension Reform Act."

The CalPERS Board responded with its own statement:

"Today's decision by the CalPERS Board brings much needed clarity to the definition of what is pensionable compensation for new CalPERS members. If the law is ever changed, CalPERS will of course amend our regulations accordingly."

The regulations specify that pensionable compensation for new members consists of the normal monthly rate of pay or base pay as long as it is for services rendered on a full-time basis during normal work hours and other criteria are met. The regulations then contain a long list of the other types of compensation that can count toward pensionable compensation as long as they meet the same criteria as for the base pay.

The types of pay that we have seen used in local educational agencies and that are included on this list as counting toward pensionable compensation are as follows:

- <u>Longevity pay</u>: Additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years

- <u>Educational incentive</u>: Compensation to employees for completing educational courses, certificates and degrees which enhance their ability to do their job (in school agencies this is typically referred to as a degree stipend or professional growth increment); a program or system must be in place to evaluate and approve acceptable courses; the cost of education that is required for the employee's current job classification is not included in this item of pensionable compensation

- Reading specialist premium: Compensation to certificated employees who have obtained special training and provide literacy instruction as part of their teaching duties

- Undergraduate/graduate/doctoral credit: Compensation to school district employees who are required to obtain a specified degree

- Bilingual premium: Compensation to employees who are routinely and consistently assigned to positions requiring communication skills in languages other than English

- School yard premium: Compensation to part-time school district employees who are routinely and consistently assigned to supervise students during recreation

- Severely disabled premium: Compensation to school instructional aides who are routinely and consistently assigned to work with severely disabled students

- Shift differential: Compensation to employees who are routinely and consistently scheduled to work other than a standard daytime shift, e.g., graveyard shift, swing shift, shift change, rotating shift, split shift, or weekends

- Temporary upgrade pay: Compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration (in school agencies this is typically referred to as out-of-class pay)

This last item, the temporary upgrade pay, is the most controversial item. Many comments were submitted specifically about this item, with, as one would expect, labor groups supporting it and employers—and Governor Brown—opposing it.

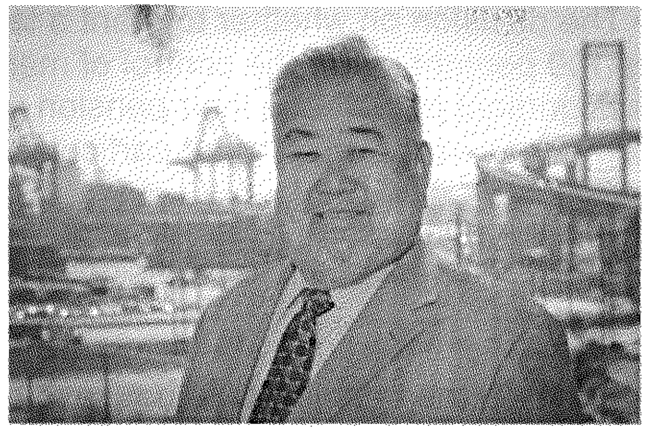
With the Board's action to adopt the regulations, they will now be submitted to the Office of Administrative Law for inclusion in the California Code of Regulations. The regulations can be viewed here.

—Sheila G. Vickers and Michelle McKay Underwood

posted 08/25/2014

THE SACRAMENTO BEE sacbee.com

Another View: CalPERS made the right decision on pension changes



Warren Furutani

By Warren Furutani
Special to The Bee
Published: Tuesday, Aug. 26, 2014 - 12:00 am

CalPERS got it right when it voted last week to affirm the existing practice of counting temporary out-of-classification assignments toward retirement.

This issue was specifically discussed in negotiations over Assembly Bill 340, and the Legislature agreed that this compensation should continue to count towards retirement and wrote the Public Employees Pension Reform Act (PEPRA) consistent with this decision.

We made this decision based on a thorough assessment of the facts, including:

• When a temporary out-of-classification assignment is made, both the employee and employer pay into CalPERS based on the higher salary.

• The vast majority of such assignments do not occur in the final years of employment, meaning most employees never receive higher pension benefits as a result of these assignments. Therefore, rescinding these benefits not only would harm those few employees who legitimately perform the work in these assignments, pay higher contributions and receive slightly increased pensions, it would also eliminate the cost savings that result from those employees who don't get higher pensions. Repealing this provision would probably end up increasing CalPERS' costs.

• The decision on whether to grant a temporary out-of-classification assignment is 100 percent under the control of management. No employee can receive this assignment or increase their pension unless management decides to fill a temporary vacancy with that particular employee.

• The temporary out-of-classification assignment provision existed prior to PEPRA. Repeal of these provisions was considered and rejected for the above reasons.

Repealing the benefit would not save money, it would cost money. Also, it would harm employees who legitimately perform work at management's request and pay out of their own check to fund the benefit.

Former Assemblyman Warren Furutani is the author of the Public Employees Pension Reform Act.

• Read more articles by Warren Furutani