March 19, 2013

Christina Nutley, Regulation Coordinator
California Public Employees' Retirement System
PO Box 942702
Sacramento, CA 94229-2702

Re: Proposed Regulatory Action

To whom it may concern:

My name is Autumn Acquistapace I have been a state employee since 1997 and I am greatly concerned about my pension based on reviewing the Notice of Proposed Regulation.

I would like to know a more inclusive list when it becomes available of what will be included in the definition of a "break in service" besides what has been discussed such in the proposed regulatory action such as a temporary absence or maternity/paternity leave. As an example, if a person has been a state employee for over 16 years and wants to leave state service for about 5 years to return to school with plans on returning to state service would that still be considered a break in service? At this point from what I understand, under the current law if I return to state service I would come back to my previous formula. How would the new definition of a break in service affect me in that situation?

My next question is regarding medical vesting. If I were to leave state service for approximately 5 years and return again would my medical vesting requirements change? Currently I have to work 20 years to achieve 100% of the state share and retire from state service within 120 days from my last day on the books. With pension reform will medical vesting also be affected if I returned to state service under the definition of a "new member"?

I would like to make a comment, based on the contract I came to work in state service under and have worked for all 16 years I would like to understand how the definition can be changed after I have already worked under the criteria previously established? It would seem to me that the definition could not change once a vested employee came to work under the previous definition regardless of when I come back to state service.

If you have further questions please call me at (209) 617-8667 or email me at al_acquistapace@yahoo.com. If possible I would like a written response to my questions either by email or mail or some form of follow-up to educate myself regarding the future decisions of our pension. My address is 3627 Tepusquet Road, Santa Maria, CA 93454.

Sincerely,

Autumn Acquistapace

California Public Employees' Retirement System
Customer Account Services Division
P.O. Box 942704
Sacramento, CA 94229-2704
TTY: (877) 249-7442
888 CalPERS (or **888**-225-7377) phone · (916) 795-4019 fax
www.calpers.ca.gov

May 1, 2013

Autumn Acquistapace
3627 Tepusquet Road
Santa Maria, CA 93454

Subject: CalPERS Responses to Public Comments dated March 19, 2013

Dear Ms. Acquistapace:

Thank you for your letter dated March 19, 2013, providing comments on the proposed Public Employees' Pension Reform Act (PEPRA) regulations. Your comments concern the definition of break in service and whether there are any changes in any medical vesting time period.

Comment #1:
"I would like to know a more inclusive list when it becomes available of what will be included in the definition of a 'break in service' besides what has been discussed such in the proposed regulatory action such as a temporary absence or maternity/paternity leave. As an example, if a person has been a state employee for over 16 years and wants to leave state service for about 5 years to return to school with plans on returning to state service would that still be considered a break in service? At this point from what I understand, under the current law if I return to state service I would come back to my previous formula. How would the new definition of a break in service affect me in that situation?"

CalPERS Response:
The "Break in Service" proposed regulation text is to address the term as used in PEPRA, specifically Government Code section 7522.04(f)(3). The statute requires an individual be classified as a "New" member if, after a break of service of more than six months, that member returns to active membership with a new employer. In the scenario you provided, the member would be returning to the same employer (all state entities are considered to be one employer), and would therefore retain the "Classic" member status for service accrued after returning to work.

However, if a member separated from state service for longer than 6 months and was then employed by a local, public agency other than the state (such as a city or county), the member would be enrolled in CalPERS as a "New" member for future service accrued after the break in service.

Comment #2:
My next question is regarding medical vesting. If I were to leave state service for approximately 5 years and return again would my medical vesting requirements change? Currently I have to work 20 years to achieve 100% of the state share and retire from state service within 120 days from my last day on the books. With pension reform will medical vesting also be affected if I returned to state service under the definition of a 'new member'?

CalPERS Response:
Your questions regarding medical vesting requirements are not impacted by the proposed regulations. However, in response to your question, medical vesting is based upon your date of hire. The initial date of hire is retained even if an employee leaves state service for a period of time, and if the employee was to return to state service as an active employee he or she would retain that initial date of hire. In your case, with an initial date of hire in 1997, the applicable statute requires 20 years of state employment to receive 100 percent of the state contribution towards retiree health. Please keep in mind that the provision that you retire within 120 days of separation still applies.

Comment #3:
I would like to make a comment, based on the contract I came to work in state service under and have worked for all 16 years I would like to understand how the definition can be changed after I have already worked under the criteria previously established? It would seem to me that the definition could not change once a vested employee came to work under the previous definition regardless of when I come back to state service.

CalPERS Response:
Based on our follow-up telephone conversation, I understand that you are referring to the general benefit package (including formula, medical vesting requirements, etc.) in place for you at the time you separate from state service. If you return to the same public employer, the proposed regulation text would not apply to you. You would be identified as a "Classic" member and the requirements already in place in the Public Employees Retirement Law would govern benefits provided upon return.

I hope this information is helpful. Again, thank you for taking the time to comment on these proposed PEPRA regulations.

Sincerely,

RENEE OSTRANDER, Assistant Division Chief
Customer Account Services Division

From: Michelle Ahlberg [mailto:mahlberg@scu.edu]
Sent: Sunday, March 24, 2013 11:41 AM
To: PEPRA Regulations
Subject: Comment re: Proposed PEPRA regulations

I would like to offer two comments regarding the regulatory actions that the Board of Administration of the California Public Employees' Retirement System proposes.

1. A loophole from the application of the Pension Reform measures (PEPRA), enacted by the California Legislature in 2013, is being created through the proposed definitions of 'new member' and 'classic member'.

The proposed definition of a 'new member' is to be synonymous with the current definition of 'new member' (Government Code § 7522.04(f)), which describes that in order for 'new member' status to be conferred on an employee a break in service must be between two separate employers.

> *§ 7522.04(f)(3) An individual who was an active member in a retirement system and who, after a break in service of more than six months, returned to active membership in that system* ***with a new employer****. For purposes of this subdivision, a change in employment between state entities or from one school employer to another shall not be considered as service with a new employer.*

The proposed definition of a 'classic member' uses Government Code § 7522.04(f), and says 'classic members' are those members who do not meet the definition of a 'new member.'

This results in a loophole to evade the effect of the Pension Reform Legislation of 2013. A public employee, who has had a break in service of more than six months would be able to evade the status of 'new member' by returning to their former employer first, before continuing on with a career in public service at the more beneficial formula rates for classic members.

For example:

Employee X works for Agency A (CalPERS-covered employer), then leaves Agency A.

Ten years later, Employee X returns to Agency A.

A month later, Employee X leaves Agency A and goes to Agency B (CalPERS-covered employer).

Under the proposed regulations, Employee X would be a 'classic member' merely due to their gaming of the pension regulations, by returning to their former employer first.

If this loophole was not intended, Government Code § 7522.04(f)(3) should be amended, prior to its addition as Section 579.1 to the CCR. The current language of 'with a new employer' and the second sentence should be removed. If specific exceptions are intended, those should be stated explicitly.

Alternatively, to remove this loophole, specific language could be included in proposed addition of section 579.4, which defines 'break in service.' Language along the lines of "a break in service of more than six months with the same employer, if ended after 1/1/2013, shall constitute a break in service for purposes of the 'new member' definition."

2. The proposed addition of section 579.5 to the CCR, defining the phrase 'similarly situated,' is still not clear.

The phrase 'similarly situated' will determine the amount of the employee's payroll deduction, and so it should be clearer. Government

Code § 7522.30(c) states that new members shall pay at least 50 percent of the normal cost or the current contribution rate of similarly situated employees, whichever is greater, but then § 7522.30(f) puts § 7522.30(c) on hold if it would impair any terms of a contract, including a memorandum of understanding, until that contract has expired (or been renewed, amended or extended). Many bargaining units have negotiated to pay more than 50 percent of the normal costs, so new employees, if they are similarly situated, would be subject to the higher contribution rates.

The proposed regulation is intended to clarify when employees are similarly situated, which would mean that 'new members' would pay the same contribution rate as 'classic members', if higher than 50 percent of the normal cost, until the current contract expires. However, the proposed regulation lists factors such as similarity in job duties, work location, collective bargaining unit, and then a catch-all of 'other logical work-related characteristics.' This does not clarify the phrase 'similarly situated.'

If any of the factors are determinative, such as work location, or collective bargaining unit, those should be stated plainly. Additionally, 'other logical work-related characteristics' is too broad. It may be more functional for employees and employers alike to give the factors of employees who are *not* 'similarly situated.'

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May 1, 2013

Michelle Alberg

Subject: CalPERS Responses to Public Comments dated March 24, 2013

Dear Ms. Alberg,

Thank you for contacting us on March 24, 2013, regarding the proposed Public Employee Pension Reform Act (PEPRA) regulations. We appreciate your input and would like to take this opportunity to respond to your comments.

Comment #1:
"A loophole from the application of the Pension Reform measures (PEPRA), enacted by the California Legislature in 2013, is being created through the proposed definitions of 'new member' and 'classic member.' The proposed definition of a 'new member' is to be synonymous with the current definition of 'new member' (Government Code §7522.04(f)), which describes that in order for 'new member' status to be conferred on an employee a break in service must be between two separate employers. [*quotation omitted*]. The proposed definition of a 'classic member' uses Government Code §7522.04(f), and says 'classic members' are those members who do not meet the definition of a 'new member'.

This results in a loophole to evade the effect of the Pension Reform Legislation of 2013. A public employee, who has had a break in service of more than six months would be able to evade the status of 'new member' by returning to their former employer first, before continuing on with a career in public service at the more beneficial formula rates for classic members.

For example: Employee X works for Agency A (CalPERS-covered employer), then leaves Agency A. Ten years later, Employee X returns to Agency A. A month later, Employee X leaves Agency A and goes to Agency B (CalPERS-covered employer). Under the proposed regulations, employee X would be a 'classic member' merely due to their gaming the pension regulations, by returning to their former employer first.

If this loophole was not intended, Government Code §7522.04(f)(3) should be amended, prior to its addition as Section 579.1 to the CCR. The current language of 'with a new employer' and the second sentence should be removed. If specific exceptions are intended, those should be stated explicitly. Alternatively, to remove this loophole, specific language should be included in proposed addition of section 579.4, which defines 'break in service'. Language along the lines of 'a break in service of more than six months with the same employer, if ended after 1/1/2013, shall constitute a break in services for purposes of the "new member" definition.'"

CalPERS Response:
The proposed regulation for "Break in Service" is aimed at enabling CalPERS to distinguish between members who are subject to PEPRA and should be classified as "New" members, and those who are not and would therefore be identified as "Classic" members. In the scenario you provided with a member returning to active membership with his or her previous employer and then transitioning to a different employer, it is correct that a member would be considered a "Classic" member, and, if no future break in service greater than 6 months occurs, the member would retain "Classic" membership throughout the remainder of his or her service with any CalPERS-covered employer. The perceived gap you describe results from the language of the statute itself, not the proposed regulation. CalPERS has written the proposed regulation text to align with the statute as it currently exists, and the changes you have suggested require amendments to the statute and cannot be accomplished with modifications to the proposed regulation.

Comment #2:
"The proposed addition of section 579.5 to the CCR, defining the phrase 'similarly situated,' is still not clear. The phrase 'similarly situated' will determine the amount of the employee's payroll deduction, and so it should be clearer. Government Code §7522.30(c) states that new members shall pay at least 50 percent of the normal cost or the current contribution rate of similarly situated employees, whichever is greater, but then §7522.30(f) puts §7522.30(c) on hold if it would impair any terms of a contract, including a memorandum of understanding, until that contract has expired (or been renewed, amended or extended). Many bargaining units have negotiated to pay more than 50 percent of the normal costs, so new employees, if they are similarly situated, would be subject to the higher contribution rates.

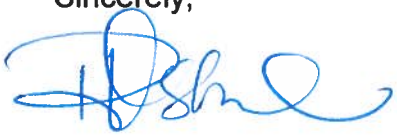
The proposed regulation is intended to clarify when employees are similarly situated, which would mean that 'new members' would pay the same contribution rate as 'classic members,' if higher than 50 percent of the normal cost, until the current contract expires. However, the proposed regulation lists factors such as similarity in job duties, work location, collective bargaining unit, and then a catch-all of 'other logical work-related characteristics.' This does not clarify the phrase 'similarly situated.'

If any of the factors are determinative, such as work location, or collective bargaining unit, those should be stated plainly. Additionally, 'other logical work-related characteristics' is too broad. It may be more functional for employees and employers alike to give the factors of employees who are *not* similarly situated.'"

CalPERS Response:
Pending legislation (Senate Bill 13) may include an amendment to Government Code section 7522.30(c) which may remove the term "similarly situated" from this section which would render this proposed regulation inapplicable. Therefore, out of an abundance of caution CalPERS is removing Section 579.5 from the regulatory action.

I hope this information is helpful. Again, thank you for taking the time to comment on these proposed PEPRA regulations.

Sincerely,



RENEE OSTRANDER, Assistant Division Chief
Customer Account Services Division