



Agenda Item 5

November 18, 2014

ITEM NAME: PEPRA Implementation Update Regarding Government Code Section 7522.56

PROGRAM: Benefits and Services: Post-Retirement Administration/Exceptional Programs

ITEM TYPE: Information

EXECUTIVE SUMMARY

The Public Employees' Pension Reform Act of 2013 (PEPRA) changed the laws governing post-retirement employment for members and retirees of public retirement systems in California. Because the new requirements imposed on post-retirement employment under PEPRA are similar to existing Public Employees' Retirement Law (PERL) provisions in many respects, the impact on most California Public Employees' Retirement System (CalPERS) members and retirees has been relatively minor and implementation has been fairly straightforward in most cases. However, it has been more difficult to harmonize PEPRA's requirements with certain PERL provisions governing post-retirement employment of elective officers and disability retirees.

STRATEGIC PLAN

This item does not support a specific provision of the Strategic Plan or Business Plan, but represents the normal ongoing administration of the working after retirement requirements.

BACKGROUND

1. Post-Retirement Employment Restrictions in the PERL

Prior to the implementation of PEPRA, sections 21220 through 21230, inclusive, in the PERL (Attachment 1) governed post-retirement employment for CalPERS retirees. These PERL provisions provide generally that a person who has been retired under this system, for service or for disability, may not be employed in any capacity thereafter by a CalPERS employer unless he or she has first been reinstated from retirement or unless the employment, without reinstatement, is authorized by these statutes. These provisions specify the requirements and restrictions for CalPERS retirees that return to provide service for employers within the CalPERS system. Service performed for private sector employers or public agencies outside the CalPERS system is generally not restricted. In general, these provisions permit retirees to perform service of limited duration for CalPERS employers, restrict such service to no more than 960 hours in a fiscal year and restrict the compensation paid to that paid to similarly situated

employees. If a retiree is younger than the normal retirement age that applies to his or her benefit formula, he or she must also have a bona fide separation from his or her employer prior to beginning post-retirement employment.

The PERL also includes exceptions to the general working after retirement restrictions in certain circumstances and for certain enumerated positions such as jurors, crossing guards, election officers, retirees needed for litigation, certain management positions for court security and correctional facilities, and elective officers. In addition, section 21228 of the PERL provides a specific exception for disability retirees. This exception generally permits disability retirees to work in a full-time permanent position subject to a determination that the retiree is not disabled from performing the duties of the new position and so long as the new position is not the same position from which he or she retired and is in a different membership classification. While employed pursuant to section 21228, the retiree's disability allowance is reduced during the new employment to an amount that, when added to the compensation received, equals the maximum compensation earnable by a person holding the position the individual held at the time of retirement. While providing service pursuant to this code section, an individual is considered retired by the system and will not accrue any service credit. Any employment under this section must terminate when the retiree reaches the mandatory retirement age for the new position.

2. Post-Retirement Employment Restrictions in the PEPRA
Assembly Bill (AB) 340 (Furutani, Chapter 296, Statutes of 2012) imposed numerous requirements related to post-retirement employment (Attachment 2) on individuals receiving a pension benefit from a public retirement system. These requirements are found in sections 7522.56 and 7522.57. Each of these sections specifies that their provisions "shall supersede any other provision in conflict" with them. However, neither provision identifies those sections of existing law that are in conflict with their provisions, nor did AB 340 amend the post-retirement employment provisions in the PERL. As a result, there has been some uncertainty about the effect of sections 7522.56 and 7522.57 on certain PERL provisions governing post-retirement employment.

In general, the requirements of section 7522.56 are similar to the requirements under existing PERL provisions governing post-retirement employment. They include a limitation on the duration of the employment, a 960 hour annual work limitation and a provision restricting compensation to the compensation paid to similarly situated employees. However, the exceptions to the requirements imposed by section 7522.56 are more limited than the exceptions included in the PERL.

Section 7522.57 addresses requirements for retirees serving as a member of a state board or commission who are first appointed on or after January 1, 2013. This section (7522.57) permits a retiree to serve without reinstatement provided

that the appointment is to a part-time state board or commission and the statute establishes part-time appointment in this context as meaning an appointment with a salary of \$60,000 per year or less. For board or commission positions with salaries greater than \$60,000 per year, the retiree may serve without a salary or must reinstate to active membership with the associated contributions and service credit accrual.

3. Post-Retirement Employment Legislation in 2013 and 2014

In 2013, CalPERS sponsored Senate Bill (SB) 220 (Beall, Chapter 526, Statutes of 2013) which sought to make numerous changes or clarifications to the PERL to better conform existing statutes to the newly-enacted PEPRA provisions and to clarify which provisions under the PERL survive the PEPRA. In the June 17, 2013, amendments, SB 220 included provisions nearly identical to those in Government Code (GC) 21221(d) and 21222 setting forth exceptions from the PERL's working after retirement restrictions intending to clarify that these sections were not superseded by PEPRA. These provisions were approved on unanimous votes by two Assembly committees, but were later removed on August 26, 2013, in response to concerns raised by the Department of Finance.

In 2014, SB 1219 (Torres) was introduced. This legislation included the provisions that had been removed from SB 220 and also included a provision nearly identical to the disability retiree post-retirement employment provision in the PERL (GC 21228) which was intended to clarify that this provision was not superseded by PEPRA. SB 1219 was passed on unanimous votes through the Senate and two committees in the Assembly. The bill was supported by employee and employer organizations and was opposed by the Department of Finance. The bill was moved to the Assembly inactive file near the end of session.

ANALYSIS

As noted above, PEPRA imposed numerous requirements related to post-retirement employment (Attachment 2) on individuals receiving a pension benefit from a public retirement system and specifies that sections 7522.56 and 7522.57 "shall supersede any other provision in conflict" with them. While it may be fairly clear in some instances which provisions of the PERL are in conflict with, and therefore superseded by sections 7522.56 and 7522.57, there are certain situations addressed by PERL provisions that are not specifically addressed in PEPRA. This silence has led to confusion regarding the applicability of some PEPRA provisions to matters specifically addressed in the PERL. Post-retirement employment of disability retirees and elective officers are two exceptions included in the PERL that PEPRA does not specifically address.

1. Retiree Elective Officers:

The PEPRA does not contain any language that explicitly authorizes retired elective officers to serve in office without reinstatement pursuant to GC sections

21221(d) and 21222. The PEPRA makes no reference to these statutes, and no enacted legislation since AB 340 was implemented has repealed or amended the language of sections 21221(d) and 21222.

2. Employment After Disability Retirement

The PEPRA does not contain any language that explicitly authorizes CalPERS disability retirees to continue to be employed pursuant to GC section 21228. The PEPRA makes no reference to this statute, and no enacted legislation since AB 340 was implemented has repealed or amended the language of section 21228.

BUDGET AND FISCAL IMPACTS

This item is informational in nature and will not in itself create impacts to CalPERS budget. However, reinstatement of retirees to membership status has significant financial impacts on individual members and employers depending on the specifics of each situation.

BENEFITS/RISKS

The overall construction of the post-retirement employment statutes, with sections in both the PERL and the PEPRA, has in some instances created ambiguity for CalPERS, our retirees, members, and employers, because the provisions fail to work together on all issues and attempts to clarify and/or conform the provisions through clean-up legislation have not been successful. As a result, CalPERS must determine a reasonable course of action that implements the law and does not create unintended consequences for our retirees, members and employers.

ATTACHMENTS

Attachment 1 – Government Code §§21220 to 21230

Attachment 2 – Government Code §7522.56 and §7522.57

Attachment 3 – Circular Letter 200-002-14, Post-Retirement Employment Requirements, released January 14, 2014

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