



Pension and Health Benefits Committee

Agenda Item 6b

December 18, 2018

Item Name: State Legislative Proposal: Policy and Technical Amendments to the Public Employees' Retirement Law

Program: Legislation

Item Type: Action

Recommendation

Sponsor legislation to make technical and policy changes to sections of the Government (Gov.) Code affecting the benefit programs administered by the California Public Employees' Retirement System (CalPERS).

Executive Summary

Staff seeks approval of the Board of Administration (Board) to sponsor legislation that would:

- Expressly prohibit disability and industrial disability retirees from returning to a retired annuitant position similar to or closely resembling the position from which they retired for disability, or in a position which includes duties or activities they were restricted from performing at the time of their Disability Retirement (DR) or Industrial Disability Retirement (IDR);
- Clarify that retired members who elected to receive an unmodified allowance, or an option that only provides a return of remaining contributions upon their death, are permitted to name a new beneficiary and provide an optional settlement for that beneficiary when the qualifying event of marriage occurs after retirement;
- Clarify that, for the purpose of converting unused sick leave (USL) to service credit at retirement for all members employed by a school district, county superintendent of schools, or community college district, USL shall include sick leave transferred from a previous school employer to the school employer from which they retired pursuant to certain provisions of the Education (Ed.) Code;
- Make corrections to inaccurate code section references and other technical changes to the Public Employees' Retirement Law (PERL) in accordance with other provisions of state and federal law.

Strategic Plan

This proposal supports the 2017-22 CalPERS Strategic Plan to simplify programs to improve service, streamline operations to gain efficiencies, improve productivity, and reduce complexity across the enterprise.

Background

CalPERS benefit programs and administrative processes are subject to numerous statutory requirements, several of which have been identified by team members as outdated, subject to confusion among stakeholders, or which otherwise represent an opportunity to realize efficiencies through their modification or clarification. In these cases, recommended legislative changes are appropriate for the continued administration and good governance of CalPERS.

Analysis

The following is a proposed policy change to the Gov. Code:

Gov. Code section 21232 allows a person who retired for disability to take a permanent position at a CalPERS employer without reinstatement to active membership as long as the position is not the same position from which he or she retired for disability or a position in the same member classification and provided they have CalPERS approval. 204 members served CalPERS employers under these conditions in 2015.

Existing law also allows all retirees, including members receiving a DR or IDR allowance, to work for a CalPERS employer for up to 960 hours in a fiscal year as a Retired Annuitant (RA). These retired members do not accrue service credit during their post-retirement employment, nor do they or their employers make contributions to CalPERS for their service. Current data has identified approximately 600 members receiving a DR or IDR allowance working as RAs. Because RAs do not require approval from CalPERS prior to accepting these positions, there is a possibility that members receiving a DR or IDR allowance may be working in a position that is the same or similar to the position from which they originally retired for disability. In addition, because an RA is not required to disclose to a potential employer the type of retirement allowance he or she is receiving, the employer may not have knowledge of the RA's disability unless it is a contracting agency that has the authority to approve disability retirement applications for CalPERS safety members and had approved the disability retirement application of a former employee that it has agreed to rehire.

Currently, the working after retirement statutes in the PERL and the Public Employees' Pension Reform Act of 2013 (PEPRA) do not explicitly prohibit a person who retires for disability or industrial disability from returning to work as an RA, nor do they place conditions on that service with respect to positions whose duties are the same or comparable to those the person was restricted from performing as part of their disability retirement, similar to the restrictions on DR and IDR members under Gov. Code section 21232. Therefore, team members recommend amending the PERL to expressly prohibit disability and industrial disability retirees from returning to a RA position similar to or closely resembling the position from which they retired for disability, or in a position which includes duties or activities they were restricted from performing at the time of their disability retirement.

The following are proposed technical amendments to sections of the Gov. Code:

Retired Member Right to Elect Optional Settlement: Qualifying Event

Existing law allows a retired member who elected to receive an unmodified allowance, or an option that only provides a return of remaining contributions upon his or her death, to name a new beneficiary and provide an optional settlement for that beneficiary upon the qualifying event of marriage. CalPERS current business practice considers a new marriage after retirement to be the qualifying event to change the originally elected retirement option.

To conform the PERL to business practice and make consistent with other sections of law related to a modification of options after retirement, team members recommend changes to clarify a retired member who elected to receive an unmodified allowance, or an option that only provides a return of remaining contributions upon his or her death, to name a new beneficiary and provide an optional settlement for that beneficiary upon the qualifying event of marriage that occurs after retirement.

Conversion of Unused Sick Leave into Service Credit – School Employers

The PERL allows USL earned by a state, school, school safety, local miscellaneous, or local safety member to be converted to additional retirement service credit if he or she retires within four months of separation from employment from the employer that granted the sick leave, with one day of USL equaling .004 of a year of service credit. Service credit for USL is a mandated benefit for state, school and school safety employers, as well as public agencies that participate in risk pools. Service credit for USL is an optional benefit for all other public agencies.

A recent CalPERS review to determine whether employers reported USL for eligible retiring members accurately and in accordance with the PERL identified instances of school employers reporting USL that members had earned while working for a prior school employer. The primary cause of this overreporting appears to be a conflict between the PERL and provisions of the Ed. Code that allow eligible certificated and classified employees of any school district, county superintendent of schools or community college district, to transfer any USL to their new school employer. In addition, some school districts, county superintendent of schools and community college districts subject to these Ed. Code provisions contract with CalPERS as public agencies to offer local miscellaneous and school safety benefits to their employees.

Historically, CalPERS has considered all school employers to be the same employer for purposes of the requirement that USL must be granted by the employer from which the member retires. Failure to codify this existing business practice and harmonize the USL provisions in the PERL and the Ed. Code will substantially increase workload and complexity for both CalPERS and school employers related to establishing processes to identify and track USL credit accrued under each employer and limit the conversion of USL to what the member earned at the employer from which he or she retired. Therefore, team members recommend amending the PERL to clarify that, for the purpose of converting USL to service credit at retirement for all CalPERS members employed by a school district, county superintendent of schools, or community college district, USL includes sick leave transferred from a previous school employer to the school employer from which they retired pursuant to the provisions of the Ed. Code. This change is also consistent with PEPR provisions that treat all these members as being employed by the same employer for purposes of maintaining CalPERS classic member status and their current retirement benefit formula whenever accepting employment with a different school employer.

Other Technical Changes

This proposal will also make corrections to inaccurate code section references and other technical changes to the PERL in accordance with other provisions of state and federal law.

Budget and Fiscal Impacts

Program Costs/Savings:

None.

Administrative Costs/Savings:

These proposals will have a minimal impact to the program area other than updating system communications.

Benefits and Risks

Benefits

- Extends restrictions on working after retirement, specifically as it pertains to disability and industrial disability retirees working in the same or similar positions from which they retired.
- Maintains consistency with other sections of law pertaining to the timing of qualifying events, such as a marriage
- Maintains consistency between statutes and between business practices and statute.
- Minimizes confusion among members and employers.
- Reduces audit findings.
- Reduces workload associated with administrative appeals.
- Maintains public trust by being an ethical, sensitive, effective, and cost-efficient organization in service to employers and employees alike (CalPERS Guiding Principles).

Risks

- None identified

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