





**SCERS**  
SACRAMENTO COUNTY  
EMPLOYEES' RETIREMENT SYSTEM

# PEPRA LITIGATION UPDATE

PRESENTATION BY  
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# PUBLIC EMPLOYEES' PENSION REFORM ACT

- Signed into law 9/12; Effective 1/1/13
- Included an expanded definition for compensation earnable CG §31461
- Itemized certain pay elements not to be included in compensation earnable
- AB 197 passed to close perceived loophole in use of terminal pay

# THE PAY ELEMENTS EXCLUDED BY PEPRA

- (b)(1) compensation determined by the Board to have been paid to enhance a benefit
- (b)(2) unused vacation, sick leave, CTO that exceeds what may be earned and paid in final compensation period (leave cash-outs)
- (b)(3) pay for services rendered outside of normal working hours (standby/on-call pay)
- (b)(4) pay made at termination (Terminal pay)

# MAPE v. MCERA

- MCERA Board resolved to eliminate standby pay from compensation earnable
- By excluding items from the final compensation calculation that MCERA had previously committed to provide, AB 197 unconstitutionally impairs MCERA members' vested rights
- A comparable new benefit was required

# MAPE v. MCERA

- The Court saw things differently
- A bit off script in the Court response to the question
- “Must” provide comparable benefit versus “Should” provide comparable benefit
- Besides, a benefit was present
- No contracts clause violation because there was not a substantial impairment to a contract

# CAL FIRE v. CALPERS

- Legislature approved purchase of up to 5 years of airtime in 2003
- PEPRRA eliminated airtime as of 1/1/13. CalPERS members had 15 weeks to get an application in
- Plaintiffs sued arguing that the ability to purchase airtime was a vested right
- Plaintiffs argued that taking away the ability to purchase airtime resulted in a financial disadvantage with no comparable financial benefit to replace its elimination

# CAL FIRE v. CALPERS

- The Court held that:
  - 1) airtime was intended to be cost neutral and paid for entirely by the member, so it was not financially beneficial to the member,
  - 2) following MAPE, any replacement benefit is a should, not a required replacement,
  - 3) Legislature provided 15 weeks to take advantage, and
  - 4) failure to do so was entirely a member decision,
  - 5) no contract present.
- Reiterated the ability of the employer to change the benefit and that employer cannot destroy a benefit, but can change before retirement



# CONSOLIDATED CASES

- Contra Costa, Alameda, and Merced
- All three had Ventura Agreements that allowed some type of inclusion of terminal pay in compensation earnable
- All three counties made changes to how benefits would be calculated for legacy members, including elimination of standby pay and reduction in the use of terminal pay

# CONSOLIDATED CASES

- The Ventura Agreements do not supersede the statute
- The Court examined each of the four new sections of §31461
  - Did it change existing law or simply restate it?
  - If it changed existing law, then did it impair a vested right?

# CONSOLIDATED CASES

- Court found (b)(2) and (b)(4) were simply restatements of current law
- Court found that (b)(1) and (B)(3) represented changes to §31461
- In analyzing whether there was an impairment, Court departed from MAPE's "reasonable pension" and "comparable benefit" arguments
- Remanded case back to trial court to evaluate the detrimental impact on legacy members
- Although a restatement of the law, Court granted terminal pay to legacy member based on estoppel theory

# IMPACT ON SCERS

- SCERS had airtime and eliminated as required by PEPRA
- SCERS currently recognizes standby pay; the Supreme Court's decision will determine whether a change will need to be made.
- Implemented compensation review process
- Implemented base pay only for PEPRA members