SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM

Assessment of California Public Employees' Pension Reform Act of 2013 (CalPEPRA or AB 340)

(As of May 29, 2013)

Disclaimer:

AB 340 is lengthy and complex, and its interpretation is still evolving. The comments that follow reflect SCERS' current assessment of the legislation but it is possible that SCERS' interpretation could change based on subsequently received information. Please contact SCERS to confirm the most current view on the provisions of the new law.

OVERALL

- Minimal impact on current members.
- Minimal impact on current retirees and beneficiaries.
- Substantial impact on new members.

CURRENT MEMBERS

No Change to:

- o Benefit formula
- o Final average salary period
- o Benefit vesting period
- o Eligibility to retire (retirement age)
- o Cost-of-living adjustment on retirement benefits

1. Retirement Eligible Compensation

- Makes some changes to what qualifies as compensation that will be counted when calculating a retirement benefit (i.e., 'compensation earnable') but changes will not impact many people:

    - o Regular, recurring pay elements received by employees in a given job classification will continue to qualify as compensation earnable – e.g., differentials, allowances, incentives.

    - o Leave sell-backs (if permitted for job classification) will continue to qualify as compensation earnable. However:

        - ▪ Leave sell-back in each year of the final average salary period cannot exceed the leave that would be earned by the employee in a year. No change for SCERS – current permitted sell-back is within this limit.

- SCERS is now required to monitor compensation elements going into retirement benefit calculations to assess whether 'pension spiking' has taken place:

    - o SCERS must exclude any compensation it determines was paid for the principal purpose of enhancing the retirement benefit. Regular, recurring pay elements to all qualified people in the same job classification unlikely to be excluded under this criteria.

    - o Examples of potentially excludable pay items: (a) Compensation previously paid in-kind or to a third party on behalf of employee but converted to cash payment to employee in final average salary period; (b) One-time or ad hoc payment not given to similarly situated employee in same grade or class;

(c) Severance or separation pay received while employed (except for permitted leave cash-out above).

- o If SCERS determines a pay element will be excluded because it was for the principal purpose of enhancing the retirement benefit, member and/or employer will have an opportunity to contest that determination.

2. Conversion of Sick Leave into Service Credit

- Conversion of accrued sick leave into service credit at retirement will still be permitted.

3. Purchase of ARC

- Purchase of Additional Retirement Credit (ARC) will not be permitted after December 31, 2012.

  - o For a new ARC purchase, prior to December 31, 2012 the member will need to sign and deliver to SCERS a complete agreement* to purchase ARC in which the member has committed to make the purchase in question.

  - o If a member has initiated an ARC purchase before December 31st and is paying for it via a payroll deduction plan that runs past December 31st, the purchase can be completed after December 31st.

  - o An ARC purchase completed prior to December 31, 2012 is not affected by AB 340, and the purchase will count toward the member's service credit.

* A Request for Agreement to purchase ARC is the first step in order to receive a Purchasable Service Agreement from SCERS. Since the processing time for such an Agreement can take more than 24 hours, interested members are encouraged to submit the Request for Agreement at least two weeks in advance.

4. Other Types of Service Purchases

- Other types of service purchases currently permitted by SCERS will continue to be permitted.

5. Cost Sharing

- Pension cost sharing between the employer and current employee may change, but is not required to change:

- Employer may negotiate under collective bargaining for current members to pay cost normally paid by employer (but is not required to).

- Between January 1, 2013 and January 1, 2018 the employer may (but is not required to) negotiate under collective bargaining for current members to pay up to 50% of the 'normal cost' of the benefits.

- After January 1, 2018, the employer may (but is not required to) negotiate under collective bargaining for current members to pay up to 50% of the 'normal cost' of the benefits, subject to the limits noted above. However:

    - Employer may (but is not required to) use impasse procedures to compel new cost sharing.

    - If impasse procedures are used, normal cost to be paid by member cannot be increased by more than 14% above then current normal cost contribution rate for Miscellaneous members and by more than 33% above then current normal cost contribution rate for Safety members.

- Employer prohibited from paying ('picking up') any part of the required employee contribution.

6. Impact of Felony Conviction on Pension

- If a member is convicted of a felony related to the performance of his/her official duties or in connection with obtaining benefits, the member will forfeit pension benefits earned from the date of the commission of the felony.

- The person involved will not accrue additional retirement credit effective the date of conviction.

- Benefits earned during service prior to the felony commission will not be impacted.

7. Prohibition on Retroactive Benefit Increases

- Employers prohibited from granting pension benefit enhancements for service performed prior to the date of the enhancement.

NEW MEMBERS

1. Definition of New Member

    - Either: (1) Individual who has never been a member of any public retirement system prior to January 1, 2013; (2) An individual who moves between public retirement systems with more than a 6 month break in service (i.e., not eligible for reciprocity); or (3) An individual who moves between employers within the same retirement system with more than a 6 month break in service.

2. Reduced Benefit Formulas and Increased Retirement Ages

    - Miscellaneous Members: (1) 2% at age 62 formula, topping out at 2.5% at age 67; and (2) Eligible to retire at age 52 with five years of service, but formula is 1%.

    - Safety Members: (1) Formula tops out at 2.7% at age 57 and older; and (2) Eligible to retire at age 50 with five years of service, but formula is 2.0%.

3. Cap on Compensation that Counts Toward Pension Benefit

    - Caps compensation that counts toward pension benefits at the maximum amount of compensation used to calculate Social Security benefits ($113,700 in 2013).

    - Compensation cap adjusted annually based on change in the Consumer Price Index (CPI) for All Urban Consumers.

    - In future, legislature can modify the cap and CPI changes, but cannot make a change that would result in a decrease in benefits accrued prior to the modification.

4. 50/50 Sharing of Normal Cost

    - Employees must pay at least 50% of the normal cost. Normal cost does not include the cost of unfunded liability.

    - Employer cannot pay any of the required employee contribution.

- The normal cost rate will only be increased or decreased for employees when the change is more than 1%.

- Employers and employees may agree via bargaining that the employees will pay more than 50% of normal cost. However, the employer may not contribute at a higher level for non-represented, supervisory or managerial employees in the same membership category.

- If the 50/50 cost sharing requirement conflicts with a MOU in effect on January 1, 2013, the required cost sharing will not take effect until the expiration of the MOU. A renewal, extension or amendment does not push out the effective date.

5. Three Year Final Average Salary

- 'Final Compensation' is the highest average pensionable compensation earned by the member during a period of at least 36 consecutive months.

6. What is Included/Excluded from Final Compensation

- 'Pensionable compensation" means the "base pay" paid to "similarly situated members of the same group or class of employment" pursuant to "publicly available pay schedules."

- Pensionable compensation does not include: (1) Any compensation the SCERS Board determines was paid to increase retirement benefits; (2) Compensation previously paid in kind or to a third party on behalf of the employee which was converted to a cash payment to the employee; (3) Any one time or ad hoc payments; (4) Severance or separation pay received while the person is employed; (5) Payment for unused vacation, annual leave, personal leave, sick leave, or compensatory time off whether paid in lump sum or otherwise; (6) Payments for additional services rendered outside of normal working hours; (7) Any employer-provided allowance, reimbursement or payment such as for but not limited to for vehicle, housing or uniforms; (8) Overtime payment; (9) Employer contributions to deferred compensation or DC plans; (10) Any bonus payments; and (11) Any form of compensation the SCERS Board determines is inconsistent with the statutory provision limiting compensation to base pay.

- Given its responsibility to apply the law as written, it is unlikely that SCERS will include as retirement-eligible compensation the various allowances, differentials, or incentive payments provided to many job classifications unless/until the

County or participating employer includes such payments in the definition of base pay provided pursuant to publicly available pay schedules.

7. Purchase of ARC

- Purchase of Additional Retirement Credit (ARC) will not be permitted for new members.

- Other types of service purchases currently permitted by SCERS will continue to be permitted.

8. Prohibition on Retroactive Benefit Increases

- The employer is prohibited from granting pension benefit enhancements for service performed prior to the date of the enhancement.

9. Impact of Felony Conviction on Pension

- If a member is convicted of a felony related to the performance of his/her official duties or in connection with obtaining benefits, the member will forfeit pension benefits earned from the date of the commission of the felony.

- The person involved will not accrue additional retirement credit effective the date of conviction.

- Benefits earned during service prior to the felony commission will not be impacted.

RETIREES AND BENEFICIARIES

No Change to:

- Benefits being paid
- Cost-of-living adjustments to those benefits
- Any continuance payable upon the death of the retiree

Some Changes to Post-Retirement Employment Rules:

- Number of hours a retiree can work for an employer in the retirement system without suspension of the retirement benefit is unchanged – retiree cannot work more than a total of 960 hours of service in a calendar year for all employers in the retirement system.

- A retiree may not work for a public employer if, during the 12 month period prior to starting service, the retiree received any unemployment compensation arising out of prior employment with any public employer.

  - Previously, a disqualification due to a past unemployment claim was limited to claims related to the employer for which the retiree now wants to work.

  - Retiree must certify to the employer that he/she is in compliance with the unemployment compensation rule.

- A retiree is not eligible for employment for a period of 180 days following his/her date of retirement unless: (1) The employer certifies that the nature of the employment and the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment is approved by the governing body of the employer in a public meeting; or (2) The retiree is a public safety officer or firefighter.

  - Exemption is not available to any retiree who received a retirement incentive.

- Additional SCERS requirements based on federal tax law limitations:

  - Irrespective of whether the 180 day rule applies, a retiree cannot take employment with former employer for 60 days after retirement date.

  - Employer and employee cannot agree on post-retirement employment prior to person's retirement.

PARTICIPATING EMPLOYERS

1. Mandatory New Plan for New Members

   - Applies to all state and local retirement systems and all participating employers.
   - Reduced benefit formulas and increased retirement ages.
   - Cap on the compensation that counts toward pension benefits.
   - Requires minimum of 50/50 cost sharing of normal cost.
     - Employers and employees may agree via bargaining that the employees will pay more than 50% of normal cost. However, the employer may not contribute at a higher level for non-represented, supervisory or managerial employees in the same membership category.
     - If the 50/50 cost sharing requirement conflicts with a MOU in effect on January 1, 2013, the required cost sharing will not take effect until the expiration of the MOU. A renewal, extension or amendment does not push out the effective date.
   - Employer cannot pay any of the required employee contribution.
   - Three year final average salary.

2. Restrictions on Supplemental Defined Benefit (DB) Plans

   - Employer cannot offer a supplemental DB plan covering compensation in excess of the compensation cap.

3. Limits on Employer Contributions to Defined Contribution (DC) Plans

   - Employer can make contributions to an additional DC plan for employees whose pensionable compensation has hit the cap. However the combined employer contribution to the DB plan and the DC plan (expressed as a percentage of pay) cannot exceed the employer's contribution level as a percentage of pay to employees with compensation below the cap.

4. Limits on What is Included in Retirement-Eligible Compensation

- ‘Pensionable compensation" means the "base pay" paid to "similarly situated members of the same group or class of employment" pursuant to "publicly available pay schedules."

- Pensionable compensation does not include: (1) Any compensation the SCERS Board determines was paid to increase retirement benefits; (2) Compensation previously paid in kind or to a third party on behalf of the employee which was converted to a cash payment to the employee; (3) Any one time or ad hoc payments; (4) Severance or separation pay received while the person is employed; (5) Payment for unused vacation, annual leave, personal leave, sick leave, or compensatory time off whether paid in lump sum or otherwise; (6) Payments for additional services rendered outside of normal working hours; (7) Any employer-provided allowance, reimbursement or payment such as for but not limited to for vehicle, housing or uniforms; (8) Overtime payment; (9) Employer contributions to deferred compensation or DC plans; (10) Any bonus payments; and (11) Any form of compensation the SCERS Board determines is inconsistent with the statutory provision limiting compensation to base pay.

- Given its responsibility to apply the law as written, it is unlikely that SCERS will include as retirement-eligible compensation the various allowances, differentials, or incentive payments provided to many job classifications unless/until the County or participating employer includes such payments in the definition of base pay provided pursuant to publicly available pay schedules.

5. Limits on Replacement Benefit Plans

- IRC Section 415(m) replacement benefits plans are not permitted for employees who become members on or after January 1, 2013.

- Members, retirees and beneficiaries currently eligible to receive benefits an existing replacement benefit plan may continue to participate in such a plan.

- If a public employer does not currently provide a replacement benefits plan, it may not offer such a plan to any employee after January 1, 2013.

6. No Retroactive Benefit Enhancements

- Prohibits retroactive enhancement of a retirement formula for public employees. This applies to all current and future employees.

7. No 'Contribution Holidays' (with Exceptions)

- Mandates that in any year the employer's contribution in combination with the employee contributions shall not be less than the normal cost.

- However, the SCERS Board may suspend contributions when: (1) The plan is more than 120% funded; (2) The plan actuary determines that further funding could result in disqualification of the plan's tax exempt status under the IRC; and (3) The Retirement Board determines that receipt of additional contributions would conflict with its fiduciary responsibility under Article XVI of the California Constitution.

8. Changes to Post-Retirement Employment Rules

- Number of hours a retiree can work for an employer in the retirement system without suspension of the retirement benefit is unchanged – retiree cannot work more than a total of 960 hours of service in a calendar year for all employers in the retirement system.

- A retiree may not work for a public employer if, during the 12 month period prior to starting service, the retiree received any unemployment compensation arising out of prior employment with any public employer.

  - Previously, a disqualification due to a past unemployment claim was limited to claims related to the employer for which the retiree now wants to work.

  - Retiree must certify to the employer that he/she is in compliance with the unemployment compensation rule.

- A retiree is not eligible for employment for a period of 180 days following his/her date of retirement unless: (1) The employer certifies that the nature of the employment and the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment is approved by the governing body of the employer in a public meeting; or (2) The retiree is a public safety officer or firefighter.

  - Exemption is not available to any retiree who received a retirement incentive.

- Additional SCERS requirements based on federal tax law limitations:
  - Irrespective of whether the 180 day rule applies, a retiree cannot take employment with former employer for 60 days after retirement date.
  - Employer and employee cannot agree on post-retirement employment prior to person's retirement.

9. Duty to Report Convicted Felons to SCERS

- Employer required to notify SCERS if an employee or prior employee is convicted of a felony requiring forfeiture of pension benefits.

10. SCERS Review for Potential 'Pension Spiking'

- SCERS is now required to monitor compensation elements going into retirement benefit calculations to assess whether 'pension spiking' has taken place:
  - SCERS must exclude any compensation it determines was paid for the principal purpose of enhancing the retirement benefit. Regular, recurring pay elements to all qualified people in the same job classification unlikely to be excluded under this criteria.
  - Examples of potentially excludable pay items: (a) Compensation previously paid in-kind or to a third party on behalf of employee but converted to cash payment to employee in final average salary period; (b) One-time or ad hoc payment not given to similarly situated employee in same grade or class; (c) Severance or separation pay received while employed (except for permitted leave cash-out below).
  - If SCERS determines a pay element will be excluded because it was for the principal purpose of enhancing the retirement benefit, member and/or employer will have an opportunity to contest that determination.
  - Leave sell-backs (if permitted for job classification) will continue to qualify as compensation earnable. However, leave sell-back in each year of the final average salary period cannot exceed the leave that would be earned by the employee in a year.