



THE PUBLIC SECTOR

Retired annuitants: new targets in the public-sector pension controversy

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For most employees of public agencies that contract with the California Public Employees' Retirement System (CalPERS), transitioning into retirement means no longer tallying accruals and making employee contributions and finally receiving a pension, cost-of-living adjustments, and often health benefits for their years of public service. Many retirees continue working as "retired annuitants" during their "retirement," contributing their specialized skills in exchange for supplemental compensation.

The story of Bill Carnahan, however, illustrates that sometimes becoming a retired annuitant may pose problems. Through a contract with his consulting agency, Carnahan worked full-time as the executive director of the Southern California Public Power Authority for over a decade while still drawing his full pension from CalPERS. Last month, CalPERS informed him that he owed over \$500,000 in improperly granted pension benefit payments.

Carnahan's situation is unique because there was also an ongoing dispute over whether his employer could reimburse CalPERS on his behalf, but it is similar to several recent cases in which retired annuitants have been ordered to either resign or make six-figure repayments. Within the past year, legislative changes and additional guidance from CalPERS make clear that employers and retirees need to scrupulously observe restrictions on retired annuitant arrangements.

Under the California Government Code, "retired annuitants" are retirees who may receive CalPERS retirement benefits in addition to income from post-retirement employment with a CalPERS-covered agency. This postretirement employment must be prompted by the agency's temporary need for the retiree's special skill or as an emergency measure to prevent the stoppage of public business.

To pension reform advocates and unions alike, retired annuitants are considered "double-dippers," simultaneously receiving a pension and compensation for work that displaces the work of active employees. There are similar concerns about retirees working as "independent contractors"—a categorization that CalPERS thinks could be subject to abuse and manipulation.

New rules governing retired annuitants

The California Legislature has continued to constrict the parameters surrounding the use of retired annuitants. Most significant, after the 2013 Public Employees' Pension Reform Act (PEPRA), CalPERS issued a January 2014 circular letter imposing a set of rules that allow CalPERS agencies to appoint retired annuitants only for a "limited duration" to fill an interim position, prevent a stoppage of public business, assist on a special project, help reduce or eliminate a backlog, or perform work in excess of that of regular staff.

The retired annuitant must also have a bona fide separation in service of at least 180 days (with some exceptions) before beginning postretirement employment, is limited to working 960 hours per fiscal year, and can't "volunteer" additional hours. A retired annuitant's compensation must be paid at an hourly rate equivalent to the monthly base salary of employees performing comparable duties. Retired annuitants can't receive other benefits or incentives in addition to the hourly rate.

The consequences of failing to comply with those requirements could include both the annuitant and employer reimbursing CalPERS for retirement benefits paid and the employer's share of retirement contributions, plus interest and administrative fees.

It's difficult to be too critical of rules that restrict the conditions under which recipients of big pensions can "double-dip." Yet retired annuitants can and do provide public employers with critical expertise during times of transition, for special projects, or to ensure an adequate level of services to the public. The restrictions on maximum compensation and the like will make it harder for public agencies to hire top managers to temporarily fill crucial gaps in their management cadre. Has CalPERS gone too far in regulating postretirement employment?



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