THE PUBLIC SECTOR

Overview of new laws affecting public retirement benefits

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As the Public Employees' Pension Reform Act of 2013 (PEPRA) has proven, changes to public employee pensions are often controversial. But pension legislation itself is usually technical and dry. That's certainly the case with the following bills, which will take effect on January 1, 2017. Nevertheless, it's important for public-sector employers to be aware of their rights and obligations under the new laws.

Laws affecting CalPERS systems

AB 2028. Assembly Bill (AB) 2028 is perhaps the most significant new pension-related law—at least to us lawyers! Sometimes an arbitrator, an administrative body, or a court will reinstate an employee who was terminated. The reinstatement order typically includes "make-whole" relief to put the employee in the same position he would have been in if he hadn't been terminated. That means the employee is entitled to not only payment of lost wages and benefits but also restoration of retirement service credit.

Over the last few years, the California Public Employees' Retirement System (CalPERS) has taken the position that it cannot grant service credit for time an employee did not work. Because an employee reinstated from termination didn't actually work between her termination and reinstatement, CalPERS has refused to grant service credit for that time.

AB 2028 fixes that problem by requiring CalPERS to grant service credit in those situations, but only for employees terminated after January 1, 2017. Currently pending proceedings involving terminated employees wouldn't be subject to the law. AB 2028 requires pension contributions to be paid for the service credit. Although the language is less than clear, it appears the employer and the employee are responsible for their respective contributions. An employee's contributions would be deducted from any back-pay award.

AB 2404. CalPERS members may reduce their monthly benefit to provide a payment to their beneficiary upon their death. Currently, members may choose among 12 different optional settlements to achieve that result. AB 2404 aims to simplify plan administration by consolidating redundant options and eliminating options that are rarely selected. Members who retire on or after January 1, 2018, will have only seven optional settlements from which to choose.

AB 2375. Every year, the legislature passes a "housekeeping" bill that makes various minor changes to the Public Employees' Retirement Law (PERL). AB 2375 contains two notable clarifications:

(1) When a CalPERS member applies for concurrent retirement with service credit earned under the University of California Retirement System or a 1937 Act Retirement System, the retirement benefit is based on the highest annual average compensation during any consecutive 12- or 36-month period, regardless of which system the member was in at the time the compensation was earned.

(2) The interest rate on late payments for contracting agencies is 10 percent or the investment return rate for the previous year, whichever is higher. Further, in addition to the interest charge, CalPERS may impose a penalty for a payment that's more than three months late.

AB 2375 removes language that allowed members to designate their final compensation period because the my|CalPERS system automatically searches payroll records to determine the period.

1937 Act county retirement systems

SB 1203. This bill provides continuity of benefit plans and formulas for classic/legacy employees when agencies form a new joint powers authority (JPA). Under Senate Bill (SB) 1203, the new JPA may continue to offer classic/legacy employees the pre-PEPRA defined-benefit plans and formulas offered by the predecessor member agencies.

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Bottom line

California pension laws require regular revision to clarify their meaning, streamline the administrative process, and address specific benefits for certain employees in particular agencies or retirement systems. Even when legislation isn't of the magnitude of PEPRA, it's important to know what effect changes to the pension laws may have on your agency and employees.

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