



SB-1124 Public Employees' Retirement System: collective bargaining agreements: disallowed compensation. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

NO. 1124

Introduced by Senator Leyva

February 13, 2018

An act to add Section 20164.5 to the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 1124, Leyva. Public Employees' Retirement System: collective bargaining agreements: disallowed compensation.

Existing law, the Public Employees' Retirement Law (PERL), establishes the Public Employees' Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. PERL authorizes a public agency to contract to make its employees members of PERS and prescribes a process for this. PERS is administered by its board of administration, which is responsible for correcting errors and omissions in the administration of the system and the payment of benefits. Existing law requires the board to correct all actions taken as a result of errors or omissions of the state or a contracting agency, in accordance with certain procedures.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires a public retirement system, as defined, to modify its plan or plans to comply with the act. PEPRA, among other things, establishes new defined benefit formulas and caps on pensionable compensation.

This bill would establish new procedures under PERL for cases in which a member's benefits are erroneously calculated by the state or a contracting agency. The bill would require the system, upon determining on or after January 1, 2019, or on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted his or her administrative or legal remedies, that compensation for an employee member reported by the state or a contracting agency conflicts with specified law, to discontinue the reporting of the disallowed compensation. The bill would require the contributions made on the disallowed compensation, for active members, to be credited against future contributions on behalf of the state or contracting agency that reported the disallowed compensation and would require that state or contracting agency to return to the member any contributions paid by the member.

The bill would require PERS, with respect to retired members, survivors, or beneficiaries whose final compensation at retirement was predicated upon disallowed compensation, to permanently adjust the benefit to reflect the exclusion of the disallowed compensation, and would require the contributions made on the disallowed compensation to be credited against future contributions on behalf of the state or contracting agency that reported the disallowed compensation. If, among other things, the member was unaware the compensation was disallowed when reported, the bill would require the state or contracting agency that reported the disallowed compensation to pay the system the full cost of any overpayment, as specified, and to pay the retired member, survivor, or beneficiary the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated without the disallowed compensation, as provided.

The bill would also authorize the state or a contracting agency, for any memorandum of understanding entered into on or after January 1, 2019, to submit any compensation proposal intended to form the basis of a pension benefit calculation to the system to determine compliance with specified provisions governing compensation. The bill would make related legislative findings and declarations.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares as follows:

(a) The California Public Employees' Retirement System (CalPERS) administers defined benefit retirement plans for California's public employees, including state and local government firefighters.

(b) California firefighters selflessly endure physically, mentally, and emotionally grueling careers, responding to everything from structure fires, automobile accidents, airplane crashes, earthquakes, mudslides, and more, in anticipation of a reasonably secure retirement.

(c) A firefighter's pension is based on collectively bargained compensation that takes the form of base pay and special compensation for additional skills, extraordinary assignments, or education.

(d) CalPERS has indicated that it is the employer's responsibility to ensure that employee information is reported accurately and on a timely basis in order for CalPERS to correctly calculate an employee's service credit and final compensation for retirement purposes.

(e) In 2012, after serving the public for nearly 30 years, a firefighter employed by a contracting agency of CalPERS made the decision to retire. Before retiring, the firefighter requested an official retirement estimate from CalPERS, which provided a projection of retirement benefits as of the firefighter's estimated retirement date. The firefighter made the decision to retire based on that estimate.

(f) In 2017, five years after officially retiring, CalPERS notified the firefighter retiree that the retiree's former employer had erroneously reported and remitted contributions on certain compensation, which CalPERS later determined in an audit was not pensionable compensation. CalPERS sought repayment of the purported overpayment directly from the retired firefighter totaling thousands of dollars, as well as imposing a substantial future reduction to the retiree's monthly allowance. Unfortunately, this scenario is not isolated to just this one retiree. A handful of firefighter retirees have reported similar stories across multiple CalPERS contracting employers.

(g) For over eight decades, CalPERS has proven its ability to fairly administer the retirement system to uphold the promises made by its contracting employers for those members who invest their life's work in public service. However, this kind of clawback has the potential to take a major toll on the finances of retirees, including firefighters who, unlike private sector employees, do not receive social security benefits and instead rely on their fixed monthly pension as their sole source of retirement income.

(h) In enacting this bill, it is the intent of the Legislature to ensure that a retired member is protected when alleged misapplication or calculation of compensation occurs as a result of an employer's error, and that this protection be provided to retirees whose appeal of CalPERS' determination, and subsequent reduction of the retiree's allowance, is not final. It is further the intent of the

Legislature that errors made on the part of the employer, with respect to a promise to a retiree, be borne by the employer rather than through a retroactive clawback and permanent reduction in the retired member's pension.

SEC. 2. Section 20164.5 is added to the Government Code, to read:

20164.5. (a) If the system determines, on or after January 1, 2019, that the compensation reported for a member by the state or a contracting agency conflicts with the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), Section 20636, or the administrative regulations of the system, the system shall require the state or contracting agency to discontinue reporting the disallowed compensation. This section shall also apply to determinations made on or after January 1, 2017, if an appeal has been filed and the member, survivor, or beneficiary has not exhausted his or her administrative or legal remedies.

(1) In the case of an active member, all contributions made on the disallowed compensation shall be credited to the benefit of the state or contracting agency that reported the disallowed compensation against future contributions, and any contribution paid by, or on behalf of, the member, including contributions under Section 20691, shall be returned to the member by the state or contracting agency that reported the disallowed compensation.

(2) In the case of a retired member, survivor, or beneficiary whose final compensation at the time of retirement was predicated upon the disallowed compensation, the contributions made on the disallowed compensation shall be credited to the benefit of the state or contracting agency that reported the disallowed compensation against future contributions, and the system shall permanently adjust the benefit of the effected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation.

(3) (A) In addition to paragraph (2), in the case of a retired member, survivor, or beneficiary whose final compensation at the time of retirement was predicated upon the disallowed compensation, this paragraph shall apply if all of the following conditions are met:

(i) The compensation was reported to the system and contributions were made on that compensation while the member was actively employed.

(ii) The compensation was provided for in a memorandum of understanding as compensation for pension purposes.

(iii) The determination by the system that compensation was disallowed was made after the date of retirement.

(iv) The member was not aware that the compensation was disallowed at the time it was reported.

(B) If the conditions of subparagraph (A) are met, the state or contracting agency that reported contributions on the disallowed compensation shall pay to the system, as a direct payment, the full cost of any overpayment of the prior paid benefit made to an effected retired member, survivor, or beneficiary resulting from the disallowed compensation.

(C) The state or contracting agency that reported contributions on the disallowed compensation shall pay to the retired member, survivor, or beneficiary, as a lump sum or as an annuity based on that amount, the actuarial equivalent present value representing the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated pursuant to paragraph (2) for the duration that allowance is projected to be paid by the system to the retired member, survivor, or beneficiary. The payment, or payments, shall be made by the state or contracting agency that reported contributions on the disallowed compensation in the option selected by the retired member, survivor, or beneficiary pursuant to a settlement or agreement between the parties.

(4) The system shall provide a notice to the state or contracting agency that reported contributions on the disallowed compensation and to the effected retired member, survivor, or beneficiary, including, at a minimum, all of the following:

(A) The amount of the overpayment to be paid by the state or contracting agency to the system as described in subparagraph (B) of paragraph (3).

(B) The actuarial equivalent present value owed to the retired member, survivor, or beneficiary as described in subparagraph (C) of paragraph (3), if applicable.

(C) Written disclosure of the state or contracting agency's obligations to the retired member pursuant to this section.

(b) In the case of any memorandum of understanding entered into on or after January 1, 2019, the state or the contracting agency, as applicable, may submit any compensation proposal, intended to form the basis of a pension benefit calculation, to the system to determine compliance with the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), Section 20636, and the administrative regulations of the system.

(c) This section does not alter or abrogate any responsibility of the state or a contracting agency to meet and confer in good faith with the employee organization regarding the impact of the disallowed compensation or the effect of any disallowed compensation on the rights of the employees and the obligations of the employer to its employees, including any employees who, due to the passage of time and promotion, may have become exempt from inclusion in a bargaining unit but whose benefit was the product of collective bargaining.