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## AB-1971 County Employees Retirement Law of 1937. (2021-2022)

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### Assembly Bill No. 1971

#### CHAPTER 524

An act to amend Sections 31646, 31725.7, and 31760 of, and to add Sections 31646.2 and 31680.16 to, the Government Code, relating to public employees' retirement.

[ Approved by Governor September 25, 2022. Filed with Secretary of State September 25, 2022. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1971, Cooper. County Employees Retirement Law of 1937.

The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension and other benefits to county and district employees. CERL generally vests responsibility for management of a retirement system created pursuant to its provisions in a board of retirement (board).

CERL authorizes a member who returns to active service following an uncompensated leave of absence on account of illness or parental leave to receive service credit for the period of the absence upon the payment of the contributions, as specified. CERL prescribes limits on these benefits and processes for making contributions. CERL authorizes the provision of service credit to members in other specified instances while generally providing that a person is not entitled to service credit for time the person was not in service.

This bill would allow a member who returns to active service following an uncompensated leave of absence because of the serious illness of a family member when the absence is eligible for coverage, as specified, to receive service credit for the period of the absence, upon the payment of the member and employer contributions that would have been paid during that period, together with the interest that would have been earned. The bill would prescribe requirements for, and limits on, this benefit and would condition its operation on approval by resolution, as specified, by the county board of supervisors.

This bill would authorize the board to grant members who are subject to a temporary mandatory furlough the same service credit and compensation earnable or pensionable compensation to which the members would have been entitled in the absence of the temporary mandatory furlough. The bill would authorize the board to condition this grant on specified factors.

CERL generally prohibits a member retired from service from being paid for service rendered to a county or district after retirement, subject to certain exceptions, and prescribes requirements for reinstatement into a retirement system upon reemployment. CERL and the California Public Employees' Pension Reform Act of 2013 authorize reemployment of, and service by, retired members in certain capacities after retirement without reinstatement into the applicable retirement system, and prescribe limits on this service.

This bill would authorize a person who is retired and receiving a retirement benefit from a county system to serve as a nonsalaried member without reinstatement for service on a part-time board or commission, as specified. The bill would prohibit a

retired person acting in this capacity from acquiring benefits, service credit, or retirement rights with respect to the service, but would authorize the receipt of any per diem that is authorized to all members of the board or commission.

CERL regulates disability retirements and authorizes a retirement board to grant a service retirement allowance pending the determination of the entitlement to disability retirement. If a member is found eligible for disability retirement, CERL requires that appropriate adjustments be made in the member's retirement allowance retroactive to the effective date of their disability retirement. CERL prohibits this authorization from being construed to authorize a member to receive more than one type of retirement allowance for the same period of time or to entitle a beneficiary to receive benefits which the beneficiary would not otherwise have been entitled to receive.

This bill would apply specified provisions in this regard to a member retired for service who subsequently files an application for disability retirement and, if the member is found to be eligible for disability retirement, would require appropriate adjustments to be made in the retirement allowance retroactive to the effective date of the disability retirement.

CERL authorizes a member or a retired member, until the first payment of a retirement allowance is made, to elect to have the actuarial equivalent of a retirement allowance, as of the date of retirement, applied to a lesser retirement allowance payable throughout life in accordance with specified optional settlements.

This bill would authorize a member retired for service who is subsequently granted a disability retirement to change the type of optional or unmodified allowance that they elected at the time the service retirement was granted, as specified.

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

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

### **SECTION 1.** Section 31646 of the Government Code is amended to read:

**31646.** (a) A member who returns to active service following an uncompensated leave of absence on account of the member's illness may receive service credit for the period of the absence upon the payment of the contributions that the member would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(b) (1) A member who returns to active service following an uncompensated leave of absence on account of parental leave may receive service credit for the period of the absence upon the payment of the contributions that the member and the employer would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. For purposes of this subdivision, parental leave is defined as any time, up to one year, during which a member is granted an approved maternity or paternity leave and returns to employment at the end of the approved leave for a period of time at least equal to that leave. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(2) This subdivision shall not be operative until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable to that county and applies it to parental leave that commences after the adoption by the board of supervisors.

(c) (1) A member who returns to active service following an uncompensated leave of absence on account of the serious illness of a family member when the absence is eligible for coverage under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.) or the Moore-Brown-Roberti Family Rights Act, commonly referred to as the California Family Rights Act, as described in Section 12945, may receive service credit for the period of the absence upon the payment of the contributions that the member and the employer would have paid during that period, together with the interest that the contributions would have earned had the contributions been on deposit, if the member was not absent. For purposes of this subdivision, "leave of absence on account of illness of a family member" means any time, up to one year, during which a member is granted an approved leave to care for a seriously ill family member and returns to employment at the end of the approved leave for a period of time at least equal to that leave. The contributions required to receive the service credit may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(2) This subdivision shall not be operative until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable to that county and applies it to leave that commences after the adoption by the board of supervisors.

### **SEC. 2.** Section 31646.2 is added to the Government Code, to read:

**31646.2.** (a) The board may grant a member who is subject to a temporary mandatory furlough the same service credit and compensation earnable or pensionable compensation to which the member would have been entitled in the absence of the temporary mandatory furlough. The board may condition this grant on the receipt of additional member or employer contributions, or both as applicable, that the board determines are necessary to fund any benefits granted under this section on an actuarially sound basis.

(b) For the purposes of this section, "temporary mandatory furlough" means the time during which a member is directed to be absent from work without pay for up to one quarter of the member's normal working hours, provided that these reduced working hours shall not be in place for longer than two years.

**SEC. 3.** Section 31680.16 is added to the Government Code, to read:

**31680.16.** (a) Notwithstanding Section 31680, this section shall apply to a retired person who is receiving a retirement benefit from a county retirement system and is appointed or elected to either of the following:

(1) A county board or commission of the county that is a covered employer of the retirement system.

(2) A board or commission operating under a participating agency of the county that is a covered employer of the retirement system.

(b) A person who is retired under this chapter may serve as a nonsalaried member of a board or commission without reinstatement from retirement or loss or interruption of benefits under this chapter or the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), provided the appointment or election is to a part-time board or commission. A retired person whose service without reinstatement is authorized by this subdivision shall not acquire benefits, service credit, or retirement rights with respect to the appointment or election, but may receive any per diem that is authorized to all members of the board or commission.

**SEC. 4.** Section 31725.7 of the Government Code is amended to read:

**31725.7.** (a) Except as provided in subdivision (b), at any time after filing an application for disability retirement with the board, the member may, if eligible, apply for, and the board in its discretion may grant, a service retirement allowance pending the determination of their entitlement to disability retirement. If the member is found to be eligible for disability retirement, appropriate adjustments shall be made in their retirement allowance retroactive to the effective date of their disability retirement as provided in Section 31724.

(b) Notwithstanding subdivision (a), this section shall also apply to a member retired for service who subsequently files an application for disability retirement with the board. If the member retired for service is found to be eligible for disability retirement, appropriate adjustments shall be made in their retirement allowance retroactive to the effective date of their disability retirement, as provided in Section 31724.

(c) This section shall not be construed to authorize a member to receive more than one type of retirement allowance for the same period of time nor to entitle any beneficiary to receive benefits which the beneficiary would not otherwise have been entitled to receive under the type of retirement which the member is finally determined to have been entitled. In the event a member retired for service is found not to be entitled to disability retirement, they shall not be entitled to return to their job as provided in Section 31725.

(d) If the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary shall be as selected by the member at the time of retirement for service. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall also be binding as to the type of allowance the member receives if the member is awarded a disability retirement.

(e) Notwithstanding subdivision (d), if the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary may be as selected by the member at the time of retirement for service, or as if the member had selected an unmodified allowance. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall not be binding as to the type of allowance the member receives if the member is awarded a disability retirement. A change to the optional or unmodified type of allowance shall be made only at the time a member is awarded a disability retirement and the change shall be retroactive to the service retirement date and benefits previously paid shall be adjusted. If a change to the optional or unmodified type of allowance is not made, the benefit shall be adjusted to reflect the differences in retirement benefits previously received. This paragraph shall only apply to members who retire on or after January 1, 1999.

**SEC. 5.** Section 31760 of the Government Code is amended to read:

**31760.** (a) Except as provided in subdivisions (b) and (c), until the first payment of any retirement allowance is made, a member or retired member, in lieu of the retirement allowance for the member's life alone, may elect to have the actuarial equivalent of their retirement allowance as of the date of retirement applied to a lesser retirement allowance payable throughout life in accordance with one of the optional settlements specified in this article.

(b) Notwithstanding subdivision (a), a member who applies for disability and is subsequently granted a service retirement pending a determination of entitlement to disability may change the type of optional or unmodified allowance that they elected at the time the service retirement was granted, subject to the provisions of Section 31725.7.

(c) Notwithstanding subdivision (a), a member retired for service who applies for, and is subsequently granted, a disability retirement may change the type of optional or unmodified allowance that was elected at the time the service retirement was granted, subject to the provisions of Section 31725.7.