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AB-2474 Retirement: County Employees Retirement Law of 1937: benefit payments and overpayments.
(2023-2024)

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Assembly Bill No. 2474

CHAPTER 108

An act to amend Section 31452.6 of, to add Section 31680.9 to, and to add and repeal Sections 31452.61 and 31590.2 of, the Government Code, relating to retirement.

[Approved by Governor July 15, 2024. Filed with Secretary of State July 15, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2474, Lackey. Retirement: County Employees Retirement Law of 1937: benefit payments and overpayments.

(1) The County Employees Retirement Law of 1937 (CERL) authorizes counties and districts to establish retirement systems in order to provide pension benefits to their employees and their beneficiaries and prescribes the rights, benefits, and duties of members in this regard. CERL defines compensation and compensation earnable for purposes of its provisions. Existing law, the Public Employees' Pension Reform Act of 2013 (PEPRA), prescribed various limitations on public employees, employers, and retirement systems concerning, among other things, the types of remuneration that may be included in compensation that is applied to pensions.

Under CERL, the board of retirement is required to comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member, as described, authorizing the treasurer or other entity authorized by the board to deliver the monthly warrant, check, or electronic fund transfer for the retirement allowance or benefit to any specified bank, savings and loan institution, or credit union to be credited to the account of the retired member or survivor of a deceased retired member.

This bill would also define "account of the retired member or survivor of a deceased retired member" to include an account held in a living trust or an income-only trust, as specified.

This bill, until January 1, 2028, would additionally authorize the board of retirement for the County of Los Angeles to have the monthly warrant, check, or electronic fund transfer for the retirement allowance or benefit be delivered to a prepaid account, as defined, in accordance with certain procedures.

Under CERL, any person entitled to the receipt of benefits may authorize the payment of the benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of the person's choice, as specified.

This bill, until January 1, 2028, would authorize the board of retirement for the County of Los Angeles to permit a person entitled to receive benefit payments to have them deposited into a prepaid account, as described. This bill would also require the retirement system for the County of Los Angeles, no later than November 30, 2027, to submit a report to specified legislative committees that includes certain information regarding the implementation of these provisions.

(2) Under CERL, any person who has retired may be employed and paid in a position requiring special skills or knowledge for a period of time not to exceed 90 working days or 720 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors. That law authorizes a county to extend, as specified, that period of time, not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year or any other 12-month period, as specified. That law also authorizes other specified retired members to be reemployed and paid in a position requiring special skills or knowledge for a period of time not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year. That law further authorizes this employment without reinstatement into the system, termination or suspension of their retirement allowance, or deductions to their salary as contributions to the system.

Under PEPRA, a retired person is prohibited from serving, or being employed by, as specified, a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement, unless an exception applies. Under PEPRA, one of those exceptions authorizes a retired person to serve without reinstatement if appointed by the appointing power of a public employer during an emergency to prevent stoppage of public business or because the retired person has skills needed to perform work of limited duration. That law limits those appointments to a total for all employers in that system of 960 hours or other equivalent limit, in a calendar or fiscal year, depending on the administrator of the system.

This bill would prohibit a person who has been retired under CERL from being employed in any capacity thereafter by a county or district of the retirement system unless the person has first been reinstated from retirement or is authorized under CERL or PEPRA. The bill would prohibit a person whose employment without reinstatement is authorized from acquiring service credit or retirement rights under CERL with respect to that employment. The bill would require a retired member employed in violation of specified provisions of CERL and PEPRA to reimburse the retirement system for any allowance received during the period in violation and to pay other related amounts, as specified.

The bill would also require a public employer that employs a retired member in violation of CERL or PEPRA, if the retired member is reinstated, to pay the retirement system an amount of money equal to the employer contributions that would otherwise have been paid, plus interest, for the period of time that the member was employed in violation of these provisions, and to contribute toward reimbursement for reasonable administrative expenses of the system. The bill would further authorize the board of a retirement system under CERL to assess certain fees upon an employer that fails to enroll a retired member without reinstatement, subject to certain procedural and notice requirements.

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

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

SECTION 1. Section 31452.6 of the Government Code is amended to read:

31452.6. (a) The board shall comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member entitled to a retirement allowance or benefit under this chapter or the California Public Employees' Pension Reform Act of 2013, authorizing the treasurer or other entity authorized by the board to deliver the monthly warrant, check, or electronic fund transfer, for the retirement allowance or benefit to any specified bank, savings and loan institution, or credit union to be credited to the account of the retired member or survivor of a deceased retired member. That delivery is full discharge of the liability of the board to pay a monthly retirement allowance or benefit to the retired member or survivor of a deceased retired member.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to receive a retirement allowance or benefit under this chapter or the California Public Employees' Pension Reform Act of 2013 shall be refunded to the retirement system.

(c) In order to obtain information from a financial institution following the death of a retired member or the beneficiary of a retired member, as provided in subdivision (o) of Section 7480, the board may certify in writing to the financial institution that the retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or the beneficiary of a retired member.

(d) For purposes of this section, "account of the retired member or survivor of a deceased retired member," may include an account held in a living trust or an income-only trust, also known as a Miller trust, that is controlled by the retired member or survivor of a deceased retired member or that is established for the retired member's or the survivor of a deceased retired member's benefit, in order to qualify for Medi-Cal, as established pursuant to Chapter 14 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code, or comparable assistance.

SEC. 2. Section 31452.61 is added to the Government Code, to read:

31452.61. (a) (1) This section applies only to a retirement system in a county of the first class, as described in Sections 28020 and 28022.

(2) The board shall comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member entitled to a retirement allowance or benefit under this chapter or the California Public Employees' Pension Reform Act of 2013, authorizing the treasurer or other entity authorized by the board to deliver the monthly warrant, check, or electronic fund transfer, for the retirement allowance or benefit to any specified bank, savings and loan institution, credit union, or prepaid account to be credited to the account of the retired member or survivor of a deceased retired member. That delivery is full discharge of the liability of the board to pay a monthly retirement allowance or benefit to the retired member or survivor of a deceased retired member.

(3) For purposes of this subdivision, a prepaid account shall have the same meaning as in Section 1339.1 of the Unemployment Insurance Code and shall meet the applicable requirements of that section to qualify under this subdivision.

(4) Prior to implementing the option to receive a retirement allowance or benefit by electronic fund transfer to a prepaid account pursuant to this section, the board shall develop a procedure to provide a retired member or beneficiary who elects the option all of the following:

(A) Access to a monthly statement detailing the retirement allowance or benefit amount and any deductions thereof.

(B) A reasonable process for the retired member or beneficiary to report and contest any error of the retirement allowance or benefit amount.

(C) Contact information for a responsible system ombudsperson to assist the retired member or beneficiary in recovering any amounts deducted from the net retirement allowance or benefit amount once it has been deposited in the account, resulting from an error or by fraud.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to receive a retirement allowance or benefit under this chapter or the California Public Employees' Pension Reform Act of 2013 shall be refunded to the retirement system.

(c) In order to obtain information from a financial institution following the death of a retired member or the beneficiary of a retired member, as provided in subdivision (o) of Section 7480, the board may certify in writing to the financial institution that the retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or the beneficiary of a retired member.

(d) (1) No later than November 30, 2027, a retirement system of a county of the first class shall submit a report to the Assembly Committee on Public Employment and Retirement and the Senate Committee on Labor, Public Employment and Retirement that includes, but is not limited to, each of the following:

(A) A description of the history and need for a prepaid account to be offered as an option to the retirement system's retired members or their beneficiaries.

(B) A summary of the board of retirement system's processes and procedures to implement this section and Section 31590.2.

(C) The total number of all retired members of the retirement system.

(D) The total number of retired members of the retirement system who elected to have their retirement allowance under this chapter directly deposited into an account at a financial institution, as identified by the retired member.

(E) The total number of retired members of the retirement system who elected to have their retirement allowance provided by bank draft, such as a check.

(F) The total number of retired members of the retirement system who elected to have their retirement allowance deposited to a prepaid account, consistent with this section and Section 31590.2.

(G) Information detailing all costs to the retirement system with respect to implementing and administering the option of a prepaid account, consistent with this section and Section 31590.2, respectively.

(H) To the extent feasible, a summary of comments, feedback, or experiences received from a retired member who elected to have their retirement allowance deposited to a prepaid account card, consistent with this section and Section 31590.2, and with respect to obtaining, using, or the replacement of, a prepaid account card for their retirement allowance.

(2) The report pursuant to paragraph (1) shall be submitted in compliance with Section 9795.

(e) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

SEC. 3. Section 31590.2 is added to the Government Code, to read:

31590.2. (a) (1) This section applies only to a retirement system in a county of the first class, as described in Sections 28020 and 28022.

(2) All warrants, checks, and electronic fund transfers drawn on the retirement fund shall be signed or authorized by at least two board officers or employees, designated by the board or by the treasurer if designated by the board. If the treasurer is designated by the board, the board shall also designate the auditor to sign or authorize warrants, checks, and electronic fund transfers. The authorization may be by blanket authorization of all warrants, checks, or electronic fund transfers appearing on a list or register, or may be by a standing order to draw warrants, checks, or electronic fund transfers, which shall be good until revoked. If the treasurer and auditor are designated by the board, a warrant, check, or electronic fund transfer is not valid until it is signed or authorized, numbered, and recorded by the county auditor, except as provided in subdivision (c).

(b) Any person entitled to the receipt of benefits may authorize the payment of the benefits to be deposited as follows:

(1) Directly deposited by electronic fund transfer into the person's account at the financial institution of the person's choice under a program for direct deposit by electronic transfer established by the board or treasurer if authorized by the board. The direct deposit shall discharge the system's obligation in respect to that payment.

(2) Deposited into a prepaid account under a program for deposit into a prepaid account that is established by the board or by the treasurer if authorized by the board. That deposit shall discharge the system's obligation in respect to that payment. For purposes of this paragraph, a prepaid account shall have the same meaning as in Section 1339.1 of the Unemployment Insurance Code and shall meet the applicable requirements of that section to qualify under this paragraph.

(c) The board may, or, if authorized by the board, the treasurer shall, authorize a trust company or trust department of any state or national bank authorized to conduct the business of a trust company in this state or the Federal Reserve Bank of San Francisco or any branch thereof within this state, to process and issue payments by check or electronic fund transfer.

(d) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

SEC. 4. Section 31680.9 is added to the Government Code, to read:

31680.9. (a) A person who has been retired under the retirement system, for service or for disability, may not be employed in any capacity thereafter by the county or a district of the retirement system unless the person has first been reinstated from retirement pursuant to this chapter, or unless the employment, without reinstatement, is authorized by this article or the Public Employees' Pension Reform Act of 2013. A retired person whose employment without reinstatement is authorized by this article or the Public Employees' Pension Reform Act shall acquire no service credit or retirement rights under this part with respect to the employment.

(b) Any retired member employed in violation of Section 31680.2, 31680.3, 31680.6, or 7522.56 shall do all of the following:

(1) Reimburse the retirement system for any retirement allowance received during the period or periods of employment that are in violation of law. The retirement allowance that was paid in violation of law shall be considered an overpayment subject to collection by the retirement system.

(2) Only if reinstated, pay to the retirement system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.

(3) Contribute toward reimbursement of the retirement system for reasonable administrative expenses incurred in responding to this situation, to the extent the member is determined by the retirement system administrator to be at fault.

(c) Any public employer that employs a retired member in violation of Section 31680.2, 31680.3, 31680.6, or 7522.56 shall do both of the following:

(1) Only if the retired member is reinstated, pay to the retirement system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon.

(2) Contribute toward reimbursement of the retirement system for reasonable administrative expenses incurred in responding to this situation, to the extent the employer is determined by the administrator of the retirement system to be at fault.

(d) If an employer fails to enroll, solely for the administrative recordkeeping purposes of the system, a retired member employed in any capacity, without reinstatement, within 30 days of the effective date of hire, the board may assess the employer a fee of two hundred dollars (\$200) per retired member per month until the retired member is enrolled in those administrative aspects of the system.

(e) If an employer fails to report the pay rate and number of hours worked of a retired member employed in any capacity, without reinstatement, within 30 days following the last day of the pay period in which the retired member worked, the board may assess the employer a fee of two hundred dollars (\$200) per retired member per month until the information is reported.

(f) An employer shall not pass on to an employee any fees assessed pursuant to subdivisions (d) and (e).

(g) The employer shall provide written notice to the employee, by an appropriate mechanism, including by first-class mail or email, before the employee is within 10 business days or 80 hours of the period of time included in Section 31680.2, 31680.3, 31680.6, or 7522.56.