



September 12, 2012

Pension Reform Legislation

Marin County Employees' Retirement Association
Board Meeting

Jeff Wickman, Retirement Administrator
Marin County Employees' Retirement Association

Ashley Dunning, Partner
Manatt Phelps & Phillips



Disclaimer

The following presentation was developed as a discussion draft to communicate the implications of the Public Employees Pension Reform Act of 2013 (PEPRA). Every effort has been made to ensure the accuracy of the information provided; however, the information may be updated as we continue to analyze the legislation. If there is any discrepancy between what is contained in this presentation and the law, the law will govern.

Applicability of Legislation to MCERA

- Enacts the “California Public Employees’ Pension Reform Act of 2013” (“PEPRA”) (Gov. Code section 7522)
 - PEPRA applies to all state and local public retirement systems and to their participating employers, but does not apply to the University of California or to charter cities or to charter counties, except to the extent that these entities continue to be participating employers in any retirement system governed by state statute (e.g., City of San Rafael)
 - PEPRA thus applies to all ‘37 Act systems and their participating employers.

PEPRA Basics

- Most PEPRA provisions are applicable only to new members who are not eligible for reciprocity and who join MCERA on and after January 1, 2013 (“New Members”).
- For ease of reference, these provisions applicable to New Members only will be called “PEPRA Tiers” in this presentation.

PEPRA Tiers:

Cap on “Pensionable Compensation” for All New Members

- “Pensionable compensation” and defined benefit are capped at 120% of the Social Security contribution and benefit base if the member’s service is not included in Social Security, and 100% if it is. This is currently \$132,120 if not participating in Social Security and \$110,100 if the member does participate.
- “Pensionable compensation” cap is indexed to inflation based on the CPI for All Urban Consumers, and that adjustment shall be effective annually on January 1 following the annual valuation.

PEPRA Tiers:

Limits on Total Benefits Provided for All New Members

- Public employers may not offer a defined benefit, or combination of defined benefits, on compensation in excess of the “pensionable compensation” cap.
- Public employers may provide a non-vested defined contribution plan for compensation in excess of the “pensionable compensation” cap provided that the plan and contribution meet the requirements and limits of federal law.

PEPRA Tiers:

Final Average Compensation Period

- Three-year final average compensation measuring period for all New Members.

PEPRA Tiers:

Formula for New General Members

- ❑ Retirement eligible after 5 years of service and upon reaching 52 years of age. No service retirement prior to age 52.
- ❑ Minimum 1% at 52, 2.5% maximum at 67 formula required, unless a “less costly” plan with less “risk,” as certified by the retirement system actuary, is already in place.
- ❑ PEPRA does not change previously granted COLA.

PEPRA Tiers:

Formula for New Safety Members

- Retirement eligible after 5 years of service and upon reaching 50 years of age. No service retirement prior to age 50.
- Minimum 2% at age 50, maximum 2.7% at age 57 formula as prescribed by section 7522.25 as of January 1, 2013, unless a “less costly” plan, with less “risk,” as certified by the retirement system actuary, is already in place.
- PEPRA does not change previously granted COLA.

PEPRA Tiers:

Formula for New Safety Members

- The formula offered “shall be the formula that is closest to, and provides a lower benefit at 55 years of age than, the formula provided to members in the same retirement classification offered by the employer on December 31, 2012.” (Emphasis added.) This is a mathematical computation.
- 2% at age 57, 2.5% at age 57, 2.7% at age 57

PEPRA Tiers:

Formula for New Safety Members

- ❑ Lower safety tiers in PEPRA could be applied to new hires if agreed by collectively bargained MOU without impasse.
- ❑ Must be uniform as between represented and non-represented, managerial and supervisory employees of same employer in same membership classifications.

PEPRA Tiers:

Contribution Rates for New Members

- “Equal sharing of normal costs between public employers and public employees shall be the standard. The standard shall be that employees pay at least 50% of normal costs and that employers not pay any of the required employee contributions.”

PEPRA Tiers:

Contribution Rates for New Members

- Notwithstanding the 50% of normal cost provision, employee contributions may be more than one-half of normal cost if:
 - Agreed through collective bargaining without impasse.
 - Employer is not contributing at a greater rate to the plan for nonrepresented, managerial, or supervisory employees than it contributes for other public employees of the same employers in related retirement membership classifications.

PEPRA Tiers:

Contribution Rates for New Members

- Notwithstanding the 50% of normal cost provision, if “the terms of a contract, including [an MOU], that is in effect on January 1, 2013, would be impaired by any provision of this section,” that provision shall not apply to that employer and its employees until the expiration of that contract.
- Any renewal, amendment or other extension of the contract shall be subject to the requirements of the 50/50 normal cost split section.

PEPRA Tiers:

New “Pensionable Compensation” Definition for New Members

- ▣ Same general definition as “compensation earnable” under the 1937 Act, with numerous additional specific exclusions for new members, as set forth on the following slides.

PEPRA Tiers:

New Exclusions to “Pensionable Compensation” for New Members

- ❑ “Any compensation determined by the [retirement] board to have been paid to increase a member’s retirement benefit under that system.”
- ❑ Compensation previously paid in kind or directly to 3rd party by employer, even if converted to cash.
- ❑ Any one-time or ad hoc payments made to member.

PEPRA Tiers:

New Exclusions to “Pensionable Compensation” for New Members

- ❑ Severance, even if received by the member while employed.
- ❑ Payments of any unused leave, regardless of when reported or paid.
- ❑ Payments for additional services rendered outside of normal working hours.
- ❑ Employer-provided allowances for uniforms, vehicles, housing, etc.

PEPRA Tiers:

New Exclusions to “Pensionable Compensation” for New Members

- Any “bonus” paid in addition to normal monthly rate of pay of a member paid in cash to similarly situated members of the same group or class of employees for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.
- “Any other form of compensation a public retirement board determines should not be pensionable compensation.”

PEPRA Tiers:

Replacement Benefit Plans

- Retirement systems may continue to administer replacement benefit plans for employees first hired prior to January 1, 2013 under an existing plan.
- No new plans may be adopted nor may any existing plan be provided to New Members.

PEPRA for Current Members:

Compensation Earnable Exclusions

- Under an addition to the definition of “compensation earnable” in Government Code section 31461 of the CERL, as provided by AB 197, “compensation earnable” would be clarified to be consistent with *Salus v. SDCERA* and *In re Retirement Cases*, to state that the items identified on the following slides are to be excluded from retirement allowance calculations.
- MCERA’s current policies on “compensation earnable” are consistent with this definition.

PEPRA for Current Members:

Compensation Earnable Exclusions

- New subdivision (b) of section 31461 provides that “‘compensation earnable’ does not include, in any case, the following:
 - (1) Any compensation determined by the [retirement] board to have been paid to increase a member’s retirement benefit under that system”

- AB 197 describes three types of compensation that “may” be excluded under the new section 31461(b)(1) noted above.

PEPRA for Current Members:

Compensation Earnable Exclusions

Excludable items under new subdivision (b)(1) of section 31461 include:

- ❑ Compensation previously paid by employer in kind or directly to third party, even if converted to cash.
- ❑ Any one-time or ad hoc payments made to member, but not to all similarly situated members of the member's grade or class.
- ❑ Termination payments and payments for unused leave, except payments that do not exceed what is earned and payable in each 12-month period during the final average period regardless of when reported or paid.

PEPRA for Current Members:

Compensation Earnable Exclusions

New subdivision (b) of section 31461 in AB 197 also provides that compensation earnable does not include, in any case, the following:

- "Payments for unused ... leave or compensatory time off, however denominated ... that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid."
- "Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise."
- "Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid."

PEPRA for Current Members:

Benefit Enhancement Restrictions

- Any enhancement to a public employee's retirement formula or benefit adopted on or after January 1, 2013, shall apply only to service performed on or after the operative date of the enhancement (no retroactive upgrades to past service credit).

PEPRA for Current Members:

Service Credit Purchases

- ❑ No purchases of “nonqualified service credit, as defined by Section 415(n)(3)(C) of the Internal Revenue Code of 1986.”
- ❑ Prohibition “shall not apply to an official application to purchase nonqualified service credit that is received by the public retirement system prior to January 1, 2013, that is subsequently approved by the system.”

PEPRA for Current Members:

Limits on Post-Retirement Employment

- As to “any person who is receiving a pension benefit from a public retirement system” as of January 1, 2013 (“retired person”):
- A retired person shall not serve, be employed by, or be employed through a contract directly by, an employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement or “loss or interruption of benefits provided by the retirement system” unless one of the two conditions on the next slide applies.

PEPRA for Current Members:

Limits on Post-Retirement Employment

- ▣ Return to Work/Retirement Prohibition would not apply either:
 - ▣ “during an emergency to prevent stoppage of public business”; or
 - ▣ “because the retired employee has skills needed to perform work of limited duration”.
 - ▣ Discussion of “work of limited duration” on next slide.

PEPRA for Current Members:

Limits on Post-Retirement Employment

- ❑ “Work of a limited duration” may not exceed a total for all employers in a public retirement system of 960 hours in a fiscal or calendar year.

- ❑ 180 day waiting period until re-employment unless:
 - ❑ Employer certifies necessity and governing body approves in public meeting (not consent calendar)
 - ❑ Retiree is public safety officer or firefighter
 - ❑ And, above exceptions do not apply if retiree accepted a retirement incentive upon retirement

PEPRA for Current Members:

Limits on Post-Retirement Employment

- ❑ 12-month waiting period if retired person received unemployment insurance compensation arising out of his or her prior employment with the public employer during the 12 months prior to appointment.
- ❑ Retiree “shall certify in writing to the employer upon accepting an offer of employment that he or she is in compliance with [the above] requirement.”

PEPRA for Current Members: Service-Connected Disability Retirement Benefit Levels Changed

- Formula for calculating service-connected disability retirement benefit for safety members changed somewhat.
- This is a pilot project that sunsets on January 1, 2018, unless extended.

PEPRA for Current Members: Expands Rules Requiring Certain Convicted Felons to Forfeit Pensions

- Expands existing forfeiture provisions resulting from felony convictions for “conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits”.

PEPRA for Current Members: Expands Rules Requiring Certain Convicted Felons to Forfeit Pensions

- One felony forfeiture provision applies to all public employees first employed by a public employer, or first elected or appointed to an office, before January 1, 2013, not just to those “elected to public office . . . on or after January 1, 2006,” which is the scope of the current forfeiture law.
- Another provision applies to public employees first employed by a public employer, or first elected or appointed to an office, on or after January 1, 2013.

PEPRA for Plan Sponsors:

As of January 1, 2013: Prohibit Pension Holidays

- Would require continued payment of normal cost by employer, even when the system is overfunded, unless overfunding is 120% and other findings are made.

Other PEPRA Provisions of Note:

Health Benefit Vesting

- No health benefit vesting schedules for public employees who are elected or appointed, a trustee, excluded from collective bargaining, exempt from civil service, or a manager, that are more advantageous than that provided generally to other public employees, including represented employees, of the same public employer who are in related retirement membership classifications.