



FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

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DATE: March 18, 2015

TO: Board of Retirement

FROM: Donald C. Kendig, CPA,
Retirement Administrator

STAFF CONTACT: Becky Van Wyk, CPA
Assistant Retirement Administrator

SUBJECT: Public Employees' Pension Reform Act Update – RECEIVE AND FILE: APPROPRIATE ACTION

Background

The Public Employees' Pension Reform Act (PEPRA) was signed into law in late 2012. The law made sweeping reforms to public pensions offered by many public entities within California, including Fresno County. Ongoing review of the statutes has resulted in changes to FCERA's operations as it seeks to implement PEPRA in the new pension administration system. You may recall the discussion on determining final compensation for members with service credit in both PEPRA and non-PEPRA tiers that took place in August 2014. At that time, FCERA Administration reported that it was still reviewing the availability of service credit purchases for PEPRA members and retirement eligibility for members with time in both PEPRA and non-PEPRA retirement tiers. This agenda item addresses those two issues. We will continue to provide the Board reports on other changes as they are identified and seek its guidance where choices may exist.

Discussion

1. Service Credit Purchases

The County Employees' Retirement Law of 1937 (1937 Act or CERL) allows members enrolled in tiers I through IV to purchase different types of service in order to enhance their retirement benefit. The types of service available for purchase include unpaid military and medical leaves of absence, prior service (time worked in an extra-help or temporary position), and prior public service (time worked for another eligible California public agency). The purchase increases the service credit used to calculate a retirement benefit. Members are responsible for their portion of the service purchase cost.

On the other hand, members enrolled in PEPRA tiers are bound by pensionable compensation limits wherein once the maximum contribution for a payroll (calendar) year has been paid, no additional contributions may be collected. In effect, from that point on, they are fully paid up for the year. Thus, an unpaid absence that would otherwise be eligible for purchase is deemed "paid in full". Periods of unpaid personal leave or medical leaves in excess of one year are not purchasable, and therefore service credit cannot be granted for such periods of unpaid absence. Members that have time available to purchase that have not met the maximum contribution limit, will have the opportunity to purchase the service.

Redeposits of previously withdrawn fund will require special handling if the member returns to membership in the same calendar year as the refund. FCERA will need to determine if the maximum contribution has been met once the redeposit is completed. This could result in a refund of contributions because FCERA would not review the maximum until the redeposit was completed.

Counsel's previously issued memo dated August 14, 2014 and email dated September 29, 2014 are attached for your reference.

2. Retirement Eligibility

Retirement eligibility under the 1937 Act (tiers I – IV) includes: (i) age 50 and 10 years of service; (ii) 30 years of service credit regardless of age for general members or 20 years of service credit regardless of age for safety members; (iii) age 70 regardless of years of service credit.

Retirement eligibility under PEPRA (tier V) is age (i) 52 and 5 years of service credit for general members or age 50 and 5 years of service credit for safety members or (ii) age 70 regardless of service credit.

Eligibility is very easy to determine when the member only has service in a single tier but becomes more complicated when the member has service in both general and safety tiers or PEPRA and non-PEPRA tiers. Historically, eligibility was determined based on retirement tier at termination. For example, a member with 8 years of service in a general tier and 12 years of service in a safety tier would be eligible to retire after only 20 years of service regardless of age if the member was active in a safety tier at termination. Alternatively, if the member were active in a general tier at termination, the member would need to meet the age requirement to be eligible to retire.

This procedure cannot be used for members with service in a PEPRA tier. Counsel advises Section 31672.3 provides: "A member of a county retirement system who is subject to the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1) for all or a portion of the member's membership in the county retirement system who has completed five years of service and has reached the

minimum retirement age applicable to that member under the act, or has reached 70 years of age, may be retired upon filing with the board a written application, setting forth the date upon which the member desires his or her retirement to become effective which shall be not more than 60 days after the date of filing the application."

The legislative history of AB 1380 provides: "Specifies that the provisions of the '37 Act that allow a member to retire at a specified age, or a specified age with a certain amount of service credit, or once they have attained a certain amount of service credit regardless of age, do not apply to members who are subject to PEPRA."

PEPRA and AB 1380 are not models of clarity, but I think the best reading of section 31672.3 (and its legislative history) means that: (1) a member with CERL service credit who may have previously been eligible to retire at age 50 has to wait until age 52, if the member also has service credit under PEPRA, and (b) a member with CERL service credit who may have not been eligible to retire until age 70, will be eligible to retire at the same time that member becomes eligible under PEPRA, if the member has service credit under PEPRA (or age 70 if the member never becomes eligible under PEPRA).

Thus, with the implementation of Government Code Section 31672.3 (attached), members with service under both PEPRA and non-PEPRA tiers must meet the retirement eligibility requirements for PEPRA allowing a member with service in a PEPRA tier to retire when they have met the retirement eligibility requirements under PEPRA. That is, regardless of the amount of service credit in a PEPRA tier, a general member must be at least age 52 with 5 years of service or age 70 and a safety member must be at least age 50 with 5 years of service or age 70 in order to retire. This would also allow a member with service in both a PEPRA and non-PEPRA tier to retire from the non-PEPRA tier with less than 10 years of service credit.

Fiscal and Financial Impacts

The implementation of Government Code Section 31672.3 requires programming in Arrivos. Costs associated with the service credit purchases and 31672.3 depend on the situation.

For retirement eligibility, requiring the PEPRA age of 52 for general members might actually reduce overall benefits (costs), if not delay their receipt.

Recommended Action

Receive and file.

Attachments

1. Government Code Section 31672.3
2. Reed Smith Memo Dated August 14, 2014
3. Reed Smith Email Dated September 29, 2014



California
LEGISLATIVE INFORMATION

Code: GOV

Section: 31672.3

Search

[Up^](#) [<< Previous](#) [Next >>](#)[cross-reference chaptered bills](#)[Add To My Favorites](#) Highlight**GOVERNMENT CODE - GOV****TITLE 3. GOVERNMENT OF COUNTIES [23000 - 33205]** (Title 3 added by Stats. 1947, Ch. 424.)**DIVISION 4. EMPLOYEES [31000 - 33017]** (Division 4 added by Stats. 1947, Ch. 424.)**PART 3. RETIREMENT SYSTEMS [31200 - 33017]** (Part 3 added by Stats. 1947, Ch. 424.)**CHAPTER 3. County Employees Retirement Law of 1937 [31450 - 31898]** (Chapter 3 added by Stats. 1947, Ch. 424.)**ARTICLE 8. Retirement for Service [31670 - 31683]** (Article 8 added by Stats. 1947, Ch. 424.)

31672.3. A member of a county retirement system who is subject to the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1) for all or a portion of the member's membership in the county retirement system who has completed five years of service and has reached the minimum retirement age applicable to that member under the act, or has reached 70 years of age, may be retired upon filing with the board a written application, setting forth the date upon which the member desires his or her retirement to become effective which shall be not more than 60 days after the date of filing the application.

(Added by Stats. 2013, Ch. 247, Sec. 33. Effective January 1, 2014.)

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To: Board of Retirement
Fresno County Employees' Retirement Association

Cc: Becky Van Wyk, Interim Retirement Administrator

Date: August 14, 2014

Subject: Purchase Of Service Credit By PEPRA Members Who Have Already Paid The Maximum Annual Contributions Under PEPRA

Under the Public Employees' Pension Reform Act of 2013, Government Code sections 7522 *et seq.* ("PEPRA"), "new member's" benefits are calculated, in part, based on their "pensionable compensation." The definition of "pensionable compensation" governs which elements of pay are included in the member's PEPRA retirement formula. Additionally, under PEPRA section 7522.10, there is a cap on the *total* amount of "pensionable compensation" that can be used in a member's retirement formula.

Under subdivision (h) of section 7522.10, the cap on total "pensionable compensation" also limits the "pensionable compensation" used to calculate member and employer contributions. Thus, if a member subject to PEPRA receives pay in excess of the limits established under section 7522.10, some of that member's pay must not be used in the calculation of either the member's benefits or the member's contributions. FCERA staff has asked whether a member may purchase available service credit after the member has already paid the maximum contributions permitted under PEPRA section 7522.10(h).

✧ We advise that a member who is otherwise eligible to purchase service credit should be permitted to purchase service credit, even though the member has already paid the maximum annual contributions for that year under PEPRA.

Under PEPRA section 7522.34, "pensionable compensation" is based on a "normal monthly rate of pay or base pay." This "normal monthly rate of pay or base pay" is not impacted by the purchase of additional service credit, any more than "compensation earnable" is impacted when a member in pre-PEPRA tier purchases service credit. Since these additional payments will not increase the member's "pensionable compensation," we see no reason to prevent the member from exercising his or her statutory rights to purchase service credit, provided the member meets all eligibility requirements.

A more complicated question may be how to determine the *cost* of the purchase of service credit. We will be working with staff to develop appropriate responses to a variety of scenarios that may impact how the cost of service credit is determined for members whose compensation exceeds the "pensionable compensation" limits of PEPRA.

From: Rieger, Jeffrey R. [<mailto:JRieger@ReedSmith.com>]
Sent: Monday, September 29, 2014 5:11 PM
To: Van Wyk, Becky
Cc: Leiderman, Harvey L.
Subject: Purchase Of Service Credit For Members Who Exceed "Pensionable Compensation" Limit

Becky,

The below responds to your questions regarding purchases of service credit by members who have reached the PEPPA limits on "pensionable compensation."

Please note that all of our responses are based on our understanding that FCERA will collect member and employer contributions on all "pensionable compensation" until the limit is reached in each calendar year. After the limit has been reached, no member or employer contributions will be collected on that member's pay for the rest of that calendar year. FCERA will then begin collecting member and employer contributions again the following calendar year. Please let us know if we misunderstand the mechanics of how the "pensionable compensation" limits will be implemented in the employers' payroll reporting systems, as that may materially change out analysis below.

Purchase Price

- (1) Service prior to membership, medical leave absences and military leave absences: We advise that FCERA should follow the "pensionable compensation" limitations for the calendar year in all instances, even if that means that a member will receive some additional service credit without having to pay any additional amounts for that service credit. The limits should be determined based on the time period that is being purchased, rather than by when the payment for the service credit is made.

Although providing additional service credit at no cost to the member in some instances may seem counterintuitive on the surface, if we dig more deeply into the logistics of how the "pensionable compensation" limitations operate, it makes sense. An example will help illustrate the point. Let us assume that the "pensionable compensation" limitation is \$100,000 annually and the member is making a base salary of \$200,000 annually. Let us further assume that the member's membership start date is February 1, 2015, but has service prior to membership available to purchase for the month of January 2015. That member reaches the "pensionable compensation" limit by July 31, 2015 and then comes into FCERA on August 1, 2015 to purchase the month of service prior to membership. This member should receive the additional month of service credit **at no cost**. This is because, if FCERA charged the member for the extra month of service, the member would be paying more contributions than can be counted as "pensionable compensation" for calendar year, in violation of Government Code section 7522.10(h). The point here is that the member has **already paid** a year's worth of contributions in six months. The member would not have had to pay for the additional month if he or she had been a member during that month, so we see no reason that the member should have to pay for the additional month under section 31641.5. (Technically speaking, if we apply section 31641.5 literally, the member would have had to make contributions that first month, because the limit had not been reached yet, but FCERA would then have to refund the member's contributions for

July 2015, because the limit would have been reached at the end of June 2015. Of course, FCERA does not have to go through the process of collecting money just to refund it.) Further, the same outcome is required, even if the member comes into FCERA to purchase that same month from January 2015, on January 1, 2016. Although the calendar year has re-set and the member is making contributions again, the time of service that the member is purchasing occurred in a year for which the member has already paid the maximum contributions allowed under PEPRA.

The same analysis applies to a member who is on a medical or military leave of absence. Again, let us assume that the limitation is \$100,000 annually and the member makes a base salary of \$200,000 annually. Let us further assume that the member makes contributions on all of the member's salary through June 2015, and then has a military or medical leave for the rest of the year and returns to active service January 1, 2016. This member should receive the additional six month of service credit at no additional cost. Again, although this seems counterintuitive at first, the point here is that the member essentially prepaid the full year's worth of contributions in the first six months of the year. If the member had continued to work through the year, no additional contributions would have been made. Thus, we are treating this member no differently than the member who worked the full year, which is exactly what is contemplated by the medical leave and military service purchase provisions of the CERL.

- (2) Redeposit of Withdrawn Contributions. In most circumstances, the redeposit provisions should not be impacted the PEPRA limitations, but if a member withdraws and redeposits within the same calendar year, FCERA should follow the "pensionable compensation" limitations for that calendar year to ensure that the member does not contribute more in a single calendar year than is allowed under the legal limits. In almost all circumstances, the period of service for which the redeposit is made will not overlap with a year in which the member has reached the "pensionable compensation" limits. Thus, the member is simply redepositing the withdrawn contributions (with interest) and getting back the service credit that the member previously had lost. There could be a rare case, however, in which a member withdraws and then comes right back into membership within the same year. If that happens, FCERA will need to make sure that the redeposited amounts, when added to the other amounts contributed during the same calendar year, do not exceed the PEPRA limits. Under section 31652, the member's membership must be "the same as if unbroken by such termination." If the member had not terminated and come back, the member's contributions would have been capped by the legal limit, so they should also be capped in the case of a withdrawal and redeposit.
- (3) "Public service" credit purchases: We advise that the member should pay the **full amount** required under section 31641.2, **whether or not the member has reached the maximum contribution amount**. The reason for this different conclusion is that the "public service" purchase price is not based on what the member would have paid during the time period at issue. Rather, the cost is determined by applying twice the member's initial rate of contribution to the amount of service credit the member is purchasing.

Determination of Pensionable Compensation at Retirement

In all instances a member's "pensionable compensation" at retirement must not exceed the legal limit. Thus, if FCERA's records indicate that the limits have been exceeded in a particular

year, FCERA should (1) cap the “pensionable compensation” used for determining the member’s allowance at the legal limit, and (2) investigate the circumstances to determine whether a refund of any overpaid member contributions might be due.

When An Absence Is Not Eligible For Purchase

If an absence is not eligible for purchase, no action is required. The member does not receive any service credit and the member does not pay any amounts. The above analyses apply only in cases in which the CERL entitles the member to purchase service credit.

Please let me know if you need anything further on this matter.

Jeff Rieger