

Assembly Bill No. 197

CHAPTER 297

An act to amend Sections 20516 and 31461 of the Government Code, relating to public employees' retirement.

[Approved by Governor September 12, 2012. Filed with
Secretary of State September 12, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 197, Buchanan. Public employees' retirement.

The Public Employees' Retirement Law establishes the Public Employees' Retirement System (PERS) for the purpose of providing pension benefits to specified public employees. PERS is funded by investment returns and employer and employee contributions. Existing law authorizes a contracting agency and its employees to agree in writing to share the costs of any optional benefit that is inapplicable to a contracting agency until the agency elects to be subject to the benefit.

This bill would instead authorize a contracting agency and its employees to agree in writing to share the costs of the employer contribution with or without a change in benefits, as specified. The bill would prohibit an employer from using impasse procedures to impose member cost sharing on any contribution amount above that which is authorized by law.

The County Employees Retirement Law of 1937 (CERL) authorizes counties and districts, as defined, to provide a system of retirement benefits to their employees. CERL defines compensation earnable for the purpose of calculating benefits as the average compensation for the period under consideration with respect to the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay, as determined by the retirement board.

This bill would exclude from the definition of compensation earnable any compensation determined by the board to have been paid to enhance a member's retirement benefit. The bill would also exclude various payments from the definition of compensation earnable, including payments for unused vacation, annual leave, personal leave, sick leave, and compensatory time off, as well as payments made at the termination of employment, except what may be earned and payable in each 12-month period during the final average salary period.

The people of the State of California do enact as follows:

SECTION 1. Section 20516 of the Government Code is amended to read:

20516. (a) Notwithstanding any other provision of this part, with or without a change in benefits a contracting agency and its employees may agree, in writing, to share the costs of the employer contribution. The cost sharing pursuant to this section shall also apply for related nonrepresented employees as approved in a resolution passed by the contracting agency.

(b) The collective bargaining agreement shall specify the exact percentage of member compensation that shall be paid toward the current service cost of the benefits by members. The member contributions shall be contributions over and above normal contributions otherwise required by this part and shall be treated as normal contributions for all purposes of this part. The contributions shall be uniform, except as described in subdivision (c), with respect to all members within each of the following classifications: local miscellaneous members, local police officers, local firefighters, county peace officers, and all local safety members other than local police officers, local firefighters, and county peace officers. The balance of any costs shall be paid by the contracting agency and shall be credited to the employer's account. An employer shall not use impasse procedures to impose member cost sharing on any contribution amount above that which is authorized by law.

(c) Member cost sharing may differ by classification for groups of employees subject to different levels of benefits pursuant to Sections 7522.20, 7522.25, and 20475, or by a recognized collective bargaining unit if agreed to in a memorandum of understanding reached pursuant to the applicable collective bargaining laws.

(d) This section shall not apply to any contracting agency nor to the employees of a contracting agency until the agency elects to be subject to this section by contract or by amendment to its contract made in the manner prescribed for approval of contracts. Contributions provided by this section shall be withheld from member compensation or otherwise collected when the contract amendment becomes effective.

(e) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under this system.

(f) Nothing in this section shall preclude a contracting agency and its employees from independently agreeing in a memorandum of understanding to share the costs of any benefit, in a manner inconsistent with this section. However, any agreement in a memorandum of understanding that is inconsistent with this section shall not be part of the contract between this system and the contracting agency.

(g) If, and to the extent that, the board determines that a cost-sharing agreement under this section would conflict with Title 26 of the United States Code, the board may refuse to approve the agreement.

(h) Nothing in this section shall require a contracting agency to enter into a memorandum of understanding or collective bargaining agreement with a bargaining representative in order to increase the amount of member

contributions when such a member contribution increase is authorized by other provisions under this part.

SEC. 2. Section 31461 of the Government Code is amended to read:

31461. (a) "Compensation earnable" by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

(b) "Compensation earnable" does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(C) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, 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.

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount 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.

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(4) 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.

(c) The terms of subdivision (b) are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003)110 Cal.App.4th 426.