

THE NEWLY ENACTED PUBLIC EMPLOYEE PENSION REFORM ACT

OCAA is studying the extremely long and complicated bills-- AB 340 and its companion bill AB 197 (the Public Employees Pension Reform Act or PEPRA)--that were rushed through the Legislature at the last possible moment. These bills deal with multiple retirement systems and have some provisions that will directly impact a county with its own retirement system, such as Orange County. The bulk of AB 340 and AB 197 however, deal with employees of the State of California, school districts, and those counties and cities participating in CalPERS, the retirement system operated by the State. For the most part, the big changes resulting from the passage of PEPRA will impact new employees, ie., those hired for the first time after January 1, 2013.

While PEPRA primarily impacts new employees, there are some provisions also impacting current employees which will become effective on January 1, 2013. For instance, PEPRA contains a requirement applicable to all employees of a county with its own retirement system, such as OCERS, that income not be reported as part of compensation earnable¹ which PEPRA defines, in part, as constituting "[a]ny compensation determined by the [OCERS] board to have been paid to enhance a member's retirement benefit under that system" and requires that OCERS establish a procedure for determining when payments have in fact been made to enhance a member's retirement benefit.

The newly enacted Government Section 7522.34 lists types of compensation which are not to be considered part of compensation earnable for *new* employees. Compensation earnable as defined by PEPRA for *new* employees will *not* include pay outs of annual leave regardless of when paid (this would seem to include annual pay outs from leave banks and also the pay out that currently occurs upon an employee's leaving employment).

For *current* employees, Government Code Section 31461 was amended to similarly prohibit payments made to enhance a member's retirement benefit which "*may include*" pay outs of annual leave,

¹ Compensation earnable is defined as "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 position during the period, and at the same rate of pay."

personal leave, compensatory time off, sick leave, or vacation if the amount exceeds "that which may be earned in each 12-month period during the final average salary period, regardless of when reported or paid." In addition, any "one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's class or grade" is included in the list of payments which may be considered to have been made to enhance a member's retirement benefit. However, the fact that a member was entitled to receive such payments pursuant to a collective bargaining agreement and they were subsequently deferred is evidence the payment was compensation earnable and therefore "shall not be deemed to have been paid to enhance a member's retirement benefit" under Section 31542.

PEPRA also includes limits on the ability of a retiree to work for a public employer while receiving retirement benefits which limits will become effective on January 1, 2013. The Act also prohibits a public agency from providing better retirement formulas or benefits to employees who are excluded from collective bargaining.

For all employees, both current and new, PEPRA provides that any public employee convicted of a felony "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, he or she shall forfeit all accrued rights or benefits in any public retirement system in which he or she is a member" "from the earliest date of the commission of any felony to the forfeiture date, inclusive." "Retirement benefits attributable to service performed prior to the date of the first commission of the felony for which the public employee was convicted shall not be forfeited...."

The OCERS website has more information regarding PEPRA and can be consulted about specific questions.