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Publications: Alerts

November 3, 2008

Recently Enacted State And Federal Laws Affect Public Employee Retirement Plans

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School employers and public agencies who participate in the California State Teachers Retirement System' (CalSTRS), the California Public Employees Retirement System (CalPERS), and school employers who offer 403(b) plans to their employees should be aware of recently enacted legislation pertaining to CalSTRS and CalPERS, and pending IRS Regulations regarding 403(b) plans . The legislative changes and IRS Regulations are scheduled to take effect on January 1, 2009.

1. Assembly Bill 2202 (Caballero) adds to the Government Code new sections that require employers to provide to CalPERS information on its employees who are not enrolled in CalPERS. The bill also permits the CalPERS Board and a contracting agency to enter into an agreement to terminate the contract with respect to member classifications with no active employees.

Impact on Employers - Presently, employers who contract with CalPERS are required to provide information only on those employees who are members of CalPERS. This legislation gives CalPERS authority to request employment-related information on employees who are not enrolled in CalPERS, including part-time, seasonal, and temporary employees. Although the statute does not address how this information is to be used by CalPERS, it appears to give CalPERS authority to audit the personnel records of its employers to ensure that eligible employees are being enrolled as members of the system. The information must be provided only upon request from CalPERS.

2. Assembly Bill 2023 (Houston) amends certain sections of both the Education Code and the Government Code to provide that in determining whether an employee is eligible for a disability retirement, CalPERS and CalSTRS must base the determination on competent medical evidence, and may not approve a disability retirement application as a substitute for the disciplinary process.

Impact on Employers - This legislation is an apparent attempt to ensure that disability retirement determinations are based solely on medical records and reports, and not on information related to the employee's job performance, attendance, attitude, or other non-medical considerations.

3. Assembly Bill 2838 (Duvall) - Under current law, CalPERS members are permitted to purchase service credit for various types of uncompensated leaves of absence following the member's return to work. Uncompensated leaves due to serious illnesses such as cancer are not included as a situation permitting the purchase of service credit. AB 2838 allows a CalPERS member who returns to service following an employer-approved uncompensated leave of absence due to "serious illness" to purchase service credit for the period of absence upon payment of contributions, as determined by CalPERS. The statute applies to uncompensated leave that occurred prior to or after January 1, 2009.

Impact on Employers - This legislation is not expected to have any significant impact on employers, since the member purchasing the service credit for the uncompensated leave of absence must pay the full amount of contributions for the period of the absence, as actuarially determined by CalPERS. The contribution includes an amount equal to the increase in employer liability resulting
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4. Assembly Bill 2156 (Hernandez). Current law provides for the payment of a special death benefit to survivors of certain public safety employees who die as a result of a work-related injury or illness. AB 2156 amends Government Code section 21537 to provide for payment of the special death benefit if the member's death was the result of a single-event, work-related injury which rendered the member into a persistent vegetative state, devoid of cognitive function from the time of injury until the member’s death. This legislation applies to safety members who received a disability retirement on or after July 3, 2006, and subsequently died as a result of their injuries.

Impact on Employers - Due to the limited number of situations in which this legislation would apply, it is not expected to have any significant impact on employers.

5. Assembly Bill 1844 (Hernandez) criminalizes certain acts against CalPERS, CalSTRS, or county retirement systems operating pursuant to the County Employees’ Retirement Law. The criminal acts include the making of knowingly false material statements or representations for the purpose of applying for, receiving, supporting, opposing, or denying any retirement benefit. Violations are punishable by imprisonment for up to one year and/or a fine of up to $5,000.
The Bill also requires the State Controller to publish an annual report on the financial condition of all state and local public employee retirement systems.

Impact on Employers - This legislation implements various recommendations of the Public Employee Post-Employment Benefits Commission established in 2006. The Bill criminalizes certain fraudulent actions by individuals in connection with an application for or receipt of retirement benefits. Current law provides for administrative and/or civil sanctions for fraud and misrepresentation in connection with any transactions involving CalPERS, CalSTRS, and the county employee retirement systems.

6. Assembly Bill 2390 (Karnette) extends until 2010 the exemptions to the teachers’ retirement law provisions pertaining to post-retirement earnings limitations, which was due to expire on June 30, 2009. Under current law, when a CalSTRS member who retired prior to January 1, 2006 returns to employment in a position covered by the CalSTRS, his or her post-retirement earnings are subject to an earnings limit of $27,940, above which their retirement benefit is reduced on a dollar-for dollar basis. However, the earnings limit is subject to a number of broad exemptions In addition to extending the exemptions, this Bill makes the exemptions applicable to CalSTRS members who retired prior to January 1, 2007.

Impact on Employers - Since the exemptions to the earnings limit already exist under current law, this Bill will have minimal impact on school employers. By extending the exemptions to persons who retired prior to January 1, 2007, the Bill would provide school employers with a larger pool of retirees who could provide classroom instruction and related activities without fear of having their retirement allowance reduced.

7. Assembly Bill 1480 (Mendoza) authorizes CalSTRS to offer a Roth IRA for members for the purpose of accepting a rollover from a 403(b) account, provided the rollover complies with federal law. The measure also permits CalSTRS to contract with a Third Party Administrator to provide custodial, recordkeeping, investment or administrative services to the Roth IRA.

Impact on Employers - This Bill will have an impact on school employers who sponsor 403(b) plans, to the extent participants elect to rollover assets in their 403(b) accounts to the Roth IRA.

8. Revised IRS Regulations regarding 403(b) plans to take effect January 1, 2009
The IRS has issued new rules regarding all employer sponsored 403(b) annuity contracts. All employers sponsoring 403(b) plans need to review their plans for compliance with the new regulations. In the future, 403(b) plans will be treated more like 401(k) plans requiring much more administrative oversight than before. These regulations are effective January 1, 2009. All 403(b) plans will be required to be written and the plan will have to be administered and operated in accordance with the terms of the plan document. Under the new rules, employers will be required to monitor limitations on elective deferrals and will be required to transfer deferrals to the plan within fifteen days.