

Date of Hearing: May 5, 2020

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT

Freddie Rodriguez, Chair

AB 2365 (Rodriguez) – As Amended May 4, 2020

SUBJECT: Public Employees' Retirement System: employment without reinstatement.

SUMMARY: Provides permissive authority to the California Public Employees' Retirement System (CalPERS) regarding reinstatement relating to retired members, among other provisions. Specifically, **this bill:**

- 1) Changes reinstatement to membership in CalPERS from mandatory to permissive relating to retired members who have exceeded the statutory 960-hour work limitation while working after retirement for a CalPERS-covered employer.
- 2) Applies these changes to both a retired member and CalPERS-covered employers relative to the Public Employees' Retirement Law (PERL) and the Public Employees' Pension Reform Act (PEPRA), as specified.
- 3) Maintains provisions in existing law relating to the retired member's requirement to repay a retirement allowance received during the period or periods of unlawful employment.

EXISTING LAW:

- 1) Establishes the PERL to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and to that end provide a retirement system consistent of retirement compensation and death benefits. The PERL is administered by CalPERS.
- 2) Establishes the PEPRA which prescribes various limitations on public employees, employers, and retirement systems concerning, among other things, work after retirement.
- 3) Prohibits, pursuant to the PEPRA and generally, retirees from working for an agency participating in the system without reinstatement in CalPERS, unless the employment is otherwise specifically authorized. In addition, the PEPRA also prohibits retirees from serving or being employed directly, or through a contract, with a public employer, as defined, in the same retirement system from which they receive their benefits, unless expressly permitted.
- 4) Permits a retired CalPERS member to return to work (for a CalPERS-covered employer), without reinstatement after meeting specified conditions. No additional service credit is gained during the period or periods of employment while working after retirement.

A retired person who works in violation of existing law, must reimburse CalPERS for any retirement allowance received during the period or periods of employment that are in violation of law; pay to CalPERS the employee's share of contributions that would have been paid during the period or periods of unlawful employment (plus interest), and reimburse CalPERS for administrative costs incurred by the system for responding to the situation, as provided.

- 5) Provides that a public employer who employs a retired member in violation of existing law must:
- a) Pay an amount equal to employer contributions that would have been paid for the period or periods that the member was employed in violation of existing law, to CalPERS.
 - b) Reimburse CalPERS for administrative expenses relating to the matter to the extent that the employer is determined to be at fault. If an employer fails to enroll a retired member, or fails to report payrate and number of hours worked by a retired member, generally, the penalty that must be paid to CalPERS is \$200 per member per month, for each respective violation, until the reporting requirements are satisfied.

Employers are prohibited from passing on the costs of the employer's contributions and penalties to the employee.

FISCAL EFFECT: Unknown. This bill is flagged as fiscal by Legislative Counsel.

COMMENTS: According to the author, "Retired annuitants are individuals who retired (through CalPERS), but have returned to work after retirement for a CalPERS-covered employer. Some of these individuals may exceed, or have exceeded the statutory 960-hour per fiscal year work limit which, under current law, requires them to reinstate to "active" CalPERS membership and repay retired allowance monies received during that period, along with other costs that can amount to thousands, if not tens of thousands of dollars. On a fixed income, this is untenable and can lead to a host of personal and financial challenges for them and their families.

"Retired annuitants are not responsible for processing payroll or providing this information to CalPERS, but the employer is. When this information is not timely reported or not reported at all by the employer, the retired annuitant ultimately suffers severe financial consequences. Many of the retired annuitants who end up in this situation are completely unaware that they exceeded the work hour limit because the employer is responsible for tracking hours, payroll and providing the information to CalPERS. This bill grants CalPERS certain discretionary authority to waive financial challenges incurred by retired annuitants.

1) Working After Retirement, Generally

Generally, existing law permits a retired CalPERS member to return to work for a CalPERS-covered employer after waiting 180 days after retirement; however, after returning to work, the

retiree is limited to working a maximum of 960 hours per fiscal year without being required to reinstate to active CalPERS membership, among other requirements. No additional service credit is gained. Such individuals are commonly referred to as “retired annuitants.”

Under existing law, public employers who employ retired CalPERS members must submit payroll data to CalPERS for purposes of reporting and tracking these hours, and accountability. Retired employees who exceed the 960-hour work limit per fiscal year must reinstate to active CalPERS service and reimburse CalPERS for all retirement allowances received during the period or periods of the violation, pay the employee’s share of contributions to the system, including penalties, interest, and the system’s administrative costs. Reporting violations by employers result in a penalty assessed to them by CalPERS in the statutory amount of \$200 per member per month, until the reporting requirements are satisfied.

2) CalPERS Audit Regarding Retired Annuitants

Last year, CalPERS’ Office of Audit Service and Public Agency Review performed a random and sample audit of 61 contracting agencies comprised of 38 public agencies and 23 schools and found that among these 61 employers, 44 were not in compliance with the statutory reporting requirements relating to the appointments of RAs.

While the PEPPRA became effective in 2013, with clean-up legislation that same year (See, SB 13/Beall), coupled with information provided to employers several employers providing guidance on reporting on the use of retired annuitants, there are still numerous contracting agency public employers and schools that fail to adhere to the reporting requirements.

The ultimate end result of the continued lack of adherence to existing law may result in a financial detriment, and in some instances, serious financial detriment to the retired annuitant.

3) Comments by Supporters

According to the California State Council of the State Council of the Service Employees International Union (SEIU CA), “Many retirees are currently facing significant penalties for inadvertently going over the current statutory limitation of 960 hours per year of work for a CalPERS agency after retirement. Some retirees were not aware of the limitation, while others may have been misinformed by their employers. In some cases, retirees were misinformed that their position as a substitute does not apply to those limitations.”

SEIU CA further states that, “[this bill] provides authority to CalPERS to reinstate a retiree who violates the working after retirement provisions. However, a retiree who is no reinstated will still be required to reimburse the system for the retirement allowance they received during this period or periods of unlawful employment. CalPERS would retain the right to penalize retired annuitants who abuse the system, and to equitably resolve cases where the retiree was misinformed.”

REGISTERED SUPPORT / OPPOSITION:

Support

California School Employees Association, AFL-CIO

California State Council of Service Employees International Union

Retired Public Employees Association

Opposition

None on file

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