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AMENDED IN SENATE JUNE 22, 2011

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 340

Introduced by Assembly Member Furutani
(~~Coauthor:~~ *Coauthors: Assembly Member Members Huber and Ma*)

February 10, 2011

An act to amend Section 31461 of, and to add Sections 31540, 31540.2, 31541, 31569, and 31680.9 to, the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 340, as amended, Furutani. County employees' retirement.

(1) 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 prohibit a variety of payments, including ~~unscheduled overtime~~, payments for unused vacation, sick leave, or compensatory time off, exceeding what may be earned and payable in each 12-month period during the final average salary period, and specified payments made at the termination of employment from being included in compensation earnable. The bill would additionally prohibit employer-provided housing allowances and employer-provided vehicle allowances from being included in compensation earnable for members first hired on or after January 1, 2012. The bill would require the board to establish a procedure for assessing and determining whether an element of compensation was paid for the principal purpose of enhancing a member's retirement benefit and would prohibit that compensation from being included in compensation earnable. The bill would except from this prohibition compensation that a member was entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or otherwise modified as a result of a negotiated amendment of that agreement.

The bill would require the board to provide notice to the member and employer upon a final determination that compensation was paid for the principal purpose of enhancing a member's retirement benefit. The bill would authorize the member or employer to obtain judicial review of the board's action by filing a petition for writ of mandate, as specified. The bill would permit a member or employer to present evidence that compensation was not paid for the principal purpose of enhancing a member's benefit and would permit the board to revise its determination upon receipt of sufficient evidence to that effect.

The bill would also require a county or district, when reporting compensation to a retirement board, to identify the pay period in which the compensation was earned regardless of when it was reported or paid. The bill would authorize the board to assess a county or district a reasonable amount to cover the cost of audit, adjustment, or correction, if it determines that a county or district knowingly failed to comply with these requirements, as specified. The bill would authorize a retirement board to audit a county or district and to require a county or district to provide information, or make information available for examination or copying at a specified time and place, to determine the correctness of retirement benefits, reportable compensation, and enrollment in, and reinstatement to, the system.

(2) CERL generally provides that each person entering employment becomes a member of a retirement system on the first day of the calendar

month after his or her entrance into service, unless otherwise provided by regulations adopted by the board. CERL permits people in certain employment classifications to elect membership in the retirement system, including elective officers, and prohibits membership for persons providing temporary technical or professional services under contract.

This bill would require a county or district that fails to enroll an employee into membership within 90 days of when he or she becomes eligible, when the employer knows or should have known that the person was eligible, to pay all costs in arrears for member contributions and administrative costs of \$500 per member.

(3) CERL permits members of a county retirement system who have retired to be reemployed without reinstatement into the system in certain circumstances including in a position requiring special skills or knowledge.

This bill, on and after January 1, 2012, would prohibit a person who has been retired for service from a CERL retirement system from being reemployed in any capacity without reinstatement into the system by a district or county operating a county retirement system established under CERL unless at least 180 days have elapsed since the person's date of retirement, except as specified. The bill would prohibit a person whose employment without reinstatement is authorized under CERL from receiving service credit for that employment. The bill would require that a retired member employed in violation of provisions regarding employment without reinstatement to reimburse the retirement system for any retirement allowance received during that period. The bill would also require the county or district to reimburse the retirement system for administrative expenses incurred in this regard in specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares that the
- 2 amendments made to the County Employees Retirement Law of
- 3 1937 by this act are intended to achieve the following reforms:
- 4 (a) To give the retirement boards the authority and the
- 5 responsibility to audit and deny compensation items that are
- 6 identified as being paid for the principal purpose of enhancing a
- 7 member's retirement benefit.

1 (b) To require each retirement system to establish accountability
2 provisions for participating employers that include an ongoing
3 audit process and to allow the retirement system to assess penalties
4 on employers for noncompliance.

5 (c) To prohibit final settlement pay and the cash-out of multiple
6 year accruals of vacation time, annual leave, personal leave, or
7 sick leave from being included in retirement calculations.

8 (d) To eliminate the practice of working for a participating
9 employer while collecting a retirement benefit, also known as
10 double-dipping, by prohibiting a retiree from returning to work as
11 a retired annuitant or as a contract employee until at least 180 days
12 have elapsed since that person’s retirement.

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

15 31461. (a) “Compensation earnable” by a member means the
16 average compensation as determined by the board, for the period
17 under consideration upon the basis of the average number of days
18 ordinarily worked by persons in the same grade or class of positions
19 during the period, and at the same rate of pay. The computation
20 for any absence shall be based on the compensation of the position
21 held by the member at the beginning of the absence. Compensation,
22 as defined in Section 31460, that has been deferred shall be deemed
23 “compensation earnable” when earned, rather than when paid.

24 (b) “Compensation earnable” does not include, in any case, the
25 following:

26 (1) Any compensation determined by the board to have been
27 paid for the principal purpose of enhancing a member’s retirement
28 benefit under that system. That compensation may include:

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

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

38 (C) Any payment that is made solely due to the termination of
39 the member’s employment, but is received by the member while
40 employed, except those payments that do not exceed what is earned

1 and payable in each 12-month period during the final average
2 salary regardless of when reported or paid.

3 (2) Payments for unused vacation, annual leave, personal leave,
4 sick leave, or compensatory time off, however denominated,
5 whether paid in a lump sum or otherwise, in an amount that exceeds
6 that which may be earned and payable in each 12-month period
7 during the final average salary period, regardless of when reported
8 or paid.

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

11 ~~(4) Unscheduled overtime.~~

12 ~~(5)~~

13 (4) Payments made at the termination of employment, except
14 those payments that do not exceed what is earned and payable in
15 each 12-month period during the final average salary period,
16 regardless of when reported or paid.

17 (c) In addition to the provisions of subdivision (b), for members
18 first hired on or after January 1, 2012, compensation earnable also
19 does not include:

20 (1) Any employer-provided housing allowance.

21 (2) Any employer-provided vehicle allowance.

22 SEC. 3. Section 31540 is added to the Government Code, to
23 read:

24 31540. (a) The board shall establish a procedure for assessing
25 and determining whether an element of compensation was paid
26 for the principal purpose of enhancing a member's retirement
27 benefit. If the board determines that compensation was paid for
28 the principal purpose of enhancing a member's benefit, the member
29 or the employer may present evidence that the compensation was
30 not paid for that purpose. Upon receipt of sufficient evidence to
31 the contrary, a board may reverse its determination that
32 compensation was paid for the principal purpose of enhancing a
33 member's retirement benefits.

34 (b) Upon a final determination by the board that compensation
35 was paid for the principal purpose of enhancing a member's
36 retirement benefit, the board shall provide notice of that
37 determination to the member and employer. The member or
38 employer may obtain judicial review of the board's action by filing
39 a petition for writ of mandate within 30 days of the mailing of that
40 notice.

1 (c) Compensation that a member was entitled to receive pursuant
2 to a collective bargaining agreement that was subsequently deferred
3 or otherwise modified as a result of a negotiated amendment of
4 that agreement shall be considered compensation earnable and
5 shall not be deemed to have been paid for the principal purpose
6 of enhancing a member's retirement benefit.

7 SEC. 4. Section 31540.2 is added to the Government Code, to
8 read:

9 31540.2. (a) When a county or district reports compensation
10 to the board, it shall identify the pay period in which the
11 compensation was earned regardless of when it was reported or
12 paid. Compensation shall be reported in accordance with Section
13 31461 and shall not exceed compensation earnable, as defined in
14 Section 31461.

15 (b) The board may assess a county or district a reasonable
16 amount to cover the cost of audit, adjustment, or correction, if it
17 determines that a county or district knowingly failed to comply
18 with subdivision (a). A county or district shall be found to have
19 knowingly failed to comply with subdivision (a) if the board
20 determines that either of the following applies:

21 (1) The county or district knew or should have known that the
22 compensation reported was not compensation earnable, as defined
23 in Section 31461.

24 (2) The county or district failed to identify the pay period in
25 which compensation earnable was earned, as required by this
26 section.

27 (c) A county or district shall not pass on to an employee any
28 costs assessed pursuant to subdivision (b).

29 SEC. 5. Section 31541 is added to the Government Code, to
30 read:

31 31541. The board may audit a county or district to determine
32 the correctness of retirement benefits, reportable compensation,
33 and enrollment in, and reinstatement to, the system. During an
34 audit, the board may require a county or district to provide
35 information, or make available for examination or copying at a
36 specified time and place, books, papers, data, or records, including,
37 but not limited to, personnel and payroll records, as deemed
38 necessary by the board.

39 SEC. 6. Section 31569 is added to the Government Code, to
40 read:

1 31569. A county or district that fails to enroll an employee into
2 membership within 90 days of when he or she becomes eligible,
3 when the employer knows or would reasonably be expected to
4 have known that the person was eligible, shall pay all costs in
5 arrears for member contributions and administrative costs of five
6 hundred dollars (\$500) per member as a reimbursement to the
7 system's current year budget.

8 SEC. 7. Section 31680.9 is added to the Government Code, to
9 read:

10 31680.9. (a) Except as provided in Section 31680.1, any person
11 who has been retired for service on or after January 1, 2012, as a
12 member of a county retirement system established under this
13 chapter shall not be reemployed in any capacity either as an
14 employee, an independent contractor, or an employee of a third
15 party without reinstatement by a district or county operating a
16 county retirement system established under this chapter unless at
17 least 180 days have elapsed since the person's date of retirement.

18 (b) A retired person whose employment, without reinstatement,
19 is authorized by this article shall not acquire service credit or
20 retirement rights under this part with respect to that employment.

21 (c) Any retired member employed in violation of this article
22 shall reimburse the retirement system for any retirement allowance
23 received during the period or periods of employment that are in
24 violation of law.

25 (d) Any county or district that employs a retired member in
26 violation of this article shall contribute toward the reimbursement
27 of the retirement system for administrative expenses incurred in
28 responding to a violation of this article, to the extent the county
29 or district is determined by the executive officer of this system to
30 be at fault.

31 SEC. 8. The provisions of this act shall not be interpreted or
32 applied to reduce the pension of any person who has retired prior
33 to January 1, 2012.