End Notes

[i] For those new members on or after Jan.1, 2013, AB 340 requires that the member's contribution "shall not be paid by the employer on the employee's behalf" (Government Code Section 7522.30(c); and "that the employers not pay any of the required employee contribution."(Government Code Section 7522.30(a). There is no discretion allowed in this mandate for new members, therefore this item is not a mandatory subject of bargaining.

For current members, prior to the enactment of AB 340 and AB 197, EPMC was a mandatory subject of bargaining as a discretionary wage item. Nothing in AB 340 or AB 197 changed that status. Moreover, recently revised Government Code Section 20516.5(a) states in part that it "shall be the standard that employees pay at least 50 percent of normal costs and that **employers not pay any of the required employee contribution.**" But because the 50 percent normal cost sharing standard is qualified later by Section 20516(b)– limiting imposed employees' contribution to a maximum of 8, 11, or 12 percent by 2018 the standard is considered a goal, and not a mandate. To achieve this goal of eliminating EPMC, employers will have to continue to give notice and opportunity to bargain over any proposed change in EPMC. However, unlike the 50 percent of normal cost sharing, there is no 2018 limitation on unilateral implementation of EPMC. An agency can propose the reduction or elimination of EPMC and unilaterally impose, provided the employer has engaged in good faith negotiations, including the exhaustion of mandatory impasse procedures.

[Note: There is another interpretation of Government Code Section 20516.5(a) regarding the second portion of the standard disallowing any EPMC. Because there is no other qualifying statutory language limiting the standard on EPMC, that leaves open the possible interpretation that the prohibition against employer pick-ups is a mandate, not just a goal. However, based on the historical treatment of EPMC as a mandatory subject of bargaining for current employees because it is a discretionary wage item, it is reasonable to assume that both standards (50 percent, no EPMC) for current members in Section 20516.5 are goals, not mandates. Please check with your legal counsel for advice.]

In any instance, the standard or goal that the employer not pay any of the member contribution should be used by employers as a major consideration in any factfinding involving the elimination of an EPMC.

[ii] The preferred view is that Government Code Section 7522.02(d) clearly states in part that "if the employer adopts a new defined benefit formula on or after Jan. 1, 2013, that formula must conform to the requirements of this article or must be determined and certified by the retirement system's chief actuary and retirement board to have no greater risk and no greater cost to the employer than the defined benefit formula required by this article and must be approved by the Legislature." Establishing a new tier only for reciprocal lateral hires after Jan. 1, 2013 would have to meet the above test for employers. Adding a new tier (3% @ 55) for lateral hires would meet neither of the above tests (See Government Code Section 7522.02(d)).

Another view is that nothing prior to AB 340 and AB 179 prohibited agencies from negotiating new and lower tier for individuals hired after a specified future date. Also, AB 340 does not clearly prohibit this practice. The new law's prohibitions and mandates apply only to "new members as defined by Section 7522.04" (See Government Code Section 7522.02(b)). Thus the provisions in AB 340 that prohibits any agency from implementing a new tier other than the new law's tiers after Jan.1, 2013, applies to only to

"new members." A reciprocal lateral hire is an exception, in effect, to AB 340's definition of "new member."

The League will be trying to work with the Administration, Department of Finance, and CalPERS to ensure that the integrity of the reforms remain intact. Freezing in place the enhanced benefits formulas adopted into law in the early 2000s after Jan. 1, 2013 is clearly counterintuitive to the AB 340 reforms.

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[iv] **PUBLIC RETIREMENT SYSTEMS WITH RECIPROCITY**

County Systems
Counties that maintain retirement systems under the County Employees' Retirement Law of 1937:

Alameda
Contra Costa
Fresno
Imperial
Kern
Los Angeles
Marin
Mendocino
Merced
Orange
Sacramento
San Bernardino
San Diego

San Joaquin
San Mateo
Santa Barbara
Sonoma
Stanislaus
Tulare
Ventura

Independent Public Agency Retirement Systems

Public agencies maintaining their own retirement systems that have contracted with CalPERS to provide the benefits of reciprocity and the dates the reciprocal agreements were established:

*City of Concord (11/27/70)
*City of Costa Mesa (safety employees only) (4/1/78)
City of Fresno (misc. and safety retirement systems) (2/18/02)
City of Oakland (non-safety employees only) (4/1/71)
City of Pasadena (fire and police retirement) (5/4/01)
*City of Sacramento (11/4/74)
*City of San Clemente (non-safety employees only) (1/1/85)
City of San Diego (6/25/92)
*City & County of San Francisco (7/29/88)
City of San Jose (misc. 12/9/94; safety 9/30/94)
Contra Costa Water District (3/2/88)
County of San Luis Obispo (4/19/84)
East Bay Municipal Utility District (4/16/84)
East Bay Regional Park District (safety employees only) (7/1/96)
Los Angeles County Metropolitan Transportation Authority (Non-Contract Employees' Retirement Income
Plan, formerly Southern California Rapid Transit District (5/12/71)
City of Los Angeles (7/14/97)

* These entities are now CalPERS-covered employers. If you earned service credit in these systems prior to their CalPERS contract, you may be eligible for reciprocity for that earlier service credit.

UCRP
The University of California Retirement Plan (UCRP) (10/1/63)

[v] Under section 7522.34 of AB 340, "pensionable compensation" of a "new member" means the "normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules." Additionally, "compensation for overtime work, *other than* as defined in Section 207(k) of Title 29 of the U.S.C." is *excluded* from compensation earnable.

Title 29 U.S.C. section 207(k) is part of the federal Fair Labor Standards Act (FLSA) and sets forth what is known as the 7(k) exemption for fire fighters and peace officers. Section 207(k) states that time in excess of the established 7(k) work period for fire fighters and peace officers shall be paid at time and one half. Accordingly, it is understood that overtime is excluded from "pensionable compensation" under the new law for new members unless the member works under an FLSA 7(k) work schedule and is paid for overtime that is part of the "normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours."

vi The Legislature is presumed to be aware of the laws in effect at the time they enact new laws and are conclusively presumed to have enacted the new laws in light of existing laws having direct bearing upon them. However, "the presumption that one legislates with full knowledge of existing law is not conclusive, and not even helpful, in cases where a later enactment directly conflicts with an earlier law." (*McLaughlin v. State Bd. Of Educ.* (1999) 75 Cal.App.4th 196, 212 quoting *Williams v. County of San Joaquin* (1990) 225 Cal.App.3d 1326, 1332.). In addition, where a general statute standing alone would include the same matter as a more specific statute, and thus conflict with it, the more specific statute will be considered as an exception to the general statute regardless of whether the more specific statute was enacted before or after the general statute. (*Id.* at 224.)

Here, AB 340 clearly states that section 7522.56 "*supersedes* any other provision in *conflict* with this section" and AB 340 as a whole, expressly applies to CalPERS as well as other retirement systems. Therefore, we believe that unless a provision in the PERL <u>directly conflicts</u> with the PEPRA, the PERL will control. In addition, nothing in AB 340 prohibits the PERL from imposing *more* restrictions on a PERS retiree working for a PERS employer, than are otherwise stated in AB 340.

For example, the exceptions to the general prohibition against post-retirement employment of a CalPERS retiree by CalPERS employers set forth in Government Code section 21221(a), (b), (c), and (e) are most likely still applicable in their entirety. These exceptions pertain to special positions held by the retiree. Although these exceptions are silent as to the number of hours the retiree may work in a fiscal year, or the pay that may be received, it is recommended that retirees working under these restrictions work no more than 960 hours in a fiscal year and not be paid less than, nor more than the amount paid by the employer to other employees performing comparable duties so as to effectuate the intent of AB 340.

The exception under Government Code section 21221(h) for retirees serving in an interim executive position during recruitment for a permanent employee does not directly conflict with AB 340. The exception under Government Code section 21224 which allows CalPERS retirees to work for CalPERS' employers either: (1) during an emergency to prevent stoppage of public business; or (2) because the retiree has skills needed to perform work of limited duration is substantively identical to the PEPRA with some minor differences. For the most part, these exceptions are more *restrictive* on post-retirement employment than AB 340, but AB 340 does not prohibit more specific statutes that contain more restrictive limitations on post-retirement employment. Therefore, all of the provisions of section 21221(h) and section 21224 as those statutes were last amended by Senate Bill 1021 on June 27, 2012, still apply with equal force. The only caveat is that it is recommended that retirees working under either of these two exceptions should not be paid *less* than the minimum nor more than the maximum paid to employees performing comparable duties.

[vii] Generally, PEMHCA has a uniform vesting schedule for all employees. That is, in order for an employee to be eligible to participate in the retiree health insurance plan offered by a PEMHCA employer, the employee must satisfy the definition of "annuitant" under PEMHCA. This is the same for all employees and therefore, does not run afoul of this new section 7522.40.

PEMHCA maintains a vesting schedule which is only optional for employers, set forth in Government Code section 22893. However, if this vesting schedule is adopted, it is uniform for all employees and would not allow an employer to change the length of time it takes for an employee to become eligible to participate in the retiree health coverage.

However, an employer could potentially maintain an arrangement whereby the employer makes the minimum required PEMHCA contribution on behalf of retirees and then provides a supplemental benefit to these retirees. If the supplemental benefit has different vesting levels it is subject to section 7522.40 in that the employer may not provide to an employee who is elected or appointed, a trustee, excluded from collective bargaining, exempt from civil service, or a manager of any vesting schedule for this supplemental benefit that is more advantageous than that provided generally to other employees, including represented employees, of the same employer who are in related retirement membership classifications.