

Public Pension Reform (AB 340 and AB 197): A Primer

III. Duty to Bargain and Scope of Representation

1) Introduction

The level of pension benefits for current employees is a form of wages and falls within the scope of representation under the Meyers Milius Brown Act (MMBA). (*City of San Diego v. Haas* (2012) 207 Cal.App.4th 472.) To the extent an employer has discretion over new pension benefits for new members and other requirements relating to current employees' pension benefits, the employer must negotiate over the area within its discretion. (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 864-865.)

Because AB 340 establishes mandatory formulae and definitions for pensionable compensation, agencies and CalPERS have little or no discretion, and, perhaps, little or no duty to bargain over the majority of the legislatively mandated changes. This document is intended to delineate certain subjects within the scope of representation and other non-negotiable mandates in the new law.

Employers may also be required to give notice and negotiate the impacts of implementing a non-negotiable subject. (*Claremont Police Officers Ass'n v. City of Claremont* (2006) 39 Cal. 4th 623; *Fremont Union High School District* (1987) PERB Dec. No. 651.) It may also be necessary to meet with an employee organization to discuss whether an issue is susceptible to negotiations. (*Healdsburg Union High School District* (1980) PERB Dec. No. 132.)

2) Statutory Mandates- Non-Negotiable

Benefit Formulas

New members who are non-safety employees receive the new 2% @ 62 formula, unless the bargaining unit is receiving a lower defined benefit formula that results in a lower normal cost than required by AB 340.

New members who are safety members receive the 2% @ 57 (Basic Safety Plan), 2.5% @ 57 (Safety Option Plan I), or 2.7% @ 57 (Safety Option Plan II), unless the bargaining unit is receiving a lower defined benefit formula that results in a lower normal cost than required by AB 340.

New members who are safety members receive the formula that is closest to, and provides a lower benefit at age 55, than the formula provided to safety members in the same retirement classification offered by the agency on Dec. 31, 2012.

New defined benefit plans or formulas must either conform to AB 340 or be certified as having no greater risk or cost than the defined benefit formula required by the new law, and must be approved by the Legislature.

Final Compensation Period

The final compensation period for new members is an average of the highest three-year average.

An employer may not modify benefit plans to permit calculation of compensation on the basis of less than a consecutive 36-month period for existing employees after Dec. 31, 2012.

Employee Contribution

The initial employee contribution rate for new members is at least 50 percent of the normal cost rate for that defined benefit plan, rounded to the nearest quarter percent or the current contribution rate of similarly situated employees, whichever is greater.

An employer may not pay any part of new members' employee contribution.

Once established, the employee contribution rate for new members may not be adjusted due to a change in the normal cost rate unless the normal cost rate increases or decreases by more than 1 percent of payroll.

An employer may not suspend employer and/or employee contributions necessary to fund the annual normal cost rate of the pension.

If the terms of a contract, including an memorandum of understanding (MOU), between an employer and its employees in effect on Jan. 1, 2013, would be impaired by the equal sharing of normal cost for new employees, the equal sharing of the normal cost rate will not apply until the contract expires, is renewed, amended or otherwise extended.

Supplemental Defined Benefit Plan

An employer is prohibited from providing new members with a supplemental defined benefit plan.

An employer may not offer a defined benefit plan, or combination of defined benefit plans, on compensation in excess of the compensation cap.

Replacement Benefit Plans

An employer that offers a plan of replacement benefits prior to Jan. 1, 2013, shall not offer such a plan to any additional group to which the plan was not provided prior to Jan. 1, 2013.

Benefit Enhancements

Enhancements to a benefit formula adopted or applied to a member on or after Jan. 1, 2013, may only be applied to the member's future service.

3) Negotiable Subjects

Formula

An agency with Safety Option Plan I or Safety Option Plan II may agree in an MOU to be subject to Safety Option Plan I or the Basic Safety Plan, as long as the MOU provides that the lower plan will apply to members first employed after the effective date of the lower plan, and the agency is not paying a higher rate for non-represented, managerial, or supervisory employees in related retirement membership classifications.

Optional Benefits

Employers may negotiate over optional benefits for both existing employees and new members, with the exception of optional benefits that are specifically prohibited, e.g., 12-month final compensation period or the 3% at 50 benefit formula for new members.

Employee Contributions

Employee contributions for new members may exceed 50% of normal cost if agreed through the collective bargaining process, as long as: (1) the employer does not contribute at a greater rate for non-represented, managerial or supervisory employees than for represented employees who are in related retirement membership classifications; (2) the employee contribution rate is not increased in the absence of an MOU; and (3) the employer does not use impasse procedures to increase an employee contribution rate above the rate required by AB 340.

EPMC

Employers may continue to negotiate EPMC for existing employees.

Defined Contribution Plans

Employers may negotiate over new defined contribution plans.

Cost Sharing of Employer Contribution (CalPERS Agencies)

Employers may propose and negotiate the sharing of the “employer’s contribution” subject to reaching an agreement. Prior to 2018, cost sharing of the employer’s contribution can only be required for represented employees by agreeing to specific terms in a collective bargaining agreement.

If an employer has already negotiated cost-sharing agreements above the 50 percent of normal cost rate, the negotiated contribution rates may continue.

Employers may negotiate an agreement inconsistent with Government Code Section 20516 if it is incorporated into an MOU and is not part of the employer’s contract with CalPERS.

Employers may negotiate and implement cost sharing by individual bargaining unit (eliminating the previous restriction that cost sharing could only be implemented within the classifications of miscellaneous, fire, and police.)

As of Jan. 1, 2018, the employer, after meeting and conferring and exhausting impasse procedures, may unilaterally impose an employee contribution rate of up to 50 percent of normal cost employee contribution rate, but not exceeding 8 percent of pay for non-safety members, 12 percent of pay for police and fire members, and 11 percent of pay for all other local safety members.