



California State Teachers'
Retirement System
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January 16, 2021

TO: All County Superintendents of Schools
District Superintendents of Schools
Community College Districts and
Other Employing Agencies

FROM: Jack Ehnes
EXECUTIVE OFFICE

SUBJECT: Employer Directive 2021-01
Changes in the Teachers' Retirement Law made by Chapter 275, Statutes of 2020,
(Assembly Bill 2101)

PURPOSE:

This directive notifies employers of changes to Education Code sections contained in Chapter 275, Statutes of 2020 (Assembly Bill 2101), that affect employers and became effective January 1, 2021.

SCOPE:

This directive contains information for county superintendents of schools, school districts, charter schools, community college districts and any agency that employs persons to perform creditable service under the CalSTRS Defined Benefit (DB), Defined Benefit Supplement (DBS) and Cash Balance Benefit (CB) programs.

DISCUSSION OF CHANGES REQUIRING NEW ACTION:

Below is a summary of the changes made by AB 2101 that require employers take new action.

Leave of Absence

Creditable compensation includes remuneration that is paid for the use of sick leave, vacation leave or an employer-approved compensated leave of absence. The definition of "leave of absence" that was added to the Teachers' Retirement Law in 2016 narrowed the definition and excluded certain types of leaves from being creditable to CalSTRS.

Chapter 275, Statutes of 2020, amends Education Code section 22144.3, the definition of "leave of absence," by adding subsection (b) to include "employer-approved compensated leave" that is not "expressly authorized" by specific sections of the Education Code, so long as the employer-approved compensated leave was or is taken on or after January 1, 2016. Consequently, this change allows remuneration that is paid for any employer-approved compensated leave of absence to be creditable to CalSTRS.

Action

Report compensation and remit the associated contributions for use of employer-approved compensated leaves of absence that meet the amended definition of “leave of absence” as stated in Education Code section 22144.3. Report employer-approved compensated leaves of absence that were taken between January 1, 2016, and December 31, 2020, but which were previously excluded from the definition of “leave of absence,” and remit the associated contributions.

Important: When possible, please submit reporting adjustments for employer-approved compensated leaves of absence that were taken between January 1, 2016, and December 31, 2020, using a Supplemental File.

Refer to [Employer Directive 2020-06](#), available on CalSTRS.com/employers-and-administrative-directives, for more in-depth information on the amendments made to the definition of “leave of absence” and how to report any retroactive adjustments.

Copies of Retirement System Election Forms

Education Code section 22509 allows DB Program members to permissively elect continued DB coverage when taking a position that would otherwise be covered by another public retirement system. A member making this election submits the *Retirement System Election* form (ES 372) to their employer. Prior to this legislation, the employer needed to transmit a copy to both the elected retirement system and to the unchosen system. Employers were not required to retain a copy of the form.

Chapter 275, Statutes of 2020, removes the requirement for employers to transmit a copy of the election form to the unchosen retirement system and requires employers to retain a copy of the form.

Action

When an employee elects to continue DB coverage, transmit a copy of the *Retirement System Election* form (ES 372) to CalSTRS, and retain a copy of the form in your records for the employee. Employers are no longer required to transmit a copy of the election form to CalPERS if it is not the chosen retirement system.

Elected Officer Clarification

Education Code section 22711 grants members service credit for time during which they are on a compensated leave of absence to serve as an elected officer of an employee organization if they meet certain requirements and remit contributions to CalSTRS. Their employer must also remit contributions during the leave. The employer contribution rate for elected officers is determined annually by the Teacher’s Retirement Board and can be found on CalSTRS.com in the annual interest and contribution rate directive.

Prior to this legislation, the statute was broadly worded to require employers to contribute at the elected officer contribution rate on the creditable compensation that would have been paid for service performed on a full-time basis and did not cover situations in which elected officer duties are performed during a partial leave of absence. In addition, while CalSTRS’ practice has been to provide full retirement benefits for the elected officer service, the statute only specified that elected officers receive service credit for the time they are on leave.

Chapter 275, Statutes of 2020, clarifies that employers must only remit the board-adopted contribution rate for the percentage of time the member is on a leave of absence to serve as an elected officer. It also acknowledges that members may be on a partial leave of absence and makes clear that members are entitled to all benefits they otherwise would have been due had they not been on leave.

Action

When reporting members' service performed as an elected officer, report under the appropriate Assignment Code for elected officers and remit contributions at the board-adopted rate only for the percentage of time the member is on a leave of absence to serve as an elected officer.

CalSTRS Retirement Incentive Program and Postretirement Employment

Education Code section 22714 allows employers participating in the CalSTRS Retirement Incentive Program to provide eligible DB Program members with two years of additional service credit if the member elects to retire during a specific window period. Employers must pay the cost of the benefit and associated administrative fees and demonstrate that the incentive would result in a net savings to the district.

If the member reinstates to active status, receives unemployment during the year after receiving the incentive or takes any job within the district that granted the incentive within five years of retirement, the member will lose the ongoing increase in the benefit. Prior to this legislation, the statute did not address situations in which a retired member takes a job as an independent contractor or an employee of a third party within the district that granted the incentive, which could also reduce the demonstrated net savings of the district.

Chapter 275, Statutes of 2020, includes taking any job as an independent contractor or as an employee of a third party working within the district that granted the incentive as situations in which a member will lose the ongoing increase in the benefit, mitigating potential circumstances in which the demonstrated net savings of the district could be affected.

Action

When hiring CalSTRS retirees, employers are required to inform them of all postretirement restrictions in accordance with Education Code section 22461.

DISCUSSION OF CHANGES REQUIRING NO NEW ACTION OR NO CHANGE IN ACTION:

Below is a summary of changes made by AB 2101 that do not require employers take new or different action. Amendments to the Education Code sections outlined below are for clarification purposes only. No employer action is needed.

Basic and Excess Sick Leave Days

Education Code section 22170.5 previously defined a "basic sick leave day" as the equivalent of one day's paid leave of absence per pay period due to illness or injury. This generally meant up to 12 days per school year of basic sick leave can be offered by an employer. Any days offered in excess of that amount are "excess sick leave days."

Chapter 275, Statutes of 2020, clearly differentiates between basic and excess sick leave days granted by an employer in a school year. Basic sick leave days consist of 12 or fewer days, and

excess sick leave days are any days in excess of 12 days in a school year. Additionally, subdivision (e) is added to Education Code section 22717 to stipulate that members may not receive service credit for accumulated unused sick leave at CalSTRS if they are already receiving service credit in another public retirement system for the same days.

Creditable Service for Audiometrists

The work of audiometrists has historically been creditable to CalSTRS since they were required to be licensed by the Education Code, and employees performing those activities were CalSTRS members. In 2015, the definition of “creditable service” was changed to require that prekindergarten through grade 12 employees must be employed in a position requiring certification by the Commission on Teacher Credentialing (CTC) in order to perform creditable service. Since the CTC does not certify audiometrists, their work was inadvertently omitted from the revised definition. CalSTRS became aware of the issue and gave direction to employers to continue to report the work of audiometrists to CalSTRS until amendments to the law could be made.

Chapter 275, Statutes of 2020, amends Education Code section 22119.5 to ensure audiometrist service is correctly reported to CalSTRS by clarifying that creditable service includes their work if they hold a certificate of registration issued by the State Department of Health Care Services.

DB Coverage for State Employees

Prior to this legislation, the law included the state as an employer within the DB Program definition of “creditable service.” While the state may employ CalSTRS members, those employees retain membership only because of a retirement system election, pursuant to Education Code section 22508, not as a result of performing creditable service. The state is not included as an employer in statutes related to mandatory DB membership for educators employed to perform creditable service on a part-time basis or as a substitute. Those provisions specifically require the service to be performed for a school district, community college district or county office of education. However, the section requiring mandatory membership for full-time employees failed to make the same distinction. Additionally, the CB Benefit Program excludes the state as an employer, yet the CB definition of “creditable service” erroneously included the state.

Chapter 275, Statutes of 2020, removes the state as an employer within the definition of “creditable service” for both the DB and CB Benefit programs. It also clarifies that mandatory membership only applies to creditable service performed at a school district or county office of education in Education Code section 22501.

Obsolete Definition of “Overtime”

Prior to this legislation, the law defined “overtime;” however, the term is not referenced by any other part of the Teachers’ Retirement Law. Chapter 275, Statutes of 2020 removes the obsolete definition of “overtime” from the Teachers’ Retirement Law.

Crediting Overpayments of Contributions, Penalties and Interest

CalSTRS is required by statute to collect contributions and assesses penalties and interest on late reporting and late contributions associated with member and participant service. All money received is due for purposes of funding the plan. Instead of refunding, CalSTRS has moved to crediting employers’ accounts with any amounts overpaid. Employers may apply the credits to

outstanding contribution or penalties and interest balances within 90 days from the date the payment is received by CalSTRS. After 90 days, CalSTRS applies the credit to any outstanding balance remaining.

Chapter 275, Statutes of 2020, clarifies that penalties and interest due to the system are additional required contributions and, when received, are treated in the same manner as other contributions, including being applied to any outstanding receivables for either contributions or penalties and interest.

Refer to Employer Circular EIC20-1 Volume 36 Issue 1, available on [CalSTRS.com/employer-information-circulars](https://www.calstrs.com/employer-information-circulars), for more in-depth information on the crediting of contributions and penalties and interest payments.

Benefit Effective Dates

For the DB Program, the benefit effective date for retirement is “no earlier than the date upon which the member completes payment of a service credit purchase.” This language could be interpreted to allow a member to retire on the same day a service credit purchase is completed. However, a benefit cannot commence until the day after service credit is purchased.

For the CB Benefit Program, all creditable service subject to coverage under the program must be terminated prior to the participant’s retirement date. Prior to this legislation, the law did not specify whether a CB participant may backdate the benefit effective date for retirement. However, CalSTRS’ disallows backdating as CB benefits are understood to be prospective, and age and service are not factors in the benefit amount.

Chapter 275, Statutes of 2020, clarifies that DB members must choose a benefit effective date at least one day after a completed service credit purchase. It also clarifies that the CB benefit effective date for retirement cannot be earlier than the first day of the month in which an application is received by the system.

Lump-Sum Benefit Changes

When applying to receive a benefit, DB members and CB participants may elect to receive a DBS distribution or CB termination benefit as a lump sum, partial lump sum or annuity. Under current law, DB members can make changes to their retirement application, including their distribution preferences, within 30 days of receiving their first benefit payment. However, prior to this legislation the law was silent regarding the timeframe in which members or participants must return their lump-sum distribution to the system prior to CalSTRS paying out the newly chosen distribution type.

Chapter 275, Statutes of 2020, clarifies that DBS and CB lump-sum distributions must be returned within 45 calendar days from the date a request to change distribution type is received by CalSTRS when the request is to change from a lump sum to an annuity.

Break in Service for Termination Benefits

Members and participants may receive a DBS or CB termination benefit, which is equal to the sum of the balance of a member’s or participant’s contributions, the employers’ contributions plus any compounded interest and additional earnings credits as of the date the benefit is paid. To ensure a break in service has occurred, prior to this legislation, these termination benefits were not payable until six months had elapsed since the last day of service was performed. In

other benefit payment situations requiring a break in service, the separation period is 180 calendar days.

Chapter 275, Statutes of 2020, makes the DBS and CB break-in-service requirements for termination benefits consistent with other break-in-service statutes by requiring a 180-calendar day separation period, instead of six months.

Employment Certification for CB Retirements

When CB participants apply for retirement within one year of the last day they performed service, their employers must certify employment termination on a form. CalSTRS is implementing a new pension administration system that will allow employers to provide this information electronically.

Chapter 275, Statutes of 2020, clarifies employers can certify employment termination in a “format” prescribed by the system, which includes electronic formats planned for the new CalSTRS pension administration system.

CB Retirement Application Change Requests

While Education Code section 24204 details the process for making changes to DB retirement applications, the law, prior to this legislation, was silent on permissible changes to CB retirement applications. In practice, changes to CB retirement applications were only accepted if a participant’s application had not yet been processed.

Chapter 275, Statutes of 2020, specifies that participants may change or cancel a CB retirement application provided the request is received at the system’s headquarters no later than 30 days from, and repayment of any benefits paid occurs within 45 days of the issue date of, the participant’s initial benefit payment.

CB Annuity Termination

Current law allows CB annuity recipients to self-terminate their annuity, reinstate as a participant and resume contributing to the CB Benefit Program. Unlike DB members, prior to this legislation, CB participants were not able to choose a specific annuity termination date. The termination date was the first day of the month designated by the participant.

Chapter 275, Statutes of 2020, aligns the CB annuity termination process with the DB process and allows participants to terminate their annuity on any date they designate, provided the termination date is no earlier than the first day of the month in which CalSTRS receives the request. This measure also provides a process by which participants can cancel or change a CB reinstatement request after submitting the request.

REFERENCES:

This Employer Directive does not take precedence over the law. To view Chapter 275, Statutes of 2020 (AB 2101), in its entirety, please go to <http://leginfo.legislature.ca.gov>.

If you have any questions regarding this Employer Directive, please contact your CalSTRS Member Account Services Representative.