

December 22, 2014

TO: All County Superintendents of Schools
District Superintendents of Schools
County Offices of Education and
Charter School Administrators

FROM: Jack Ehnes
Chief Executive Officer

SUBJECT: Employer Directive 2014-08
Changes to the Teachers' Retirement Law made by Chapter 755, Statute of 2014
(Senate Bill 1220–Public Employment & Retirement Committee), Affecting
Employers.

PURPOSE

This directive notifies Defined Benefit Program employers of changes to Education Code contained in Chapter 755, Statute of 2014 (SB 1220–PE&R), that become effective January 1, 2015.

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) and Defined Benefit Supplement (DBS) programs.

DISCUSSION & ACTION

Outgrowth Activities – DB Program

In drafting the creditable compensation regulations, a need was identified to assist employers on determining the DB Program compensation earnable for outgrowth activities. For more information regarding the Creditable Compensation Regulations, please refer to Employer Information Circular EIC14-5 Volume 30, Issue 5.

SB 1220 added subdivision (e) to Education Code section 22115 to prescribe the determination of compensation earnable when an employer provides compensation for the performance of outgrowth activities.

Education Code section 22115(e) states:

If creditable service is not performed on a full-time basis because a member is performing those activities pursuant to paragraph (6) of subdivision (a) of Section 22119.5, compensation earnable for those activities shall be determined as if the creditable compensation had been earned at the lowest pay rate for other creditable service activities performed by the member for the same employer during the same school year.

The amendment made to Education Code section 22115 by SB 1220 specifies that when a member is performing outgrowth activities, the compensation earnable for those activities is determined as if the creditable compensation is earned at the lowest pay rate for other creditable service activities that the member performs for the same employer during the same year.

Action:

Beginning January 1, 2015, employers must discontinue reporting outgrowth activities as special compensation and report them as a part-time assignment using the lowest pay rate that member is earning for other creditable service performed for the same school district or community college district, during the same school year.

Example:

Mr. Smith and Mrs. Johnson both work for the Elk Grove Unified School District as full-time teachers. Additionally, Mr. Smith performs outgrowth activities as the yearbook editor, and Mrs. Johnson performs outgrowth activities as the marching band leader.

Mr. Smith's compensation earnable for his full-time teaching position is \$50,000 per year, and Mrs. Johnson's compensation earnable for her full-time teaching position is \$60,000 per year.

Pursuant to section 22115(e), the compensation earnable for the performance of outgrowth activities should be based on "the lowest pay rate for other creditable service performed for the same employer during the same school year." Therefore, the compensation earnable that should be reported to CalSTRS for Mr. Smith's outgrowth activities is \$50,000, and the compensation earnable that should be reported to CalSTRS for Mrs. Johnson's outgrowth activities is \$60,000.

Employer-Paid Member Contributions – DB Program

Chapter 559, Statutes of 2013 (AB 1381–PER&SS), amended Education Code section 22909 to prohibit employer-paid member contributions for CalSTRS 2% at 60 members in collective bargaining agreements, not including CalSTRS 2% at 62 members, that are entered into or

changed on or after January 1, 2014. However, written employment agreements were unintentionally excluded from the amendments to Education Code section 22909.

SB 1220 adds the language “or a written employment agreement” to subdivisions (d) and (e) of Education Code section 22909. In recognition of contract impairment issues, if an employment agreement for 2% at 60 members was entered into before January 1, 2014, the grandfathering provisions in subdivision (e) of Education Code section 22909 apply. Therefore, if that employment agreement provided for employer-paid member contributions, the employer-paid member contributions can continue until that employment agreement expires or is renewed, amended or extended.

As outlined in Employer Directive 2014-01 (ED14-01), employers can continue to pay all or a portion of member contributions, as outlined in a *collective bargaining agreement*, for CalSTRS 2% at 60 members whose bargaining agreements were in effect prior to January 1, 2014. Employers cannot negotiate new or extend, renew or amend current *written bargaining agreements* on or after January 1, 2014, to provide employer-paid member contributions for CalSTRS 2% at 60 members. And consistent with the Public Employees’ Pension Reform Act, groups or classes that include CalSTRS 2% at 62 members are prohibited from having *written bargaining agreements* that are entered into or changed on or after January 1, 2013, allowing employers to pay all or a portion of member contributions.

Additionally, employers may continue to “pick-up” their employees’ contributions, pursuant to Education Code section 22903 or 22904, for the purposes of deferring income taxes, as authorized by Internal Revenue Code section 414(h)(2) and Revenue and Taxation Code section 17501.

Action:

Employers can continue to pay all or a portion of member contributions, as outlined in a *written employment agreement*, for CalSTRS 2% at 60 members whose written employment agreements were in effect prior to January 1, 2014. However, employers cannot negotiate new or extend, renew or amend current *written employment agreements* to provide employer-paid member contributions for CalSTRS 2% at 60 members on or after January 1, 2014. If you have negotiated a new or extended, renewed or amended an existing *written employment agreement* for CalSTRS 2% at 60 members after January 1, 2014, you can continue to pay the member contributions until January 1, 2015, the effective date of SB 1220.

Consistent with the Public Employees’ Pension Reform Act, groups or classes that contain CalSTRS 2% at 62 members are prohibited from having *written employment agreements* that are entered into or changed on or after January 1, 2013, allowing employers to pay all or a portion of member contributions. If you have negotiated a new or extended, renewed or amended an existing *written employment agreement* after January 1, 2013, for a group or class that contains CalSTRS 2% at 62 members, you can continue to pay the member contributions until January 1, 2015, the effective date of SB 1220.

Definition of “Employer” – DB Program

In the mid-1970s, the California Legislature amended the Government Code to give two or more public agencies the ability to join together and operate collectively, under a joint powers authority (JPA), in order to provide more effective or efficient government services or to solve a service delivery problem.

Because JPAs were not explicitly included in the definition of “employer,” SB 1220 amended Education Code section 22131 to include JPAs, provided the JPA meets the following criteria:

- 1) The JPA is formed pursuant to the Joint Exercise of Powers Act (Chapter 5 of Division 7 of Title 1 of the Government Code);
- 2) All the entities included in the established JPA must already meet the definition of employer on their own; and
- 3) The JPA must report and remit contributions through a single county office of education, with that county superintendent taking responsibility for the JPA.

Action:

No employer action is needed for these provisions.

This Employer Directive does not take precedence over the law. To view Chapter 755, Statute of 2014 (SB 1220–PE&R) 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.