

March 14, 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 2014-01
Changes to the Teachers' Retirement Law made by Chapter 559, Statutes of 2013,
(Assembly Bill 1381), the Public Employees' Pension Reform Act Conforming
Bill.

PURPOSE

This directive notifies employers of changes to Education Code sections contained in Chapter 559, Statutes of 2013 (AB 1381), that become effective January 1, 2013, or January 1, 2014, as specified.

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 (CB) Benefit programs.

DISCUSSION & ACTION

AB 1381 makes various technical and substantive changes to the Teachers' Retirement Law to conform with the provisions of Chapter 296, Statutes of 2012 (AB 340), known as the Public Employees' Pension Reform Act of 2013 (PEPRA).

This employer directive does not take precedence over the law. To view AB 1381 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.

PROVISIONS AFFECTING DB AND DBS PROGRAMS

Defined Benefit (DB) Membership

Chapter 296, Statutes of 2012 (AB 340), or PEPRA, added Government Code section 7522.02 to distinguish who is considered an existing member subject to the retirement plan that was available on or before December 31, 2012, from a new member who is subject to the provisions set forth in PEPRA.

AB 1381 adds Education Code section 22146.2, operative January 1, 2013, to define a member subject to PEPRA, otherwise known as a CalSTRS 2% at 62 member, as anyone first hired to a position to perform activities subject to coverage by the DB Program on or after January 1, 2013.

Someone *first hired* to perform creditable service prior to 2013 is not subject to PEPRA and is known as a CalSTRS 2% at 60 member.

The new section 22146.2 also defines a DB member not subject to PEPRA as any person who was a member of a concurrent retirement system, pursuant to Education Code section 22115.2, on or before December 31, 2012, and performed service in that system within six months of becoming a CalSTRS member.

A CalSTRS 2% at 60 member also includes someone hired to perform creditable service on or after January 1, 2013, who was *first hired* to perform creditable service prior to 2013 but who refunded, reinstated, retired, started as a nonmember or elected to have their creditable service covered by another retirement plan, including Social Security.

Action:

Employees *first hired* to perform service that is creditable to the DB Program on or after January 1, 2013, who were members of a concurrent retirement system, pursuant to Education Code section 22115.2, on or before December 31, 2012, and who performed service in that system within six months of becoming a CalSTRS member, should be established as CalSTRS 2% at 60 members via the Secure Employer Website (SEW). These members, however, will be defaulted into CalSTRS 2% at 62 unless action is taken.

In order have any membership changed from CalSTRS 2% at 62 to CalSTRS 2% at 60, submit documentation to your CalSTRS Member Account Services Representative to substantiate the employee was hired to perform creditable service prior to January 1, 2013, or that the employee was a member of a concurrent retirement system on or before December 31, 2012, and performed service in that system within six months of becoming a CalSTRS member.

Creditable Compensation for CalSTRS 2% at 60 Members

AB 1381 amends Education Code section 22119.2 to further clarify the definition of creditable compensation for CalSTRS 2% at 60 members, effective January 1, 2014. (Changes are in *italics* below.)

For CalSTRS 2% at 60 members “Creditable compensation” means remuneration *paid* in cash by an employer to all persons in the same class of employees for performing creditable service *in that position*; and includes:

- 1) Salary *or wages* paid in accordance with a *publicly available written contractual agreement, including, but not limited to*, a salary schedule or employment agreement;
- 2) Remuneration paid in addition to salary *or wages*, provided it is *paid* to all persons in the same class of employees in the same dollar amount or same percentage;
- 3) (No change) Remuneration paid for employer-approved leave;
- 4) (No change) Member contributions picked up by an employer, pursuant to Education Code section 22903 or 22904;
- 5) Amounts deducted from the member’s *remuneration*, including, but not limited to, for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan or insurance program; and contributions to a plan that meets the requirements of Section 125, *401(a)*, 401(k), 403(b), *457(b)*, or *457(f)* of Title 26 of the United States Code; and
- 6) (No change) Any other payments determined to be “creditable compensation.”

“Creditable compensation” for CalSTRS 2% at 60 members does not include:

- 1) Remuneration not *paid* in cash to all persons in the same class;
- 2) (No change) Remuneration paid for service that is not creditable;
- 3) Remuneration that is paid in addition to salary *or wages* if it is not *paid* to all persons in the same class in the same dollar amount or same percentage;
- 4) Remuneration paid *in exchange for the relinquishment of* unused accumulated leave;
- 5) *Payments* made by an employer, *including, but not limited to*, for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan or insurance program; and contributions to a plan that meets the requirements of Section 125, *401(a)*, 401(k), 403(b), *457(b)* or *457(f)* of Title 26 of the United States Code;
- 6) (No change) Fringe benefits;
- 7) *Expenses* paid or reimbursed by an employer;
- 8) Severance pay, *including lump-sum and installment payments*, or money paid in excess of salary *or wages to a member as compensatory damages or as a compromise settlement*.

Example: A teacher was wrongfully terminated and, during the process of litigation, was awarded compensatory damages in the form of back wages in the exact amount the teacher would have been paid had he or she never been terminated, plus additional compensation for attorney’s fees. In this case, only the back wages in the exact amount the teacher would have been paid had he or she never been terminated are considered creditable to CalSTRS. The additional compensation awarded for attorney’s fees is not creditable compensation.

- 9) (No change) Any other payments determined to not be “creditable compensation.”

Additionally, section 22119.2 is amended to state that remuneration shall be considered *paid if distributed* to any person *in the same class of employees* who meets the qualifications for receiving the remuneration as specified in a *publicly available written contractual agreement*.

Example: Compensation for obtaining a master's degree is considered paid if distributed to any person in the same class of employees who meets the qualifications. Pursuant to a publicly available written contractual agreement, all full-time teachers are eligible to receive a stipend for having a master's degree; however, only those teachers who meet the qualifications of actually having a master's degree will be paid the stipend. This compensation is creditable even though not all teachers in the same class are paid the stipend.

Section 22119.2 is also amended to include the *consistent treatment of compensation for the position* as one of the sound principles supporting the integrity of the retirement fund. Previously, compensation was excluded from compensation earnable if it was "paid for the principal purpose of enhancing a member's benefits under the plan"; the amended language requires only that the compensation be paid to enhance a member's benefits. Therefore, compensation determined to have been paid to enhance a member's benefits is not creditable to the member's DB account, but it is creditable to the member's DBS account.

Action:

For CalSTRS 2% at 60 members, employers must only report compensation that meets the definition of creditable compensation under Education Code section 22119.2. Written contractual agreements may include individual employment contracts or agreements, traditional step and column salary or pay schedules, or other publicly available documentation that delineates pay for a class of employees. These items must be publicly available, and employers must provide CalSTRS with copies upon request.

Creditable Compensation for CalSTRS 2% at 62 Members

PEPRA added section 22119.3 to the Education Code and section 7522.34 to the Government Code, which defined and limited the types of compensation creditable to the DB and DBS programs for CalSTRS 2% at 62 members.

Effective January 1, 2013, AB 1381 amends Education Code section 22119.3 to reflect the definition of "pensionable compensation" set forth in PEPRA.

For CalSTRS 2% at 62 members, "creditable compensation" means remuneration paid in cash by an employer to all persons in the same class of employees each pay period in which service is performed for that position in accordance with a publicly available written contractual agreement; and includes:

- 1) Remuneration paid for employer-approved leave;
- 2) Member contributions picked up by an employer, pursuant to Education Code section 22903 or 22904;

- 3) Amounts deducted from the member's remuneration, including, but not limited to, for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan or insurance program; and contributions to a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b) or 457(f) of Title 26 of the United States Code; and
- 4) Remuneration paid for creditable service in excess of one year in a school year.

“Creditable compensation” for CalSTRS 2% at 62 members does not include:

- 1) Remuneration not paid in cash to all persons in the same class;
- 2) Remuneration paid for service that is not creditable;
- 3) Remuneration not paid each pay period in which creditable service is performed for that position (this is different for CalSTRS 2% at 60 members);
- 4) Remuneration paid in exchange for the relinquishment of unused accumulated leave;
- 5) Payments made by an employer, including, but not limited to, for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan or insurance program; and contributions to a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b) or 457(f) of Title 26 of the United States Code;
- 6) Fringe benefits;
- 7) Expenses paid or reimbursed by an employer;
- 8) Severance pay, including lump-sum and installment payments, or money paid in excess of salary or wages to a member as compensatory damages or as a compromise settlement;
- 9) Payments determined to have been made to enhance a member's benefit (this is different for CalSTRS 2% at 60 members);
- 10) Cash in-lieu of receiving a benefit;
- 11) One-time or ad hoc payments (this is different for CalSTRS 2% at 60 members);
- 12) An employer-provided allowance, reimbursement or payment, including, but not limited to, one made for housing, vehicle or uniform;
- 13) A bonus (this is different for CalSTRS 2% at 60 members); and
- 14) Any other payments determined to not be “creditable compensation.”

Additionally, remuneration shall be considered paid if distributed to any person in the same class of employees who meets the qualifications for receiving the remuneration as specified in a publicly available written contractual agreement.

Also, the sound principles supporting the integrity of the retirement fund for CalSTRS 2% at 60 members are applicable to CalSTRS 2% at 62 members. However, compensation that is paid to enhance a member's benefits is not creditable to either the DB or the DBS program for CalSTRS 2% at 62 members. This presumption may be rebutted by the member or the employer and may be reversed if sufficient evidence to the contrary is received by CalSTRS.

Action:

Employers must only report compensation paid to CalSTRS 2% at 62 members that meets the definition of creditable compensation under Education Code section 22119.3. Written contractual agreements may include individual employment contracts or agreements, traditional step and column salary or pay schedules, or other publicly available documentation that delineates pay for a class of employees. These items must be publicly available, and employers must provide CalSTRS with copies upon request.

For members under CalSTRS 2% at 62, employers cannot report special compensation creditable to the DBS Program only (account code 71) to CalSTRS. Edits have been implemented in SEW to prevent employers from submitting special compensation to the DBS Program only for CalSTRS 2% at 62.

Certain payments, such as master's stipends, are considered creditable compensation as long as they are included in the full-time equivalent or specifically identified on a salary schedule or other publically available document. To report these types of compensation, use the existing contribution code 6 and assignment code 72. The special compensation must be paid each pay period in which service was performed.

Cap on Creditable Compensation for CalSTRS 2% at 62 Members

PEPRA added section 7522.10 to the Government Code, which established a limit on compensation used to calculate benefits for CalSTRS 2% at 62 members, including compensation credited to the DBS Program. It also established that for CalSTRS 2% at 62 members, the cap on compensation is equal to 120 percent of the 2013 Social Security wage base and will be adjusted annually based on changes to the Consumer Price Index for All Urban Consumers: U.S. City Average.

AB 1381 amends Education Code section 22119.3 to clarify how the compensation cap for CalSTRS 2% at 62 members shall be adjusted annually and that it is effective on a fiscal year basis.

The compensation cap for CalSTRS 2% at 62 members for July 1, 2013, to June 30, 2014, is \$136,440. The compensation creditable to DB, DBS and CB are combined and subject to a single cap.

CalSTRS will publish a separate employer information circular regarding the compensation cap that will be in effect on July 1, 2014, for CalSTRS 2% at 62 members.

Action:

For CalSTRS 2% at 62 members who meet the compensation cap:

- Continue to report the full compensation earnable and actual compensation earned;
- Do not submit contributions on compensation over the compensation cap.

Edits will be implemented in SEW to prevent employers from submitting contributions to the DB Program for CalSTRS 2% at 62 members whose earnings exceed the cap. CalSTRS will further discuss the new SEW edits and other compensation cap information in an upcoming employer information circular.

For members under CalSTRS 2% at 62 who earn more than one year of service credit in a school year, contributions for that compensation will continue to be credited to the DBS Program provided that the compensation does not exceed the compensation cap.

Bargained Employer-Paid Member Contributions

AB 1381 amends Education Code section 22909 to prohibit employer-paid member contributions for CalSTRS 2% at 60 members in collective bargaining agreements that are entered into or changed on or after January 1, 2014.

Consistent with PEPR, groups or classes that contain CalSTRS 2% at 62 members are prohibited from such agreements entered into or changed on or after January 1, 2013, because CalSTRS 2% at 62 members are required to contribute at least 50 percent of the normal cost, pursuant to subdivision (b) of Education Code section 22901.

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 employee contributions, as outlined in the collective bargaining agreement, for CalSTRS 2% at 60 members whose bargaining agreements are still in effect as of January 1, 2014. However, employers cannot negotiate new bargaining agreements, or extend, renew or amend current bargaining agreements, to provide employer-paid member contributions for CalSTRS 2% at 60 members.

Bargained One-Year Final Compensation

AB 1381 amends Education Code section 22135 to prohibit one-year final compensation for CalSTRS 2% at 60 members in collective bargaining agreements that are entered into or changed on or after January 1, 2014.

Consistent with PEPR, CalSTRS 2% at 62 members are not eligible for one-year final compensation pursuant to Government Code section 7522.32.

Action:

Employers can continue to provide one-year final compensation for CalSTRS 2% at 60 members whose collective bargaining agreements are still in effect as of January 1, 2014. However, beginning January 1, 2014, employers cannot enter into new bargaining agreements, or extend, renew or amend current bargaining agreements, to provide one-year final compensation for CalSTRS 2% at 60 members.

Postretirement Employment Rate of Pay

AB 1381 amends Education Code section 24214 to clarify that the rate of pay for compensation for retired member activities must be annualized to ensure that it is equivalent to the annualized rate of pay of active employees performing comparable duties, effective January 1, 2014.

Action:

Report postretirement earnings using the annualized full-time compensation earnable for employees performing duties comparable to the retired member activities.

Postretirement Employment Earnings Limit

AB 1381 also amends Education Code sections 24214 and 24214.5 to require that the postretirement compensation limits apply to employer contributions to tax-sheltered annuities, tax-deferred retirement plans, insurance programs and other tax-favored products for written agreements entered into, extended, renewed or amended on or after January 1, 2014.

CalSTRS will publish a separate employer directive regarding postretirement work, exemptions and earnings limits.

Other Provisions Affecting DB Members effective January 1, 2013:

Early Retirement (“30 and out”)

AB 1381 amends Education Code section 24203 to exclude CalSTRS 2% at 62 members from being eligible to retire at age 50 with 30 years of service credit.

Reduced Benefit Election (formerly the Limited-Term Reduction Program)

AB 1381 amends Education Code section 24205 to exclude CalSTRS 2% at 62 members from being eligible to elect to retire between the ages of 55 and 60, and receive a reduced benefit for a limited time.

Replacement Benefits Program

AB 1381 adds Education Code section 24252, which prohibits CalSTRS 2% at 62 members from receiving any benefits above the federal limits established each year by Internal Revenue Code Section 415, known as the Replacement Benefits Program.

Action:

No employer action is needed for these provisions.

PROVISIONS AFFECTING CB BENEFIT PROGRAM

Cash Balance (CB) Participants

AB 1381 adds Education Code section 26132.5, operative January 1, 2013, defining a CB participant subject to PEPRA as a person first hired to a position to perform activities subject to coverage by the CB Benefit Program on or after January 1, 2013.

Section 26132.5 also defines a CB participant not subject to PEPRA as a person who was a member of a concurrent retirement system, pursuant to Education Code section 22115.2, on or

before December 31, 2012, and who performed service in that system within six months of becoming a CB participant.

Action:

If you hired a person to perform service that is creditable to the CB Benefit Program on or before December 31, 2012, or if you hire a person to perform service that is creditable to the CB Benefit Program on or after January 1, 2013, who was a member of a concurrent retirement system, pursuant to Education Code section 22115.2, on or before December 31, 2012, and who performed service in that system within six months of becoming a CalSTRS participant, establish his or her account in SEW. These participants will be defaulted as CB participants subject to PEPRA. In order to have the participant classified as a CB participant not subject to PEPRA, submit documentation to your CalSTRS Member Account Services Representative to substantiate the employee was hired on or before December 31, 2012, to perform service that is creditable to the CB Benefit Program, or is a member of a concurrent retirement system meeting the requirements described above, and is therefore a CB participant not subject to PEPRA.

Definition of “Salary” for CB Participants Not Subject to PEPRA

Effective January 1, 2014, AB 1381 amends Education Code section 26139 to further clarify what meets and does not meet the definition of “salary” for CB participants not subject to PEPRA. (Changes are in *italics* below.)

For CB participants not subject to PEPRA, “salary” means remuneration *paid* in cash by an employer to a participant for creditable service *performed in that position*; and includes:

- 1) Money paid in accordance with a *publicly available written contractual agreement, including, but not limited to*, a salary schedule;
- 2) Money paid for creditable service performed *in accordance with a publicly available written contractual agreement, including, but not limited to, a collective bargaining agreement or employment agreement*, for participants not paid according to a salary schedule.
- 3) (No change) Money paid for employer-approved leave;
- 4) Employee contributions picked up by an employer, *pursuant to Section 26502*;
- 5) Amounts deducted by an employer from the participant’s salary, *including, but not limited to*, for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan or insurance program; and for participation in a plan that meets the requirements of Section 125, *401(a)*, 401(k), 403(b), *457(b)*, or *457(f)* of Title 26 of the United States Code;
- 6) (No change) Money paid in addition to salary, provided it is paid to all persons in the same class of employees in the same dollar amount or same percentage; and
- 7) (No change) Any other payments determined to be “salary.”

“Salary” for CB participants not subject to PEPRA does not include:

- 1) (No change) Money paid for service that is not creditable;

- 2) (No change) Money paid in addition to salary if it is not paid to all employees in the same class of employees in the same dollar amount or same percentage;
- 3) (No change) Fringe benefits;
- 4) *Expenses* paid or reimbursed by an employer;
- 5) Money paid *in exchange for the relinquishment of* unused accumulated leave;
- 6) *Severance pay, including lump-sum and installment payments*, or money paid in excess of salary *or wages to a participant as compensatory damages* or as a compromise settlement;
- 7) *Payments, including, but not limited to, for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan or other insurance program; and for participation in a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title 26 of the United States Code that are purchased by an employer for a participant;*
- 8) Payments determined to have been made *to enhance a participant's benefits*; and
- 9) (No change) Any other payments determined to not to be "salary."

Additionally, remuneration shall be considered paid if distributed to any person in the same class of employees who meets the qualifications for receiving the remuneration as specified in a publicly available written contractual agreement.

Action:

For CB participants not subject to PEPRA, employers must only report compensation that meets the definition of salary under Education Code section 26139. Written contractual agreements may include individual employment contracts or agreements, traditional step and column salary or pay schedules, or other publicly available documentation that delineates pay for a class of employees. These items must be publicly available, and employers must provide CalSTRS with copies upon request.

Definition of "Salary" for CB Participants Subject to PEPRA

AB 1381 adds Education Code section 26139.5, which defines "salary" for participants subject to PEPRA, to reflect the definition of "pensionable compensation" set forth in PEPRA, effective January 1, 2013. This section defines and limits the types of compensation that are creditable to the CB Benefit Program for CB participants subject to PEPRA.

"Salary" for CB participants subject to PEPRA means remuneration paid in cash by an employer each pay period in which creditable service is performed in that position in accordance with a publicly available written contractual agreement, including, but not limited to, a salary schedule or employment agreement; and includes:

- 1) Money paid for employer-approved leave;
- 2) Employee contributions picked up by an employer, pursuant to Section 26502;
- 3) Amounts deducted by an employer from the participant's salary, including, but not limited to, for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan or other insurance program; and for

participation in a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b) or 457(f) of Title 26 of the United States Code; and

- 4) Any other payments determined to be “salary.”

“Salary” for CB participants subject to PEPRA does not include:

- 1) Money paid for service that is not creditable;
- 2) Money not paid each pay period in which creditable service is performed for that position (this differs for a participant not subject to PEPRA);
- 3) Fringe benefits;
- 4) Expenses paid or reimbursed by an employer;
- 5) Money paid in exchange for the relinquishment of unused accumulated leave;
- 6) Severance pay, including lump-sum and installment payments, or money paid in excess of salary to a participant as compensatory damages or as a compromise settlement;
- 7) Payments, including, but not limited to, for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement program or other insurance program; and for participation in a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title 26 of the United States Code that are purchased by an employer for a participant;
- 8) Payments determined to have been made to enhance a participant’s benefits;
- 9) Cash in-lieu of receiving a benefit;
- 10) One-time or ad hoc payments (this differs for a participant not subject to PEPRA);
- 11) An employer-provided allowance, reimbursement or payment, including, but not limited to, one made for housing, vehicle or uniform;
- 12) A bonus (this differs for a participant not subject to PEPRA); and
- 13) Any other payment determined not to be “salary.”

Additionally, remuneration shall be considered paid if distributed to any person in the same class of employees who meets the qualifications for receiving the remuneration as specified in a publicly available written contractual agreement

AB 1381 also amends Education Code section 26503.5 to require other compensation paid to trustees who are subject to PEPRA to be subject to the same requirements as salary defined in Education Code section 26139.5.

Action:

For CB participants subject to PEPRA, employers must only report compensation that meets the definition of salary under Education Code section 26139.5. Written contractual agreements may include individual employment contracts or agreements, traditional step and column salary or pay schedules, or other publicly available documentation that delineates pay for a class of employees. These items must be publicly available, and employers must provide CalSTRS with copies upon request.

Because Education Code section 26139.5 is retroactively effective as of January 1, 2013, please review the contribution reporting for CB participants subject to PEPRA to ensure the payroll data reported to CalSTRS meets the definition of salary under Education Code section 26139.5. Correct any payroll reporting as necessary.

Salary Cap for CB Participants Subject to PEPRA

In addition to defining “salary,” section 26139.5, as added by AB 1381, establishes a fiscal year salary cap for CB participants subject to PEPRA, effective January 1, 2013. The cap on salary is equal to 120 percent of the 2013 Social Security wage base and will be adjusted annually based on changes to the Consumer Price Index for All Urban Consumers: U.S. City Average.

The salary cap for CB participants subject to PEPRA for July 1, 2013, to June 30, 2014, is \$136,440. The compensation creditable to DB, DBS and CB are combined and subject to a single cap.

CalSTRS will publish a separate employer information circular regarding the salary cap that will be in effect on July 1, 2014, for CB participants subject to PEPRA.

Action:

For CB participants subject to PEPRA who meet the compensation cap:

- Continue to report actual compensation earned;
- Do not submit contributions on compensation over the salary cap.

Edits will be implemented in SEW to prevent employers from submitting contributions to the CB Benefit Program for CB participants subject to PEPRA whose earnings exceed the cap. CalSTRS will further discuss the new SEW edits and other compensation cap information in an upcoming employer information circular.

Cash Balance Bargained Contribution Rates

AB 1381 amends Education Code section 26504 to require that when CB contribution rates are collectively bargained, participant contribution rates shall not be less than employer contribution rates, starting with contracts entered into or changed on or after January 1, 2014.

Action:

Current CB contribution rates can remain in effect, as outlined in the collective bargaining agreement, for CB participants whose bargaining agreements are still in effect as of January 1, 2014. However, employers cannot negotiate new collective bargaining agreements, or extend, renew or amend current bargaining agreements, in which the employee contribution rate is less than the employer contribution rate.

Cash Balance Postretirement Employment Rate of Pay

AB 1381 amends Education Code section 26812 to clarify that the rate of pay for compensation for retired participant activities must be annualized to ensure that it is equivalent to the annualized rate of pay of active employees performing comparable duties.

Action:

Report postretirement earnings using the annualized full-time compensation earnable for employees performing duties comparable to the retired participant activities.

Cash Balance Postretirement Employment Earnings Limits

The amendments made to Education Code section 26812 by AB 1381 also extend the zero-dollar earnings limit on compensation paid in cash during the first 180 days after a participant retires if the participant:

- Is receiving a CB annuity;
- Is below normal retirement age or retired on or after January 1, 2014; and
- Earns compensation paid in cash for performing retired participant activities, excluding substantiated reimbursements paid by an employer for expenses incurred by the participant.

The amendments to section 26812 also require that the postretirement compensation limits apply to employer contributions to tax-sheltered annuities, tax-deferred retirement plans, insurance programs and other tax-favored products for written agreements entered into, extended, renewed or amended on or after January 1, 2014.

CalSTRS will publish a separate employer directive regarding postretirement work, exemptions and earnings limits.

Other Provisions Affecting CB Participants effective January 1, 2013:

Definition of Retired Participant Activities

AB 1381 adds Education Code section 26135.7 to define “retired participant activities” as one or more activities identified in section 22119.5 or section 26113 performed by a retired CB participant as an independent contractor, as an employee of an employer as defined in section 22131, or as an employee of a third party. However, if the employee is performing activities as an employee of a third party and the assignment is 24 months or less, the third-party employer does not participate in a California public pension system, and the activities performed by the individual are not normally performed by employees of an employer, these activities shall not be considered “retired participant activities.”

AB 1381 also amends Education Code sections 26812 and 26813 to use the new term “retired participant activities.”

Normal Retirement Age for CB Participants Subject to PEPRA

AB 1381 amends Education Code section 26800 to set the normal retirement age as 62 for CB participants subject to PEPRA.

Action:

No employer action is needed for these provisions affecting CB participants.