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California State Teachers'
Retirement System
Executive Office
PO Box 15275
Sacramento, CA 95851-0275
www.CalSTRS.com

January 31, 2017

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 2017-02
Supersedes Employer Directive AD97-05
Compliance with the Federal Uniformed Services Employment and Reemployment Rights Act of 1994

PURPOSE:

This directive notifies employers of employee rights and employer requirements under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 and changes recently enacted by Senate Bill 1352 (Chapter 218, Statutes of 2016) that became effective January 1, 2017.

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, Defined Benefit Supplement and Cash Balance Benefit programs.

DISCUSSION:

In compliance with the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Chapter 14.5 of Part 13 and Chapter 16 of Part 14 of Division 1 of the Education Code specify the rights of a member of the Defined Benefit Program or a participant of the Cash Balance Benefit Program when the member or participant returns to employment after an eligible period of uniformed service or dies while performing eligible uniformed service. Senate Bill 1352 (Chapter 218, Statutes of 2016) made conforming changes to reflect the requirements of federal law and to specifically include the Defined Benefit Supplement Program.

Eligible Uniformed Service

Per Education Code sections 22850 and 28000, uniformed services includes:

- The Armed Forces of the United States of America
- The Army National Guard
- The Air National Guard
- Full-time National Guard
- The commissioned corps of the U.S. Public Health Service
- Any other category of persons designated by the president in time of war or emergency

SB 1352 expands the definition of service in the uniformed service to align with federal law. Service may be on a voluntary or involuntary basis and includes:

- Active duty
- Active or inactive duty training
- Funeral honors duty
- The period the employee is absent from employment for the purposes of determining fitness to perform any such duty
- The period of time following the actual uniformed service through the last day the employee is eligible to report back to work or to apply for reemployment as specified under Section 1002.259 of Title 20 of the Code of Federal Regulations

Reemployment or Death

An employee's period of uniformed service can be considered service toward plan vesting and membership eligibility provided the following:

- The employee returns to employment with the employer for which he or she was employed immediately prior to the period of uniformed service or the employee dies while performing eligible uniformed service.
- The employee's discharge was under honorable conditions.

An employee who is absent from a CalSTRS-covered position to perform service in the uniformed services for more than five years will receive up to five years of credit toward plan vesting unless the period of uniformed service exceeded five years for one of the reasons specified in Education Code sections 22854 or 28004.

Education Code sections 22852 and 28002 require an employer to notify CalSTRS of the reemployment of an employee following an eligible period of uniformed service on a form prescribed by the system within 30 days of the employee's reemployment. CalSTRS provides the *Uniformed Services Reemployment Notification* form (ES 664) for this purpose.

In cases in which the member dies while performing eligible uniformed service, CalSTRS will determine eligibility for one-time death benefits, family allowances and survivor benefits as if the member had remained continuously employed in CalSTRS-covered service.

Defined Benefit Program and Defined Benefit Supplement Program

In addition to use toward plan vesting and membership eligibility, Education Code section 22851 allows CalSTRS to use a member's eligible period of uniformed service for the purpose of accruing benefits in the Defined Benefit and Defined Benefit Supplement programs. SB 1352 clarifies that the accrual of benefits includes service credit, compensation earnable, contributions, interest and additional earnings credits. The member is not entitled to any benefits in excess of that which the member would otherwise have been entitled if he or she remained continuously employed to perform creditable service.

In order for a member to accrue benefits for the eligible period of uniformed service, the member must pay the member contributions required by Education Code sections 22901 and 22901.7, if applicable, that otherwise would have been due had the member remained employed and performed creditable service. Payment can be made by a lump-sum payment, rollover from a qualified plan or payroll deduction. Contributions must be paid in full prior to the member's retirement date. The member may defer payment of contributions for a period of up to three times the period of uniformed service, not to exceed five years from the date of reemployment. Upon notification of a member's reemployment from the employer, CalSTRS will notify the member of his or her right to make contributions and the amount due.

If a member chooses to pay the member contributions in order to accrue benefits for the eligible period of uniformed service, Education Code section 22852 requires employers remit contributions based on the amount they would have contributed per Education Code sections 22950, 22950.5 and 22951 had the member remained continuously employed and performed creditable service during the period of uniformed service. SB 1352 amends Education Code section 22852 to require employers also pay the full cost of any interest and additional earnings credits credited to the member's Defined Benefit Supplement account in association with the period of uniformed service. Employers are not required to cover the cost of interest credited to the Defined Benefit Program. The employer is obligated to remit the required employer contributions, including Defined Benefit Supplement interest and credits, within 60 working days of notification from CalSTRS of the amount due.

If the member does not complete payment of the member contributions within the period required by Education Code section 22851, the member is entitled to the benefits attributable to the contributions received, or the member may request a return of his or her payments. If the member requests a return of payments, the member will not accrue benefits for the period of uniformed service, and the employer contributions for the period of uniformed service will be adjusted pursuant to Education Code section 23008.

If a member chooses not to pay the member contributions for the eligible period of uniformed service, the period of uniformed service will solely be used for the purposes of plan vesting and

membership eligibility and not for the accrual of benefits. However, the member can still receive service credit for the period of uniformed service by completing a permissive service credit purchase pursuant to Chapter 14 of Part 13 of the Education Code. The employer is not liable for employer contributions if the member chooses not to pay the member contributions for the eligible period of uniformed service within the designated window period.

Cash Balance Benefit Program

Education Code section 28001 allows CalSTRS to use a participant's eligible period of uniformed service for the purposes of accruing benefits in the Cash Balance Benefit Program. The accrual of benefits includes contributions, interest and additional earnings credits. The participant is not entitled to any benefits in excess of that which the participant would otherwise have been entitled if he or she remained continuously employed to perform creditable service.

In order for a participant to accrue benefits for the eligible period of uniformed service, the participant must pay the employee contributions that otherwise would have been due had the participant remained employed and performed creditable service. The employee contributions are calculated pursuant to Education Code sections 26501 and 28003. After CalSTRS receives notification from an employer of an employee's reemployment, CalSTRS will contact the participant regarding his or her right to make contributions and receive benefits.

Education Code section 28001 requires an employer to pick up, pursuant to Education Code section 26502, employee contributions for an eligible period of uniformed service upon receipt of written consent from the employee specifying a schedule of repayments. Repayment is required to commence during the period beginning with the date of return to employment and may continue for a period up to three times the period of uniformed service, not to exceed five years.

If a participant chooses to pay the employee contributions in order to accrue benefits for the eligible period of uniformed service, Education Code section 28002 requires the employer remit employer contributions based on the employer contribution rate for the Cash Balance Benefit Program for other employees during the same period. CalSTRS will calculate the required employer contribution in accordance with Education Code section 28003. Amendments included in SB 1352 require the employer pay the full cost of any interest and additional earnings credits credited to the participant's account in association with the period of uniformed service. The employer must remit the required employer contributions, including additional interest and credits, within 60 working days of notification from CalSTRS of the amount due.

If a participant does not complete payment of the employee contributions within the period required by Education Code section 28001, CalSTRS will adjust the total amount of employer contributions in accordance with Education Code section 26302.

If a participant chooses not to pay the employee contributions for the eligible period of uniformed service, the period of uniformed service will solely be used for the purposes of plan vesting and membership eligibility and not for the accrual of benefits. The participant cannot

choose to make the required contributions once the repayment period ends. The employer is not liable for employer contributions if the participant chooses not to pay the employee contributions for the eligible period of uniformed service.

ACTION

If you reemploy a member or participant of the Defined Benefit or Cash Balance Benefit programs who is subject to Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), you must notify CalSTRS of the reemployment of the member or participant on the *Uniformed Services Reemployment Notification* form (ES 664) within 30 days of the employee's reemployment. The *Uniformed Services Reemployment Notification* form can be found under the Reference Items section on the Secure Employer Website. CalSTRS will no longer accept the *Defined Benefit Program Reemployment Notification* form (AR 664). *Defined Benefit Program Reemployment Notification* forms received after the date of this directive will be returned.

If the member or participant chooses to make member or employee contributions, the full amount of required employer contributions, including Defined Benefit Supplement or Cash Balance Benefit interest and additional earnings credits, must be remitted within 60 working days of notification from CalSTRS of the amount due.

If you have an employee who previously returned from service in the uniformed services, and you did not notify CalSTRS within 30 days of their reemployment, please contact us immediately so we can adjust the member's or participant's account accordingly.

Refer employees to the Uniformed Services Employment and Reemployment Rights Act fact sheet on CalSTRS.com or CalSTRS Contact Center at 800-228-5453 for more information about their rights under this federal law.

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

This Employer Directive does not take precedence over the law.