

CLIENT NEWS BRIEF

Governor Signs CalSTRS Sponsored Legislation Grandfathering CalSTRS Enrollees Into the System, Providing Option to Change Retirement Systems and Revising the Definition of Creditable Service

On January 1, 2016 Assembly Bill (AB) 963, a CalSTRS-sponsored bill addressing creditable service issues, became law. With the law now in final form, this Client News Brief updates our [Client News Brief No. 26, April 2015](#).

AB 963 accomplishes four goals:

- (1) The bill "grandfathers" in all service that did not meet the definition of creditable service in place at the time but was reported to CalSTRS anyway on or before December 31, 2015.
- (2) The bill allows members who are grandfathered in to elect to move to a different public retirement system and allows such members who were previously removed from CalSTRS to elect to move back.
- (3) The bill clarifies and amends the definition of creditable service for service performed on or after January 1, 2016.
- (4) The bill requires employers to provide CalSTRS with information regarding the certification and/or minimum qualifications of members the employer reports to CalSTRS.

Grandfathering In Employees & Retirees Erroneously Enrolled in CalSTRS

AB 963 provides a one-time remedy for employees and retirees whose employers erroneously reported non-creditable work to CalSTRS. Any employee or retiree who was performing non-creditable work on or before December 31, 2015 and whose employer enrolled then in CalSTRS are grandfathered into the system. Employees who change positions on or after January 1, 2016 will need to ensure compliance with the new definition of creditable service and election requirements for movement between CalSTRS and CalPERS.

Grandfathered Employees & Retirees: Option to Change Public Retirement Systems

Any employee or retiree who has been grandfathered into the system under AB 963 because they were erroneously reported to CalSTRS may choose to move to the CalPERS system. Additionally, any employee or retiree who was ejected from CalSTRS based on creditable service issues may re-enroll in CalSTRS. The deadline for electing the option to change public retirement systems is June 30, 2016.

School district employers likely have obligations regarding notice to employees and retirees potentially impacted by the option to change public retirement systems and regarding reporting duties for employees who elect to change systems. School districts should consult with legal counsel regarding compliance with these requirements and the costs associated with changes to enrollment under AB 963.

Amended Definition of Creditable Service

Retirement benefits under the Defined Benefit Plan administered by CalSTRS are calculated using a member's years of creditable service, age at retirement,

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and final compensation. However, compensation is reported to CalSTRS only if paid for work that constitutes "creditable service," as defined by applicable law. Generally, school district employees not performing "creditable service" should be enrolled in CalPERS.

Under AB 963, "creditable service" is still defined under a two-part test: (1) the employee must be required by law to hold a credential (or, in the community college setting, meet minimum qualifications for an educational administrator or faculty position); **and** (2) the employee must perform certain duties set forth by statute. Generally speaking, the prescribed duties are instructional or relate to student services. New activities that will count as creditable service include activities connected with the enforcement of laws relating to compulsory education, mentorship of teachers and principals, and the work of community college presidents and chancellors. Importantly, there is still ambiguity regarding proper enrollment of "mixed duty" positions (i.e., those positions that have a mix of creditable and non-creditable duties). These positions should be analyzed on a case by case basis.

Proving Creditable Service

The new statutes require employers to provide information to CalSTRS, upon request, substantiating that employees enrolled in CalSTRS meet the above described test. Accordingly, employers should become familiar with the new creditable service definition and proper enrollment procedures for CalSTRS, including election requirements for employees and new hires moving into new positions that potentially require enrollment in a different public retirement system. Additionally, job descriptions and job vacancy announcements may need to be revised in light of the new creditable service definition.

Lozano Smith attorneys are available to provide guidance on creditable service, creditable compensation and other pre- and post- retirement employment issues for CalSTRS and CalPERS members, including the changes proposed by AB 963.

For a copy of AB 963 in final form, [click here](#).

If you have any questions about CalSTRS or how retirement law governs public schools and their employees, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).