

CLIENT NEWS BRIEF

Court of Appeal Confirms that CalPERS Members Must Have Base Salary Listed on Publicly Available Pay Schedule

A California appeals court has affirmed earlier rulings that retirement benefits under the California Public Employees' Retirement System (CalPERS) may only be based on salaries listed on publicly available pay schedules. In June, the California Court of Appeal, Third District upheld a CalPERS decision that significantly reduced the retirement benefits of the City of Vallejo's former city manager. ([Tanner v. California Public Employees' Retirement System](#) (June 28, 2016, No. C078458) ___ Cal.App.4th ___ <<http://www.courts.ca.gov/opinions/documents/C078458.PDF>>.)

Joseph Tanner's original contract with the City of Vallejo provided an annual base salary of \$216,000 plus other types of compensation, including an automobile allowance, employer contributions to a deferred compensation plan, management leave paid as salary and payment of Tanner's required CalPERS contribution. The additional items of pay listed separately in his contract were to be converted to base salary. The city subsequently amended its agreement with Tanner to include the special compensation items as base salary, resulting in a base salary of \$305,844. Tanner worked approximately two years under the revised contract and then retired. Shortly after his retirement, CalPERS notified Tanner that it would compute his retirement benefit solely on the original base salary of \$216,000.

CalPERS provides retirees with a defined benefit plan that bases a member's retirement benefits on a formula that takes into account a member's years of service credit, age at retirement and final compensation. In the CalPERS system, "compensation earnable," or the portion of an employee's compensation reported to CalPERS, includes only "payrate" and "special compensation." Generally payrate, irrespective of whether an employee is a member of a group or class of employees, means the employee's normal monthly rate of pay or base pay that must be paid in cash pursuant to a publicly available pay schedule.

Tanner argued that his amended employment contract and a related "cost analysis" document prepared by city staff that described the calculation of Tanner's increased base pay functioned as a pay schedule. The court of appeal rejected this argument, explaining that the amended employment contract, or documents relating to that amended contract, do not equal or substitute for an adopted "pay schedule" under Government Code section 20636 and therefore cannot be used to establish "payrate" under applicable retirement law. The court concluded that these documents only applied to Tanner personally and did not apply to any other person or position, noting that the city "made an exceptional arrangement with Mr. [Tanner] to provide him significant compensation ... well above the salary paid to the last Vallejo city manager." Furthermore, the City Council failed to adopt these documents as "pay schedules." The court concluded that it would be difficult for a member of the public to locate the new base salary figure in either document.

The court noted that the purpose of having a publicly available pay schedule is

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to provide transparency by permitting the public to identify the “payrate” that will or may be used to determine the amount of an employee’s retirement benefit. This requirement was part of a reform effort in the early 1990s to combat pension spiking (i.e., intentional inflation of a public employee’s final compensation upon which their retirement benefits are based). Finally, the court noted that a broad interpretation of what constitutes a pay schedule would permit an agency to provide additional compensation to a particular high-ranking official any time a document listing his or her pay became publicly available, which is contrary to the law’s intent of requiring that all CalPERS members be paid off a publicly available pay schedule.

This decision impacts all school administrators and local government employees who do not have their base salary or pay rate listed on a publicly available pay schedule. An employment contract alone will not be sufficient. Employers should be aware that in 2011, CalPERS adopted regulations at title 2, California Code of Regulations, section 570.5, setting forth the requirements for a document to constitute a pay schedule. Employers should ensure that the adopted pay schedules applicable to all CalPERS members comply with these regulatory requirements.

If you have questions about this decision or any other issues impacting retirement benefits, please contact the authors of this Client News Brief or an attorney at 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](#).

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