



CLIENT ADVISORY

CalPERS Takes a Stand on Members' Vested Pension Rights

On Thursday, July 14, 2011, CalPERS released an official position paper on the status of pension benefits earned by public servants under the system. The paper, *Vested Rights of CalPERS Members: Protecting the pension promises made to public employees*, explains CalPERS benefits are protected by the state and federal constitutions.

The position paper clarifies the relationship between CalPERS, public employers and employees. It notes "public employers, not CalPERS, decide how much of an employee's compensation will be paid currently and how much will be deferred... Simply put, employers grant the benefits owed to CalPERS' members. CalPERS in turn serves as the trustee of the trust created to fund these benefits." Since the benefits are granted by the employer, the employer has certain obligations under the state and federal constitutions.

Both constitutions contain a "Contract Clause." California's clause reads: "A ... law impairing the obligation of contracts may not be passed." Article I, section 10 of the federal constitution likewise prohibits states from impairing the obligation of contracts. Courts have applied these principles to public pensions for decades. The position paper breaks down the case law into seven broad rules that apply to public-sector pension benefits.

The position paper also explains CalPERS' duty to protect its members' pension rights. It explains the CalPERS Board has a fiduciary duty to CalPERS members and may have to file legal challenges to protect their rights.

CalPERS' Seven Rules About Pension Rights

Rule 1: Employees Are Entitled to Benefits In Place During Their Employment.

Rule 2: Employees Are Entitled Only to Amounts Reasonably Expected from the Contract.

Rule 3: Only Lawful Contracts with Mutual Consideration Are Protected by the Contract Clause.

Rule 4: Future Employees Have No Vested Rights to the Current Statutory Scheme.

Rule 5: Retired and Inactive Members Have Vested Rights to the Benefits Promised to Them When They Worked.

Rule 6: Active Employees' Vested Rights May Be Unilaterally Modified Only Under Extremely Limited Circumstances.

Rule 7: The State's Emergency Powers Are Extremely Limited and Cannot Be Used to Reduce the Benefits that Have Been Promised.

Learn more about this and other legal developments affecting public safety employees by visiting the firm's California Public Safety Labor Blog at mastagnilaw.blogspot.com.

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