



PROFESSIONAL ENGINEERS



IN CALIFORNIA GOVERNMENT

## RETIREMENT AND DEFERRED COMPENSATION COMMITTEE

May 17, 2018

TO: PECG Board of Directors and Section Presidents

FROM: Tim Sharp, Akbar “Nick” Afshinnik, Ruben Reza, John “Jack” Roberts,  
Brian Young

SUBJECT: June 2018 Quarterly Report.

To view past Committee Reports and information on the CalPERS long term care lawsuit and the “California Rule” on public pensions, please go to the PECG website ([www.pecg.org](http://www.pecg.org)), and click Pensions, under the Major Issues drop down menu.

### **April 2018 litigation update from the law firm serving the plaintiffs:**

**Towers Watson Settlement:** The partial settlement with the Towers Watson defendants was given final approval at the hearing on January 26, 2018. The appeal period has now expired and Towers Watson has until June 8, 2018, to deposit the settlement proceeds. We anticipate individual settlement payments will be mailed to class members shortly thereafter. Importantly, please keep in mind that this partial settlement is *only* with the Towers Watson defendants and it will in no way impact any claims asserted against CalPERS. Indeed, as discussed further below, Class Counsel are continuing to aggressively pursue the Class claims against CalPERS.

**Discovery:** The parties have now completed the discovery phase of the case. CalPERS deposed the named plaintiffs (for a second time) and Plaintiffs recently obtained substantial policyholder data from CalPERS’ third party administrator, the Long Term Care Group (“LTCG”). We also deposed a witness from LTCG about the data that was produced. This data is being used by our experts to calculate Class damages. Pursuant to the schedule established by the Court, Plaintiffs filed a detailed trial plan on December 20, 2017. This document describes how Class Counsel intend to try the Class claims against CalPERS.

**CalPERS’ Motion to Decertify:** The Court’s schedule also permitted CalPERS to file a motion to decertify the Class. CalPERS’ motion for class decertification was filed February 5, 2018 and Plaintiffs’ opposition was filed March 1, 2018. As set forth in our opposition papers, CalPERS’ motion has presented no new evidence or law supporting decertification, and we see no basis for the Court to reverse its earlier and well-reasoned decision to certify the class. The motion to decertify was originally set for hearing on April 19, 2018, but the Court continued the hearing date. The current hearing date is

May 10, 2018 at 10:00 a.m. in Courtroom 11 at the Los Angeles Superior Court located at 312 N. Spring St., Los Angeles, California

**Trial Date:** The Court will also hold a Status Conference on May 10th. One of the main issues to be addressed is the trial date. Although the trial is now scheduled to commence on November 19, 2018, we anticipate it will be moved to early 2019. We will update the website once the new trial date is scheduled.

### **Court of Appeal ruling impacts the “California Rule”**

On August 17, 2016 the First District Court of Appeal released a published opinion in *Marin Association of Public Employees v. Marin County Employees’ Assn.* The lawsuit brought by Marin public employees challenged the application of the Governor’s 2013 Public Employees’ Pension Reform Act of 2013 (PEPRA).

Following the passage of PEPRA, Marin County decided to exclude standby pay, callback pay, cash payments for waiving health insurance and other items from the calculation of retirement benefits for employees effective January 1, 2013. In other words – for employees retiring December 31, 2012 – there would be no changes. For employees retiring after January 1, 2013, they still could have their retirement calculations based on these payments in 2012 and before, but only if they were part of their final compensation (highest three years for example) for retirement calculations.

Employees sued saying that inclusion of these items into pay for retirement purposes was a vested pension right and the new practice of excluding them impaired employees’ vested pension rights. The appellate court ruled that while employees have a vested right to a pension, the pension can change – even for existing employees. This directly challenges the “California Rule” which essentially says you can’t change the terms of the pension for an existing employee for future work without an offset of a comparable new advantage.

In this case the court held that employees only have a right to a “substantial or reasonable” pension and reasonable modifications can encompass reductions in promised benefits. Applying that standard, the court ruled that eliminating the pay at issue here from retirement calculations was a “reasonable” modification to promised benefits, presumably in part because of the financial condition of the Marin pension system - “projected to plunge into a fiscal and actuarial abyss.”

While emphasizing the “limited nature” of the holding, this is a direct challenge to the longstanding principle that employees have vested rights and changes to pensions are constitutionally protected. The problem is that the question of whether the changes are “reasonable” would never be asked if the California Rule were adhered to – the changes in retirement calculations would be deemed unconstitutional.

The parties (and others) will no doubt petition the State Supreme Court to review the case. Because the appellate decision is a big public policy deal, and because it questions

what the State Supreme Court decisions really mean, it is the kind of case the State Supreme Court would hear.

If the decision stands, possible changes in pensions for existing employees will undergo a new test to see if they are “reasonable” given all the factual circumstances.

The Supreme Court will rule on this later this year.

### **CalPERS dates for benefits education events and classes.**

Members that are close to retirement might consider signing up for a CalPERS retirement education class. To log in, click on to **my** | CalPERS box to schedule your appointment.

Upcoming events:

June 15, 16, 2018 Riverside Convention Center, Riverside, CA 92501

July 13, 14, 2018 Bakersfield Marriott at the Convention Center, Bakersfield, CA 93301

August 10, 11, 2018 Hyatt Regency La Jolla at Aventine, San Diego, CA 92122

August 24, 25, 2018 Irvine Marriott, Irvine, CA 92612

CalPERS online and instructor-led classes are based on career stage and are hosted by our eight Regional Offices throughout the state. To view class dates and locations, log in to **my** | CalPERS and select the **Education** tab. You can also enroll for classes in **my** | CalPERS or by calling the CalPERS Customer Contact Center at 888 CalPERS or 888-225-7377.

Classes:

- Benefits Basics
- New CalPERS Members
- Continuing CalPERS Members
- Planning Your Retirement
- Completing Your Retirement Application
- Completing Your Disability Retirement Application
- Retired CalPERS Members

### **CalPERS retirement options simplification.**

On February 18, 2015 CalPERS purposed Retirement Options Simplification.

A number of PECG members raised some concerns over the possibility of CalPERS reducing the retirement options for simplification.

CalPERS staff recommended the Pension & Health Benefits Committee (PHBC) approve condensing the number of retirement payment options from 13 to 5. While the overall options would be reduced, the remaining options available to members would include a combination of existing and modified choices.

On February 17, 2016 sponsor legislation to condense the number of retirement payment options currently in statute and regulations from 13 to 5 for the members of CalPERS, the Judges' Retirement System and the Judges' Retirement System II, that retire for the first time on or after January 1, 2018.

CalPERS has moved forward with the proposal to simplify retirement options. AB 2404 (Cooley) passed the Legislature on August 26th and is expected to be signed by the Governor. The bill streamlines the CalPERS plan design by consolidating redundant retirement options for those retiring on or after January 1, 2018. In addition to removing redundant options, the legislation removes options that are infrequently chosen by members and may be potentially disadvantageous to retiring members.

Thanks to legal counsel for this update on AB 2404.

We also want to thank Paul Milkey, Linda Lee and others for their attention on this issue. For a summary of this retirement options simplification go to the following websites.

<http://www.calpers.ca.gov/docs/board-agendas/201510/pension/item-5.pdf>

<http://www.calpers.ca.gov/docs/board-agendas/201510/pension/item-5-attach-1.pdf>

<http://www.calpers.ca.gov/docs/board-agendas/201510/pension/item-5-attach-2-pdf>

<http://www.calpers.ca.gov/docs/board-agendas/201510/pension/item-5-attach-3-pdf>

Sharon Stewart would always remind us to be aware of our options when filling out our paperwork for retirement.

### **California State Retirees**

This is the largest, most experienced organization exclusively representing state retirees. Read "Legislative Watch" with Ted Toppin in the monthly newspaper publication "California State Retiree". [www.californiastateretirees.org](http://www.californiastateretirees.org)

### **Deferred Compensation information.**

Jagannath "Jag" Sarkar, former Committee member, has some basic information to share with you.

Savings Plus program has 401 (K) and 457 (b) plans that has both Traditional and Roth option to choose from. It allows employees to put aside money from their pay check towards retirement. Employees can evaluate for themselves how much they need for their retirement to supplement their pension and social security.

Deferred Compensation Plans have low investment cost. The record of Index Funds over time is good, and it improves quality of life during our retirement time.

Contact for Deferred Compensation Plan:

<https://www.savingsplusnow.com/>

OR call 1-855-616-4776

## **Why Join the Deferred Compensation Plan**

Deferred compensation plan supplements retirement income. It provides employees a low cost, convenient way to save for retirement through payroll deductions.

A few things to know about deferred comps are as follows:

- A. **Savings Plus:** It is the 401(k) and 457 plan
- B. **Eligibility:** All permanent state of California employees may enroll in the Savings Plus program
- C. **Enrollment/Sign up:** Employees may enroll anytime. The email address: [www.savingsplusnow.com](http://www.savingsplusnow.com)
- D. **Cost:** Employees pay a \$1.50 monthly administrative fee for each plan account
- E. **Annual Contribution Limits:** Minimum amount is \$50 per month. Maximum limit is \$1500/month on both 401(k) and 457 plan.
- F. **Can we put money in both the 401(k) and 457?**  
YES!
- G. **Age Based Deferral:**
  - a. Yes we do, age 50 and above can contribute \$500/month more on both 401k and 457
- H. **Choosing an Investment Strategy:**
  - a. Employees can choose an investment profile that meets their needs
- I. **Loans:** Savings Plus offers two types of loans
  - a. General Purpose Loan
  - b. Primary Resident Loan
- J. **401(k) Hardship Withdrawal:**
  - a. Employees may request a 401(k) Hardship Withdrawal for an immediate and heavy financial need when no other funds (including Savings Plus Loans) are available.
- K. **457 Unforeseeable Emergency:** Withdrawal is possible only for an unforeseeable emergency that can be demonstrated beyond their control, e.g. 1. Catastrophic illness, 2. Disabling injury, 3. Death of a dependent family member, 4. Property damage from a natural disaster.
- L. **Lump Sum Separation Pay:** Employees can transfer all or portion of their unused accumulated leave credit to Savings Plus. The amount transferred cannot exceed the annual limit for the tax years involved. If the employee's separation date is between November 1, and December 31, the employee can transfer up to the limit for the current tax year and the following tax year.
- M. **Savings Plus Contact Information:** Contact Savings Plus (/employees/pages/savings-plus-contact-info.aspx) for more information about the plan.

Jack has collected the following articles and links that we hope you will find helpful.

#### RETIRE TO MARGARITAVILLE

<http://abcnews.go.com/Lifestyle/jimmy-buffett-inspired-margaritaville-retirement-community-coming/story?id=45884447>

<http://www.aarp.org/home-family/friends-family/info-2017/retire-to-margaritaville-fd.html>

#### TOP 10 TIPS BEFORE RETIRING FROM YOUR JOB

[https://www.thebalance.com/top-tips-for-retiring-from-your-job-2894585?utm\\_term=retirement+vacations&utm\\_content=p1-main-4-title&utm\\_medium=sem&utm\\_source=gemini\\_s&utm\\_campaign=adid-f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab\\_tsb\\_ocode-33135&ad=semD&an=gemini\\_s&am=broad&q=retirement+vacations&o=33135&qsrc=999&l=sem&askid=f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab\\_tsb](https://www.thebalance.com/top-tips-for-retiring-from-your-job-2894585?utm_term=retirement+vacations&utm_content=p1-main-4-title&utm_medium=sem&utm_source=gemini_s&utm_campaign=adid-f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab_tsb_ocode-33135&ad=semD&an=gemini_s&am=broad&q=retirement+vacations&o=33135&qsrc=999&l=sem&askid=f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab_tsb)

#### RETIREMENT PARTY IDEAS

[https://www.thebalance.com/top-tips-for-retiring-from-your-job-2894585?utm\\_term=retirement+vacations&utm\\_content=p1-main-4-title&utm\\_medium=sem&utm\\_source=gemini\\_s&utm\\_campaign=adid-f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab\\_tsb\\_ocode-33135&ad=semD&an=gemini\\_s&am=broad&q=retirement+vacations&o=33135&qsrc=999&l=sem&askid=f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab\\_tsb](https://www.thebalance.com/top-tips-for-retiring-from-your-job-2894585?utm_term=retirement+vacations&utm_content=p1-main-4-title&utm_medium=sem&utm_source=gemini_s&utm_campaign=adid-f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab_tsb_ocode-33135&ad=semD&an=gemini_s&am=broad&q=retirement+vacations&o=33135&qsrc=999&l=sem&askid=f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab_tsb)

#### PINTEREST RETIREMENT PARTY IDEAS

<https://www.pinterest.com/explore/retirement-parties/>

#### WISHES RETIREMENT QUOTES

[https://www.reference.com/web?qsrc=999&qo=semQuery&ad=semD&o=36982&l=sem&askid=9f7f68f2-4361-4fc3-b7f4-31606df2533a-0-rf\\_msb&q=wishes%20for%20retirement%20quotes&dqi=retirement%20quotes&am=broad&an=msn\\_s](https://www.reference.com/web?qsrc=999&qo=semQuery&ad=semD&o=36982&l=sem&askid=9f7f68f2-4361-4fc3-b7f4-31606df2533a-0-rf_msb&q=wishes%20for%20retirement%20quotes&dqi=retirement%20quotes&am=broad&an=msn_s)

#### 7 RETIREMENT BUDGET KILLERS

[https://www.thebalance.com/deadly-retirement-budget-mistakes-2388341?utm\\_term=retirement+vacations&utm\\_content=p1-main-1-title&utm\\_medium=sem&utm\\_source=gemini\\_s&utm\\_campaign=adid-f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab\\_tsb\\_ocode-33135&ad=semD&an=gemini\\_s&am=broad&q=retirement+vacations&o=33135&qsrc=999&l=sem&askid=f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab\\_tsb](https://www.thebalance.com/deadly-retirement-budget-mistakes-2388341?utm_term=retirement+vacations&utm_content=p1-main-1-title&utm_medium=sem&utm_source=gemini_s&utm_campaign=adid-f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab_tsb_ocode-33135&ad=semD&an=gemini_s&am=broad&q=retirement+vacations&o=33135&qsrc=999&l=sem&askid=f41ae508-2c39-4b64-8a73-7d2bda6eff1a-0-ab_tsb)

CHOOSING A COMPACT RV OR CAMPER FOR RETIREMENT TRAVEL

<http://www.caniretireyet.com/choosing-a-compact-rv-or-camper-for-retirement-travel/>

FUN THINGS TO DO IN RETIREMENT

<http://www.retirement-cafe.com/Fun-Things-to-Do-When-You-Retire.html>

45 MANLY HOBBIES

<http://www.retirement-cafe.com/Fun-Things-to-Do-When-You-Retire.html>

50 HOBBY IDEAS FOR WOMEN

<http://listofhobbies.org/50-favorite-hobby-ideas-for-women/>

**More retirement and deferred compensation information:**

Section 457 Deferred Compensation Plans of state and local government and tax-exempt employers after The Small Business Job Protection Act Of 1996 and The Taxpayers Relief Act Of 1997.

<http://www.irs.gov/pub/irs-tege/eotopici99.pdf>

Public Pensions: Section 457 plans posed greater risk than other supplemental plans (Chapter Report, 04/30/96, GAO/HEHS-96-38).

<http://www.gpo.gov/fdsys/pkg/GAOREPORTS-HEHS-96-38/html/GAOREPORTS-HEHS-96-38.htm>

Pros and Cons of 457 plan.

[http://money.cnn.com/2000/03/23/pensions/q\\_retire\\_457/](http://money.cnn.com/2000/03/23/pensions/q_retire_457/)

About.com – Retirement Planning.

<http://retireplan.about.com/lw/Business-Finance/Personal-finance/What-is-a457-b-plan-.htm>

Perks of a government retirement plan.

<http://www.bankrate.com/finance/retirement/perks-government-retirement-plan-1.aspx>

How to cash out a 457(b) plan.

[http://www.ehow.com/how\\_7405387\\_cash-out-457b-plan.html](http://www.ehow.com/how_7405387_cash-out-457b-plan.html)

Valuing and dividing 457, 401(k)s, ESOPs, and profit sharing plans for divorce.

<http://www.vecon.com/article/457.htm>

What is the difference between-401(k) plan and 457(b) plan.

<http://www.investopedia.com/sak/answers/100314/what-difference-between-401k-plan-and-457-plan.asp>

CalHR - Saving Plus.

<http://www.calhr.ca.gov/employees/pages/savings-plus.aspx>

IRS issues more guidance on 457(b) corrections.

<http://www.employmentmattersblog.com/2014/03/irs-issues-more-guidance-on-457b-plan-corrections/>

Thinking about retirement and your psychological portfolio.

<http://www.apa.org/research/action/retire.aspx>

Retiring minds want to know.

<http://www.apa.org/monitor/2014/01/retiring-minds.aspx>

### **PECG members' retirement certificate and gift.**

The Committee wants to properly recognize PECG members upon their retirement from State service. We do this for those who have at least five consecutive years as a PECG member at retirement. Since obtaining lists of outgoing members is easier said than done, we would like the assistance of our members to notify PECG headquarters in Sacramento at least a month before retirement.

With the assistance of the Sacramento staff, retiring members are presented with a framed certificate and laser inscribed crystal cube in appreciation of their years of dedicated State service.

Again, if you are retiring or know someone who is, please notify PECG headquarters a minimum of a month before the gift and certificate are needed.

### **Sacramento area monthly PECG retiree meeting.**

Brian Young wants to remind those in the greater Sacramento area that for the past 14 years PECG retirees have been meeting on the first Thursday of each month at 8:00am for a breakfast meeting at Sacramento Café and Brew (formerly Denny's and Perko's), at 3<sup>rd</sup> and J St. in Sacramento.

**May 3, 2018: Ted Toppin -**

The new Executive Director, Professional Engineers in California  
Government

**June 7, 2018 : Chuck Suszko**

Chairman PECG Bylaws and Policy Committee

Hi Brian; following below are my notes that I jotted down during the Apr 5, 2018 PECG retiree meeting.

The scheduled speaker was Bruce Blanning, recently retired Executive Director of the Professional Engineers in California Government.

1. There was an initial report by Jim Rae on the recently held 2018 STEM Fair.

- There was a good turnout for the fair.
- Jim was a judge in the Behavioral & Social Sciences category, and later was also a judge for the Grand Prize.
- First Place was won by an exhibit and presentation on 'reducing anxiety before taking a test'.
  - + The winner is now a senior who has been working on this effort since 9th grade.
  - + The technique starts with proper breathing techniques. It included inhaling for twice as long as you exhale.
  - + An additional technique was to watch a video that had slowly moving blue bubbles in it.

2. Brian Young made a short announcement that he received a Quarter Century Club award. The club is formed by former Caltrans employees.

3. Bruce Blanning started off his presentation by saying that he was asked to talk about

his retirement. Bruce said that he retired 5 days ago, so there isn't much to say yet about his retirement.

- Bruce said the most notable event since retirement has been that his child was

selected for an acting part in New York.

- Bruce has accepted a short term contract to be part of a labor bargaining team.

Blanning's contract ends June 30, and the team is representing four Calif. gov't

labor unions whose labor contract is being renegotiated (PECG is one of the four).

There are two primary issues: pay raises, and benefits.

#### 4. Questions from the Floor:

Q1. Does Bruce have any comment on Gov. Jerry Brown's statement that 'a reduction in benefits is inevitable.'

A1. Yes, he said that. But, Governor Brown has been putting \$5B more than required to into pensions to stabilize the pension fund. Bruce's opinion is that what the governor says publicly is different than what he does.

Q2. What is the impact of new hires on the pension fund?

A2. The new hires are paying into the pension the same as the existing employees. But

the new hires benefits are reduced:

- i. Existing employees receive: 2% at 55 years old.
- ii. New recent hires receive: 2% at 60 years old, or 2% at 62 years old

Hi Brian; following below are my notes that I jotted down during the May 3, 2018 PECG retiree meeting.

The scheduled speaker was Ted Toppin, the new Executive Director of PECG. Ted was not able to attend, instead Christina Debangas (I may have captured the last name incorrectly), and Nadine Wescott came and talked a bit about the current legal landscape.

#### FROM CHRISTINA DEBANGAS:

1. PECG is watching the 'Janus' Supreme Court case. It involves a challenge to the rule that employees must make "fair share" payments to a union for representation when they are not members of that union.
  - There has been about 40 yrs of history under the present "fair share" arrangement.
  - The Janus case is essentially the same case as brought two years ago.
  - The Supreme Court usually follows 'Stare Deciscis', that is, to follow precedence when an issue has previously been brought to the court and a ruling already issued. But apparently not in this instance.
  - Oral arguments were heard by the Court last February.
  - The judgement will come out between now and June.
  - General opinion is that the ruling will be against the unions.

- Unions look at challenge as an opportunity to refocus on organizing activities. Reminding members of the value and benefit of unions.
- If the ruling goes against the unions, it will affect 34 states.

2. PECG is paying attention to two local government employers who are proposing to change the pension benefits of their currently working employees. It is a challenge to the "California Rule".

- The California Rule holds that changes to current public employee's pension plans which result in disadvantage to employees should be accompanied by comparable new advantages.
- The two local government legal cases are:
  - a. the Marin County legal case
  - b. the Alameda County legal case
- In the Marin case:
  - a. Marin is changing pension plans of currently working employees out of financial cost concerns, resulting in pension reductions to employees.
  - b. The First District Court ruled for Marin County and against the Marin Co. unions (which weakens the CA Rule).
  - c. The ruling has been appealed to the CA Supreme court but is being stayed pending the outcome of a CA Supreme Court ruling on the Alameda case.
- In the Alameda case:
  - a. Alameda is changing pension plans, similar to Marin, out of financial cost concerns.
  - b. The First District Court ruled for the the Alameda Sheriff's union and against Alameda Co. (Same District court jurisdiction as Marin, but different judges than the Marin case).
  - c. The ruling is being appealed to the CA Supreme Court.
- Neither case attempts to change the retirement benefits of current retirees.

FROM NADINE WESCOTT:

3. Nadine recently returned from the National Association of State Highway and Transportation Unions (NASHTU). NASHTU has members from 38 states.
4. In CA, about 90% of Fed.transportation projects are designed by State engineers and 10% by private engineering firms. In some of the other states the percentages are reversed.
5. The Trump infrastructure plan is no closer than it was 3 years ago, except there is a 6 page outline of generalities.

6. Nadine is in charge of the PECG Federal legislation program.

Areas of focus are:

- Pushing Congress to include language in infrastructure project legislation saying that states have to perform cost comparisons of using public vs. private engineers and then selecting the lowest cost method.
- Pushing Congress to include language in infrastructure projects saying that the construction must be inspected by public inspectors.

7. Currently, the Transportation fund is periodically depleted and needs to be 'back-funded' with General Revenue funds to fill shortages. But support in the legislature to use General Revenue funds is unpredictable. This makes it difficult for state transportation programs to do long term planning. What's needed is a new funding mechanism.

Options for this are:

- a. New gas tax measure. But this is politically unpopular.
  - i. It is a temporary solution requiring a periodic revisit when future inflation causes costs to outpace even the added gas tax measure.
  - ii. With the introduction of electric vehicles and low gas consumption hybrids, gas taxes to pay infrastructure costs are viewed as unfairly burdensome on users with conventional gasoline powered transportation.
- b. Convert to a Lane Mile tax (aka a road use tax). There is some legislative support for this and it's viewed as being more fair to users than gas taxes. But the technology to fully implement this doesn't exist.
  - i. Oregon is furthest along towards a lane mile tax. Oregon has a pilot project using volunteers. They report mileage by one of three methods: (1) by voluntarily installing a GPS device, (2) by using an odometer reader, or (3) by voluntarily sending in mileage usage.

8. PECG has a federal Political Action Committee (FED-PAC).

- The FED-PAC accepts voluntary contributions.
- There is a monthly contribution program.
- Contributions can be made through CalPERS deductions.

The Retirement and Deferred Compensation Committee appreciates your comments and suggestions.