



PROFESSIONAL ENGINEERS



IN CALIFORNIA GOVERNMENT

## RETIREMENT AND DEFERRED COMPENSATION COMMITTEE

August 23, 2018

TO: PECG Board of Directors and Section Presidents

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

SUBJECT: September 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.

### **July 2018 brought a partial settlement of this class action case.**

Checks were distributed to the plaintiffs from the “Tower Defendants”. Importantly, this partial settlement in no way impacts any claims asserted against CalPERS, the remaining defendant in this class action case. It is not known when the remaining settlement, against CalPERS, will take place.

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

#### **Judge Denies CalPERS’ Motion to Decertify the Class**

Following the hearing on May 10, 2018, Los Angeles Superior Court Judge Ann I. Jones has agreed with plaintiffs and has denied CalPERS’ motion for class decertification. In a well-reasoned decision, Judge Jones rejected CalPERS’ arguments and found no basis to decertify the class. A copy of the Court’s order can be found [here](#).

This was an important decision because it means the class case will be going to trial. In fact, following the hearing on CalPERS’ motion to decertify, the Court also conducted a Case Management Conference to address the trial schedule. The Court set a further Case Management Conference for September 4, 2018 at 1:30 p.m., with a tentative trial date for May 13, 2019, but the Court also indicated that the 30-day trial would likely begin in [June 2019](#).

### **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:

January 11, 12 2019 Embassy Suites Monterey Bay Seaside, Seaside, CA 93955  
January 25, 26 2019 DoubleTree by Hilton Hotel Golf Resort, Cathedral City, CA 92234  
March 1, 2 2019 Sacramento Convention, Sacramento, CA 95814

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-](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.

June 7, 2018: Chuck Suszko - PECG Bylaws and Policy Committee Chair.

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