



MAJOR POLICY SHIFTS

2010

S.B. 1308

For CalPERS new hires, the California Legislature (1) increased employee contributions from 2% to 5%; (2) lengthened the period used to calculate final average salary from 1 to 3 years; and (3) created a new defined benefit formula.

2012

A.B. 340

For CalSTRS and/or CalPERS new hires, the California Legislature (1) adjusted employee contributions up or down depending on changes to the cost of benefits, making the employee responsible for 50% of the cost of retirement benefits. The cost is assessed each year based on the actuarial valuation and may not result in a change to the employee contribution rate from the prior rate of 10.25% (CalSTRS and CalPERS); (2) capped the compensation used to calculate benefits at the Social Security salary contribution limit or 120% of the current cap, depending on the employees' eligibility for Social Security (CalPERS); (3) created new defined benefit formulas (CalPERS); (4) lengthened the period used to calculate final average salary for those with at least 25 years of service from 1 to 3 years (CalSTRS); (5) changed the benefit calculation multiplier corresponding to retirement age to a maximum factor of 2.4% at age 63 (CalSTRS); and (6) increased the age for normal (unreduced) retirement from 60 to 62 (CalSTRS).

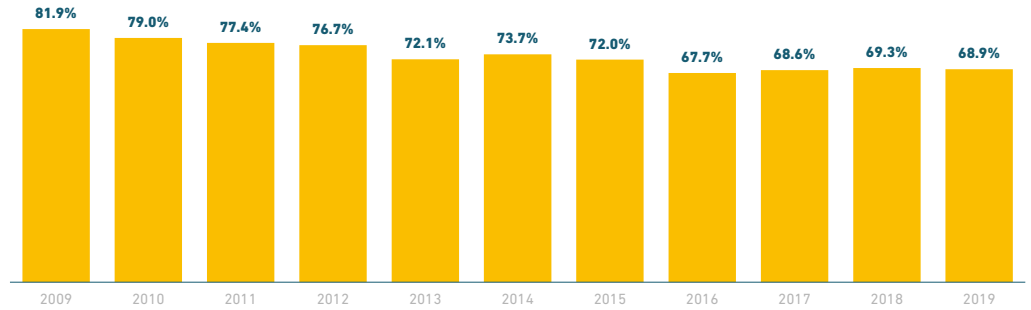
2014

A.B. 1469

For CalSTRS active employees, the State of California, and participating CalSTRS employers, the California Legislature (1) required employers to increase contribution rates over a 7-year period from 8.25% to 19.1%; (2) increased employee and state contribution rates over a 3-year period with an offsetting benefit; and (3) gave the Teachers' Retirement Board limited authority to adjust the state and employer contribution rate.

FUNDED RATIO

The graphic below covers the following retirement systems: California Public Employees' Retirement System (CalPERS), California State Teachers' Retirement System (CalSTRS), California Judges Retirement Fund (JRF), California Judges Retirement Fund II (JRF II), and University of California Retirement System (URS).

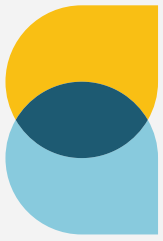


LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

Legislative efforts confined to new hires are excluded from analysis because they rarely face significant legal challenges.

Table with 4 columns: What are some policy options?, Were there relevant policy shifts for active employees or retirees?, Have there been legal challenges?, What are the legal prospects for future changes?\*. Rows include: INCREASE EMPLOYEE CONTRIBUTIONS, DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS, CHANGE VESTING PERIOD, CHANGE BENEFIT CALCULATION.

\* FAVORABLE indicates that the issue survived litigation in the past and/or there is a permissive legal environment for the change.
UNFAVORABLE indicates that the issue did not survive litigation in the past and/or there is a non-permissive legal environment the change.
UNDEVELOPED indicates that the issue has not been litigated and/or the current legal environment is unclear as to what the outcome would be.



## CALIFORNIA STATE LAW CONTEXT

### State Provisions

**ARTICLE I, SECTION 9 OF THE CALIFORNIA CONSTITUTION:** "A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed."

### Key Opinions

#### **ALLEN V. LONG BEACH, 287 P.2D 765 (CAL. 1955)**

Active police and fire department employees sued the city of Long Beach claiming that an amendment to the pension code of the city charter, increasing employee pension contributions and altering the method for calculating retirement benefits, violated the California Constitution's "impairment of contract" clause. *Allen v. City of Long Beach*, 287 P.2d at 765. In response, the California Supreme Court established the following 'California rule' for analyzing "impairment of contract" challenges to modifications of active employees' benefits:

An employee's vested contractual pension rights may be modified prior to retirement for the purpose of keeping a pension system flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system. Such modifications must be reasonable, and it is for the courts to determine upon the facts of each case what constitutes a permissible change. To be sustained as reasonable, alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees *should be accompanied by comparable new advantages*. *Id.* at 767 (emphasis added).

The court invalidated the modifications at issue because they (1) adversely affected employees' pension rights without comparable advantages to them, and (2) had no demonstrated material relation to the integrity or successful operation of the system.

#### **LATER OPINIONS APPLYING EXCEPTIONS TO THE 'CALIFORNIA RULE':**

Although changes should be accompanied by comparable new advantages, a modification without a comparable new advantage is not necessarily forbidden by the constitution, *Marin Ass'n of Pub. Emps. v. Marin Cty. Employees' Ret. Ass'n*, 206 Cal.Rptr.3d 365, 387 (Cal. Ct. App. 2016). In subsequent decisions, California courts have permitted pension plan modifications absent proof of a comparable new advantage to the affected employees when:

- (1) Providing a comparable advantage would undermine the goal of the pension system. See *Alameda Cty. Deputy Sheriff's Ass'n v. Alameda Cty. Employees' Ret. Ass'n*, 470 P.3d 85, 126 (Cal. 2020) (rejecting active employees contract-impairment challenge to an amendment limiting pension spiking absent a comparable advantage to the employees because the changes were "enacted for the constitutionally permissible purpose of closing loopholes and preventing abuse of the pension system," and offsetting "advantages would have undermined the amendment's constitutionally permissible purpose.");
- (2) The modification, although disadvantageous to employees, does not affect a "core" pension right that qualifies as "deferred compensation." See *California Fire Local 2881 v. California Pub. Employees' Ret. Sys.*, 6 Cal. 5th 965, 970 (Cal. 2019) (rejecting active employees' challenge to the elimination of a pre-existing opportunity to purchase prospective, additional retirement service credit (ARS) because "there was no indication that the Legislature intended to create a contractual right to purchase ARS credit," and "unlike core pension rights, the opportunity to purchase ARS credit was not granted as deferred compensation");
- (3) The statute creating the pension includes language permitting the change. See *International Ass'n of Firefighters v. City of San Diego*, 667 P.2d 675, 681 (Cal. 1983) (approving a modification absent a comparable advantage to the affected employees because the city charter creating the pension system expressly provided "for both [the] setting and revising of employee contribution rates upon the basis of the actuarial information and revisions thereto").

Courts have declined to apply the first of these exceptions in cases where the justification for the modification was to generally alleviate the state's ongoing pending funding crisis. The courts required that the state actor demonstrate that it considered and reasonably ruled out alternative measures that are less disadvantageous to employees than the modification under consideration. See *Abbott v. Los Angeles*, 326 P.2d 484, 493-4 (Cal. 1958); *Valdes v. Cory*, 189 Cal.Rptr. 212, 227 (Cal. Ct. App. 1983); *Board of Admin. v. Wilson*, 61 Cal.Rptr.2d 207, 238-241 (Cal. Ct. App. 1997).

California courts evidently scrutinize modifications to benefits for retirees more rigorously than ones affecting active employees. See *Allen v. Board of Admin.*, 665 P.2d 534, 538 (Cal. 1983) ("[A]s to retired employees, [the] scope of continuing governmental power may be more restricted, the retiree being entitled [to] the fulfillment of the contract which has already performed without detrimental modification."); *Allen v. Long Beach*, 287 P.2d at 767 ("An employee's vested contractual pension rights may be modified *prior to retirement* for the purpose of keeping a pension system flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system." (emphasis added)).

### FOR MORE INFORMATION

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