



OREGON

LEGAL ENVIRONMENT FOR PENSION POLICIES

As of December 2020



MAJOR POLICY SHIFTS

2003

H.B. 2003

The Oregon Legislature (1) changed the cost-of-living adjustment (COLA) calculation for members who retired between April 1, 2000 and April 1, 2004 (applying the higher of a fixed rate or a calculation based on a lower interest rate credited to retirees' accounts than was previously applied) and (2) redirected member contributions made after January 1, 2004 into a new Individual Account Program (IAP). H.B. 2003 was partially struck down (See *Strunk v. Public Employees Retirement Bd.* on the reverse side).

2003

H.B. 2020

The Oregon Legislature established the Oregon Public Service Retirement Plan (OPSRP), a hybrid pension plan that includes a defined benefit pension program and a defined contribution IAP. OPSRP became the plan for new hires, establishing a third tier of what had been a two-tier system.

2013

S.B. 861

The Oregon Legislature capped the COLA at 1.25% on the first \$60,000 of a yearly benefit payment and at 0.15% percent on amounts above \$60,000 for active members and new hires. The prior COLA had varied between .25% and 2% with a smaller COLA for larger payments.

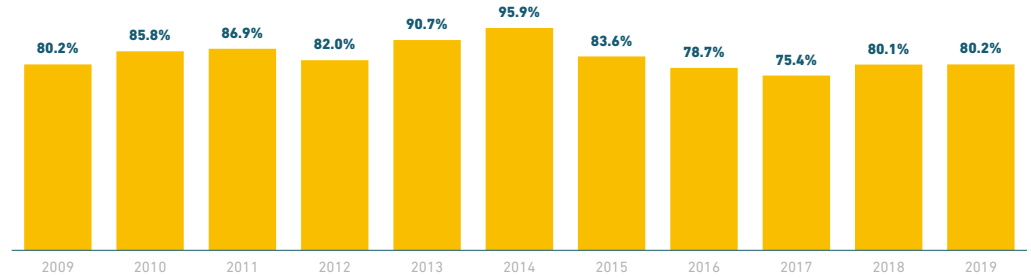
2019

S.B. 1049

The Oregon Legislature capped final salary for the purpose of most benefit calculations at \$195,000 for active and new employees and increased the contributions redirected from IAP funds into the PERS fund by 2.5% for Tier 1 and 2 members and .75% for OPSRP members.

FUNDED RATIO

The graphic below covers the Oregon Public Employees Retirement Board (PERS).



LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

(Regarding Statewide Systems Only)

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

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?*
INCREASE EMPLOYEE CONTRIBUTIONS	YES S.B. 1049 (2019)	YES Survived legal challenge in <i>James v. State</i> (2020)	<ul style="list-style-type: none"> FAVORABLE as to active employees for prospective changes unless statutory language is interpreted as establishing contractual rights N/A as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	YES H.B. 2003 (2003) S.B. 861 (2013)	YES (S.B. 861) Did not survive legal challenge in <i>Strunk v. Public Employees Retirement Bd.</i> ; Survived legal challenge in <i>Moro v. State</i> (2015) as the court distinguished prospective changes	<ul style="list-style-type: none"> FAVORABLE as to active employees for prospective changes unless statutory language is interpreted as establishing contractual rights UNFAVORABLE as to retirees
CHANGE VESTING PERIOD	NO	NO	<ul style="list-style-type: none"> UNDEVELOPED as to active, unvested employees N/A as to active, vested employees and retirees
CHANGE BENEFIT CALCULATION	YES S.B. 754 (2013) S.B. 1049 (2019)	YES Survived challenge in <i>James v. State</i> (2020)	<ul style="list-style-type: none"> FAVORABLE as to active employees for prospective changes unless statutory language is interpreted as establishing contractual rights UNFAVORABLE as to retirees

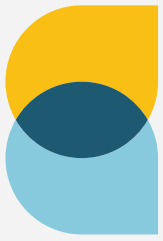
* **FAVORABLE** indicates that the issue survived litigation in the past and/or there is a permissive legal environment for the change.
* **UNFAVORABLE** indicates that the issue did not survive litigation in the past and/or there is a non-permissive legal environment the change.
* **UNDEVELOPED** indicates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



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OREGON STATE LAW CONTEXT

State Provisions

ARTICLE I, SECTION 21 OF THE OREGON CONSTITUTION: "No ex-post facto law, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution"

Key Opinions

STRUNK V. PUBLIC EMPLOYEES RETIREMENT BD., 108 P.3D 1058 (OR. 2005)

Active and retired PERS employees argued that a 2003 bill (H.B. 2003) redirecting their contributions into IAPs, potentially diminishing their benefits due to the risk-sharing nature of IAPs, and reducing previously defined COLAs impaired state contractual obligations in violation of the Oregon Contract Clause (Article I, Section 21). The court upheld portions of the bill and struck down others. The court held that members had no contractual right to annual earnings in excess of the assumed earnings rate and thus the redirection into IAPs was permissible. *Strunk v. Public Employees Retirement Bd.*, 108 P.3d at 1092. However, the court found that the elimination of the existing risk sharing buffer for Tier 1 members substantially impaired contract obligations in violation of the Oregon Constitution. *Id.* at 1094. This distinction was due to the fact that "unlike Tier One members, Tier Two members have no earnings guarantee on their regular accounts and, correspondingly, do not benefit from the fund's gain-loss reserve." *Id.* at 1069. Consequently, the provision applicable for that group was voided. *Id.* at 1094. The court also held that the COLA reduction provision was a breach of PERS contractual obligations as it reasoned that COLAs had constituted a term of the PERS statutory contract before the 2003 changes. *Id.* at 1102.

MORO V. STATE, 351 P.3D 1 (OR. 2015)

Active and retired PERS employees, who were both residents and nonresidents of Oregon, argued that 2013 legislative enactments eliminating income tax offsets for nonresident retirees and modifying the COLA for both active and retired employees impaired their contract rights under the Oregon and U.S. Constitutions. The court held that "nonresident petitioners have no contractual right to the income tax offset payments and, therefore, that the legislature did not violate the state or federal Contract Clauses by eliminating those payments." *Moro v. State*, 351 P.3d at 7. The court reasoned that the statute relevant to the tax offsets expressly stated that these benefits were not contractual and thus "the legislature remained free to change the statute and discontinue the mitigation payments that the employers had made previously." *Id.* at 26. With regard to the COLA changes, the court (in agreement with its ruling in *Strunk*) held that COLA benefits were terms of the pension contract. *Id.* at 29. However, the court distinguished prospective changes to the COLA benefit from changes impacting accrued benefits, stating that the former did not constitute contractual impairment. *Id.* at 8. In explaining how policy shifts might impact the contractual rights of PERS employees, the court stated that a contract between an employee and an employer is extended by "each additional rendition of service" for "any open offer for additional PERS benefits." *Id.* at 55. However, "the PERS contract reaches only as far as a member has accepted the offer, and a member's acceptance reaches only as far as the work that the member has performed." *Id.*

JAMES V. STATE, 471 P.3D 93 (OR. 2020)

Active PERS employees brought a constitutional impairment of contract challenge to 2019 legislation redirecting member contributions from IAP to the PERS fund and capping salaries used to calculate benefits. Prior to these legislative changes, members were required to make a contribution of six percent of their salary to their IAP accounts. After the change, up to 3.5 percent of an employee's contribution would be redirected to the PERS' fund. Additionally, the 2019 changes set the cap of the final salary used to determine benefits at \$195,000. This was a shift from for Tier 1 members who previously had no cap and for other members for whom the 2019 cap was set at \$280,000. The court upheld both changes, reasoning that they "did not operate retrospectively to decrease the retirement benefits attributable to work that the member performed before the effective date of the amendments." *James v. State*, 471 P.3d 93 at 96. The court further reasoned that "although the amendments operated . . . to change the offer for future retirement benefits, the pre-amendment statutes did not include a promise that the retirement benefits would not be changed prospectively." *Id.* The court concluded that "the fact that an employee has accepted an offer of benefits by performing services does not necessarily prevent the employer from changing the terms of the offer for future work." *Id.* at 100.

FOR MORE INFORMATION

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