



# THE BILL IS DUE

Now What? Infrastructure, Pensions and the Environment

TUESDAY, APRIL 24, 2018

BEST BEST & KRIEGER LLP

## Legal Update: Is the California Rule in Flux?

Isabel C. Safie, Partner



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## CA: SLO Council Approves Plan to Slash Budget by \$8.9M to Pay for Rising Pensions

NICK WILSON ON APR 19, 2018

SOURCE: MCCLATCHY

# Headlines

## Pension costs 'unsustainable,' California cities say



BY ADAM ASHTON  
aashton@sacbee.com



February 02, 2018 09:58 AM

### *California Today: Is the Long-Looming Pension Crisis Already Here?*

California Today

By CONOR DOUGHERTY and JOSE A. DEL REAL MARCH 9, 2018



[The Daily Press](#) | [Page C04](#)

Thursday, 19 April 2018



THEIR VIEW

### **Public pensions are on an 'unsustainable course'**

## PENSION COSTS ARE KILLING CITIES LIKE SANTA CRUZ

TUE, 03/20/2018

[The Daily Press](#) | [Page C04](#)

Monday, 26 March



THEIR VIEW

### **Pension rules must change to keep California solvent**

## Pension Costs a Looming Challenge as Santa Barbara Council Ponders 2019 Budget

By Joshua Molina, Noozhawk Staff Writer | @JECMolina | April 18, 2018 | 10:24 p.m.



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# The California Rule

- Historical Context
  - Federal & State Constitutions prohibit State from impairing contracts.
  - In *Kern v. Long Beach* (1947), California Supreme Court holds right of a public employee to a pension benefit is a right based on contract principles.
    - “The right to a pension becomes a vested one upon acceptance of employment.”



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# The California Rule

- In a Nut Shell
  - Substance of contractual right
  - Unilateral changes to benefits permitted if:
    - the change is reasonable and necessary to preserve the integrity of the system; and
    - any negative changes affecting employees *should* be accompanied by comparable new advantages
  - A “substantial or reasonable pension”
  - Outside pressures



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# The California Rule: Recent Cases

- Marin Assoc. of Public Employees v. MCERA
  - Anti-spiking changes adopted by retirement board pursuant to AB 197 restricting compensation earnable for legacy members.
  - Employees argued that they had a vested right to the continued inclusion of payments formerly included under Section 31461 of CERL in the calculation of pension benefits.
  - Appellate decision contains broad policy-based arguments for a change in the law.



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## The California Rule: Recent Cases

- Marin Assoc. of Public Employees v. MCERA
  - Court of Appeal for First District, Division 2 held:
    - A modification in pension benefits was not required to be replaced by a comparable benefit.
    - While public employees have a vested right to a pension, a right that is secured at the time of employment, such a right is not to a fixed or definite pension but to a reasonable pension.
  - California Supreme Court granted review on November 22, 2016, but deferred matter pending disposition of *Alameda County*.



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# The California Rule: Recent Cases

- Cal Fire Local 2881 v. CalPERS
  - Challenges changes made by PEPRA that restricted the purchase of airtime.
  - Plaintiffs sought to force CalPERS to continue airtime purchases for classic members; State intervened to defend PEPRA.
  - Borrowing from REAOC, court stated that plaintiffs had a heavy burden to demonstrate that legislation (i.e., the PERL) was intended to create enforceable private contract rights against the State.



## The California Rule: Recent Cases

- Cal Fire Local 2881 v. CalPERS
  - Court of Appeal for First District, Division 3 held that:
    - Legacy employees have no vested right to purchase airtime service credit, on a prospective basis, under PEPRA.
    - Cites favorably to *Marin County* decision.
  - California Supreme Court granted review on April 12, 2017. Opening and reply briefs have been filed.



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## The California Rule: Recent Cases

- Alameda County Dep. Sheriffs Assoc. v. ACERA
  - Plaintiffs challenge changes made by county system retirement boards.
  - Involves employee associations from counties of Alameda, Contra Costa, and Merced.
  - Plaintiffs argue that the value of certain payments should be included in compensation for benefit calculations.



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## The California Rule: Recent Cases

- Alameda County Dep. Sheriffs Assoc. v. ACERA
  - Court of Appeal, First District, Division 4 declined to follow *Marin County*, holding:
    - Detrimental changes to legacy employees' pension benefits are only justified by compelling evidence that the required changes manifest a material relation to the successful operation of a pension system.
  - California Supreme Court granted review last month, on March 28, 2018. Opening briefs have not yet been filed.



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# Change to the California Rule

- In Favor
  - Public employers need more flexibility to manage finances and change benefit programs.
  - Public employees should not have pension rights that are greater than in the private sector (e.g., future accruals are not vested).
  - Original cases “created” a right that no public employer would normally confer upon public employees.
  - Most public entities would not confer a vested right.
- Against
  - Public employees have bargained for and relied on this treatment of pensions for decades.
  - Employees accept lesser pay and benefits during employment in reliance to a guaranteed pension benefit.



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# Implications

- What would a change to the California Rule mean for your agency?
  - Change/reduce pension formulas for actives – with the right justification.
  - Freeze or eliminate certain defined benefit plans in favor of defined contribution plans.
  - If law changed, we would need/see PEPRA II.
  - But consider limitations of a retirement system (e.g., CalPERS).



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# Questions?