



New Supervisors Institute

Session III

Materials for

Tab 7

Labor Relations

Labor Negotiations Primer for New County Supervisors April 20, 2017

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AGENDA

- Questions for the Panel
- Background
- Public Employment Relations Board (PERB)
- Role of the Board of Supervisors
- Negotiations Process
- Questions and Answers



Questions for the Panel

- What Questions would you like the Panel to address during this presentation?



BACKGROUND

- Meyers-Miliias-Brown Act (MMBA) is the state law that gives county employees the right to union representation and collective bargaining



BACKGROUND

- Under the MMBA both the County and the Unions must “meet and confer” (bargain) in good faith over issues within “scope” of representation
- Recent examples of what is considered within “scope”



BACKGROUND

- MMBA also provides for reasonable local rules through the County’s Employer Employee Relations Ordinance (EERO)
- Local rules typically govern union representation, and sometimes include dispute resolution (mediation)



PERB

- What is the role of the Public Employment Relations Board (PERB)?
- Who is on the PERB Board?
- PERB's role is to resolve disputes related to:
 - Union representation issues
 - Employee bargaining unit disputes
 - Contract negotiations



PERB

- Processes complaints about Unfair Labor Practices, which can include:
 - Failure to bargain in good faith
 - “Direct dealing” (going around the union, directly to its members)
 - Refusing to bargain about an issue within the scope of bargaining
 - Discrimination on the basis of union activity



PERB

- Conducts Fact Finding and/or Mediation Process
 - Fact Finding Legislation requires non binding fact finding as part of impasse resolution process
 - Role of Mediation –may lengthen the bargaining process by 90-120 days
 - Negotiating new Agreements vs Negotiating Single Issues

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PERB

- Fact finding on a contract dispute will include evidence of the County's finances (ability to pay) and salary and benefit comparability
- "Effects bargaining" and number of planned layoffs is likely to require fact finding, absent agreement
- Effects of non-binding fact-finding award

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Role of Board Members in the Negotiation Process

- Board members typically provide authorization on economics and general approach to negotiations, while operational issues are guided by departmental needs
- Be aware that other expenditures may affect employee perceptions of County's ability to pay wage increases



Role of Board Members in the Negotiation Process

- Unions and employee delegations may lobby Board members directly regarding negotiations
- Members should ensure they do not engage in impermissible "direct dealing" outside of official negotiations process
- Members must maintain Closed Session confidentiality



Negotiation Process

- Analysis Necessary Prior to the start of Bargaining usually includes review of:
 - County's Budget including Employee Compensation Costs
 - County's Reserve and Reserve Policy
 - Salary and Benefit Market Studies
 - Recruitment and Retention Issues



Negotiation Process

- Continued
 - Changes to Law that affect Bargaining
 - Departmental Issues
 - Grievances and/or Arbitration Awards
 - Structural Reform Issues



Negotiation Process

- Union Bargaining Team
 - How are they typically selected?
 - Union and County reps have equal status at the bargaining table



Negotiations Process

- Reaching Tentative Agreements
 - What is a tentative agreement?
 - The Chief Negotiator must have authority to enter into tentative agreements



Negotiation Process

- Ratification of the New Agreement
 - Union Ratification Process
 - Board of Supervisor Approval Process
 - Confidentiality Concerns



Negotiation Process

- Failure to Reach Agreement
 - Impasse Process
 - Local Rules may require mediation
 - Pros and Cons of mediation



Negotiation Process

- PERB FACT FINDING PROCESS
 - PERB now has jurisdiction over non binding fact-finding
 - Only Employee Organizations can request fact finding
 - Public Employers are the responders to a request for fact finding
 - Timelines for requesting fact finding
 - If mediation is required to or agreed to
 - If no mediation process



Negotiation Process

- Fact-Finding Criteria
 - Comparison of wages, hours and conditions with other employers performing similar services in comparable public agencies
 - Consumer Price Index of Goods and Services (cost of living)
 - Overall Compensation presently received by employees
 - Financial ability to pay



Negotiation Process

– Fact-Finding Criteria (continued)

- State and Federal Law applicable to employer
- Local Rules, Regulations, or Ordinances
- Any other facts traditionally taken into consideration in making findings and recommendations
- Stipulations of the Parties
- Interests and welfare of the public



Negotiation Process

Fact-Finding

- Who makes up the Panel?
- Who issues the decision?
- What happens after the decision is issued?
 - Maintain Status Quo – expired MOU
 - Governing Body can adopt the fact finding panel's decision
 - Governing Body can reject panel's decision and implement its last best and final offer



ROLE OF THE BOARD OF SUPERVISORS

- The Statutory Role of the Board may differ between jurisdictions
- Generally however, the role of the Board of Supervisors entails:
 - Advising Negotiation Team in Closed Session
 - Setting Broad Policies related to employee compensation matters
 - Representing the County's Interest

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QUESTIONS AND ANSWERS

Any other questions?

Thank you and the CSAC Institute for having us present this morning.

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Understanding the Labor Negotiations Process

August 17, 2012

Under California law,¹ when county or city employees are represented by a union, the agency must negotiate with that union regarding their pay and benefits, working hours, and working conditions. This paper explains the key elements of that process.

Roles

Elected officials determine the agency's bargaining position and consult with staff throughout the negotiation process. Agency staff report back to decision-makers about the face-to-face negotiations' progress and any impediments to reaching agreement.

Before Bargaining

Prior to meeting with the union, the agency's negotiators will meet with elected officials to discuss how to proceed. Having this meeting well in advance of negotiations gives elected officials time to consider relevant issues and develop a set of questions.

Early conversations also give staff time to compile necessary information for decision-makers. Examples of such information may include:

- Anticipated increases in current employee expenditures
- Money available for salaries and benefits
- Cost of salary and benefit enhancements
- What comparable employers are paying
- Turnover statistics

Just as elected officials need time and information to make well-informed decisions, staff will need time to prepare and provide accurate information. As with any issue, limited staff resources may make it advisable to prioritize information requests.

Conversations about the agency's initial bargaining position typically take place in closed session.² The agency's negotiators will share their understanding of what it will take to

Additional Resources

The Institute has two glossaries to assist local officials as they engage with constituents, bargaining representatives and each other about labor relations and public pension issues:

- Labor Relations Terminology:
<http://www.ca-ilg.org/post/labor-relations-terminology>
- Public Pension Terminology:
<http://www.ca-ilg.org/post/public-pension-terminology>

The Institute is grateful to Dr. Rhonda Albey for preparing this piece. Dr. Albey has worked in labor relations for Los Angeles County since 1990.

reach agreement with the union. The agency's governing body will then give negotiators an initial bargaining position.

During Bargaining

No matter how reasonable the agency's initial bargaining position is, it is unlikely that the union will immediately accept it.

The Process Can Be Rough

During the negotiations process, the union may organize demonstrations and/or phone and e-mail campaigns. Discourse may become bullying and emotional.

Don't take it personally – it's all part of the process. Both sides may need to show they are doing their job. Union negotiators need to show their members that they are fighting for them and elected officials need to show they are working hard for the community.

The negotiation process is unpredictable. The agency's negotiators may have misread the union's priorities and goals. Union representatives may have misread the employees' mood. New issues may arise. There may be internal divisions within the union. These challenges may make it impossible to get agreement within the original parameters authorized.

Working with the Agency's Negotiators. As challenges arise, the agency's negotiators may ask for modifications in the bargaining position. This is normal in the course of any type of negotiation, as each party learns more about the interests of the other. Multiple meetings with the negotiating team may be necessary.

Modifications may not involve increases in total expense. An example is moving money from benefits to salaries (or vice-versa). Another example is if decision-makers have authorized higher increases for some position classifications than others, employee representatives may ask to even increases out.

Meeting with Union Officials. As negotiations continue, the union may seek meetings with individual elected official(s) to discuss the agency's bargaining position. As with any group of constituents, an elected official can choose to meet with them or not. If an elected official does meet with union officials, the official should be clear that the official is not speaking on behalf of the governing body.

A word of caution about meeting with employees *without* their union representative during labor

Expect to be Misquoted

People tend to hear what they want to hear.

Someone may say something like "I'll speak to the negotiating team," and mean exactly that – they'll speak to them.

The employees may hear "He/she will speak to the negotiating team and tell them to give us what we want."

Some strategies for minimizing miscommunication are to take notes during the discussion and not to meet with union representatives alone.

negotiations: such meetings can lead to an unfair labor practice accusation of “direct dealing.”³ Avoid any action that makes it appear that the agency is interfering in the union’s relationship with the employees it represents.

If the elected official meets with union representatives, it is helpful to share the conversation with the agency’s bargaining representatives. The conversation may provide insights that will help the agency’s negotiators move the process forward.

If Agreement Is Reached

The agreement still has to be ratified by the rank and file. The union may feel it needs to sell the agreement as a victory for its members. The union may post flyers or e-mails trumpeting their win over management.

For their part, elected officials may hear concerns from constituents that the agency is spending too much on employee salaries and benefits. Agency officials are well-advised to be moderate in their public discourse relating to the agreement. Anything that might be construed as bragging about the agency’s victory in the bargaining process may jeopardize the agreement. The employees won’t ratify the agreement if they think it is a

Post Agreement Issues

While the agency will not have to negotiate during the term of the agreement, issues may arise between negotiations that may require changes.

bad deal or their representatives weren’t sufficiently aggressive on their behalf.

A helpful practice can be a public statement that does not validate either extreme, but says something to the effect that “We reached a deal to provide adequate public services at reasonable cost.”

If Agreement Cannot Be Reached

What happens if the agency can’t reach an agreement? There are procedures under state law for resolving impasse. A local labor relations resolution may provide further guidance on procedures.

Mediation

A mediator may be brought in to try and resolve differences between the agency and the union. Mediators have no authority to impose a settlement, but can be useful in helping the parties look at the problem from a new perspective and to move past personal differences. The state Division of Mediation and Conciliation can provide a mediator.

Fact-finding. Whether or not mediation occurs, the union may request fact-finding as a next step. With the assistance of the

An Expired Contract is not the Same as No Contract

If the contract has expired and agreement has not been reached on a new one, the agency must maintain the status quo until there is a new agreement.

Public Employee Relations Board (PERB), a fact-finding panel is appointed which reviews both parties' proposals, holds hearings and ultimately recommends a settlement.

Unilateral implementation. After exhausting the impasse procedure and holding a public hearing, the agency may impose its final financial offer upon the employees. Management cannot force the union to accept a whole new contract.

Unilateral implementation cannot be used to impose work rule or operational changes and can only be implemented for one year. After that year, or during the year, if the union indicates it has a significant change in its position, the agency must bargain again with the union to try and reach a mutual agreement.

This resource is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on Local Government 101 go to <http://www.ca-ilg.org/localgovt101>.

The Institute thanks the following individuals for their review and input into this resource:

- Holly Brock-Cohn, Human Resources Director, City of Alameda
- Casey Echarte, Assistant Human Resources Director, City of San Mateo
- Eraina Ortega, Legislative Representative, Employee Relations & Human Resources, California State Association of Counties
- Delores Turner, Assistant City Manager, Administrative Services Department, City of Emeryville

The Institute welcomes feedback on this resource:

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References and Resources

¹ California Government Code 3500, known as the Meyers-Milias-Brown Act, (MMB) requires negotiation in good faith with the recognized employee representative on specified subjects. It also permits local agencies to adopt their own rules and regulations for the governance of labor relations.

² See Cal. Gov't Code § 54957.6, which provides:

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

³ See Cal. Lab. Code § 1156; *Ruline Nursery Co. v. Agricultural Labor Relations Bd.*, 169 Cal. App. 3d 247, 266, 216 Cal. Rptr. 162, 172 (1985)

A Local Official's Guide to Labor Relations Terminology

www.ca-ilg.org/LaborRelationsGlossary

Version: December 10, 2013

Salary, healthcare, pensions, leaves and other employment benefits are typically viewed by employees as an important component of the compensation package they receive for their work. Employer proposals to change any of those benefits, even for new employees, are subject to California law which requires the public employer to notify the applicable employee organization about the changes and provide it with the opportunity to meet and confer or bargain over the proposed changes and/or the impact(s).

Listed in alphabetical order below are the key concepts relating to that process.

Agency Shop. This refers to a situation in which an employee whose classification is part of an employee association or in a *bargaining unit* must either join the employee association (union) or pay the association a fee for its services in representing the employee's interests to management. The state's *collective bargaining* law for local public agencies (the *Meyers-Milias-Brown Act*) specifies the procedures for creating an agency shop.¹ Agency shops provide an equitable balance between a desire to make union membership a voluntary decision of each employee and the union's interests in avoiding "free riders" (people who benefit from that part of the union's activities but do not pay for them).

Arbitration. This is a method for resolving disputes by submitting the dispute to a neutral third-party (an arbitrator) who conducts an evidentiary hearing and whose decision may be final and "binding" or merely "advisory," depending on the policy of the employer or the terms of an existing *memorandum of understanding*.

ILG thanks Teresa L. Highsmith of the Colantuono & Levin, PC law firm for her review and comments on this resource. For their peer reviewing contributions, the Institute is also grateful to the following local agency human resources staff:

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- LeeAnn McPhillips, Human Resources Director/Risk Manager, City of Gilroy
- Sly Zelnys, Human Resources Manager, City of Cathedral City

Typically, the public employer and the recognized employee organization split the cost of the arbitrator's fees as provided in their *collective bargaining* agreement or contract.

- **“Grievance” or “Rights” Arbitration.** This type of arbitration resolves disagreements over the interpretation and application of an existing *memorandum of understanding*.
- **“Interest” Arbitration.** This process resolves an *impasse* in negotiations and requires an arbitrator (or arbitration panel) to determine the terms for a new *memorandum of understanding*, which may be advisory or binding.

Note that the arbitrator's decision in interest arbitration may only be binding on the local agency if the agency (or its voters) have decided to give such authority to the arbitrator; state laws providing for binding interest arbitration have been declared unconstitutional, because they deny local officials of their authority over budget decisions by giving that authority to a private individual.²

Bargaining Unit. This refers to a group of employees who share related skills or common interests in working conditions. This grouping or bargaining unit is then represented by a union or other public employee organization in its relationship with the public agency employer, to include *collective bargaining*. The term “bargaining unit” is used interchangeably with the terms “union,” “employee association,” or “recognized employee organization.”

All employees holding positions represented by the bargaining unit are covered by the *memorandum of understanding* reached between the employer and recognized employee organization, whether they are dues-paying union members or not.

For California local agencies, the public agency employer determines the appropriate bargaining units within the agency.³ The agency typically has an employer-employee relations ordinance or resolution which describes the procedures to determine bargaining units, to resolve disputes over bargaining unit formation and to establish bargaining unit representation. The public agency typically creates these procedures after consulting in *good faith* with the representatives of a recognized employee organization.⁴ Related concept: *meet and confer*.

Closed Session. California's open meeting laws allow a local agency governing body to meet in closed session to provide instructions to the agency's bargaining representatives.⁵ These sessions may take place both before and during labor negotiations.⁶ The instructions can include parameters on salaries, benefits and working conditions.⁷ Discussions on funding priorities and available funds may occur, but only insofar as necessary to instruct the agency's bargaining representatives.⁸

The theory of allowing these discussions to occur in closed as opposed to open session is to enable the agency to avoid revealing the agency's bargaining parameters to *bargaining unit* representatives. These closed sessions help agency leaders to communicate with their bargaining representatives in confidence in an effort to obtain the best deal possible for taxpayers.⁹ Related concept: *confidentiality, transparency*.

Collective Bargaining. This is the negotiation process that occurs between an employer and a *bargaining unit* where the parties try in *good faith* to reach agreement on wages, hours, benefits and other terms and conditions of employment. (Wages and benefits, hours and other terms and conditions of employment are the "mandatory" subjects within the scope of bargaining and upon which the parties must *meet and confer in good faith*.)

A union or other labor organization typically represents a *bargaining unit* in the collective bargaining process with the public agency employer. The parties can collectively bargain over such issues as salaries, benefits, vacation time, work hours, safety conditions, grievance procedures, etc.

The goal of the collective bargaining process is for the parties to reach an agreement on wages, hours and the terms and conditions of employment and to honor them by creating a "*memorandum of understanding*."¹⁰ Collective bargaining by local public entities is governed by state statutory laws and administrative agency (Public Employment Relations Board or PERB) regulations and judicial decisions. Related concepts: *bargaining unit* and *good faith*.

Confidentiality. Disclosing confidential information shared in *closed session* relating to the public agency's *collective bargaining* parameters or strategies violates the state's open meeting laws.¹¹ Any decision to disclose confidential information must be a legislative majority decision, not an individual legislative body member decision.¹² For more information, see www.ca-ilg.org/closed-session-leaks. Related concept: *transparency*.

Concession Bargaining. This form of bargaining, also called "take back" bargaining, refers to a situation in which a public agency finds itself unable to maintain the same level of staffing, wages and/or benefits (or other terms and conditions of employment) for its *bargaining units* typically due to budget constraints. One of the agency's options is to negotiate concessions with its *bargaining units* to reduce costs in order to achieve a balanced budget.

This contrasts with bargaining sessions in which *bargaining units* enter into negotiations seeking enhancements to salaries, benefit packages, staffing levels and such.

Critical elements to the success of concession bargaining include agency *transparency* in terms of its financial situation, trust in the accuracy of the financial information it shares with the recognized employee organization, and clarity on the agency's labor relations objectives.¹³

Effects Bargaining. This is a type of bargaining which involves certain *management rights* which impact wages, hours or conditions of employment—matters within the mandatory *scope of representation*. These decisions need not to be a part of bargaining, however to the extent that they have an impact or effect on employee wages, hours or conditions of employment, the agency must *meet and confer* on the impacts. Related concepts: *meet and confer*, *management right* and *scope of representation*.

Elected Official Role in Collective Bargaining. Typically, the most effective role elected officials can play in the labor relations process is to set key financial and other parameters for the negotiating team that indicate what kind of final agreement the governing body will be willing to approve at the end of the negotiating process.¹⁴ Financial parameters include salary and benefit costs, but also costs associated with operational changes that may be proposed in the course of discussions.

By setting parameters, as opposed to specific positions or strategies, the governing body provides its bargaining representatives with the flexibility necessary to engage in the give and take characteristic of the bargaining process.

It is not uncommon for the recognized employee organization to lobby individual members of the legislative body in order to gain an advantage in the bargaining process. Parameters for contacting legislative body members during labor negotiations as well as other procedural matters may be agreed to in a negotiated set of *ground rules* to help guide the *collective bargaining* process.

For more information, see www.ca-ilg.org/post/elected-officials-role-collective-bargaining. Related concepts: *closed session* and *confidentiality*.

Employee-Employer Relations Resolution. A local public agency may adopt rules through an ordinance or resolution that will govern its labor relations activities, including its *impasse* procedures. As with other actions involving the setting of rules or policies affecting members of a recognized employee organization, the agency must consult in *good faith* with recognized employee organizations before finalizing its rules.¹⁵ California law offers a list of issues that can be addressed through such rules.¹⁶

Fact Finding. This is a process for local agencies and employee organizations when they come to *impasse* in labor negotiations. The process provides the recognized employee organization the right to request the parties' differences be submitted to a fact-finding panel. The recognized employee organization must make a written request for fact finding within 30 days from *impasse* declaration or a decision of a mediator, if *mediation* was used to resolve the *impasse*. The fact finding panel is composed of three persons—one chosen by the public agency employer, one chosen by the recognized employee organization, and the chair provided by the Public Employment Relations Board (“PERB”). The parties split the costs of the fact finding panel. Once convened, the fact finding panel must conduct an investigation, hold informal hearings and issue a report within 30 days.

The panel considers many criteria, including:

- Interests and welfare of the public and the fiscal health of the public agency.
- The cost of living.
- Hours, conditions of employment, and overall compensation received by employees: wages, healthcare, retirement benefits, vacations, holidays, and other excused time.
- Comparability of hours, conditions, and overall compensation received by employees of comparable public agencies.

The parties have 10 days to negotiate and reach agreement once the fact finding opinion is released. After 10 days, if the parties are unable to reach negotiated agreement, the fact finding opinion becomes a public record and the governing body of the public agency may declare *impasse* and unilaterally impose its *last, best, and final offer*, which remains until the parties negotiate a new *memorandum of understanding*.

Good Faith. The law requires local agencies to genuinely try to reach an agreement with employee organizations prior to making a decision affecting matters within the mandatory scope of bargaining (wages, hours and other terms and conditions of employment).¹⁷ This involves approaching conversations with an authentic desire to resolve differences and reach a common ground,¹⁸ as opposed to a resolve not to budge from an initial position.¹⁹

Ground Rules. A voluntary set of agreed-to rules or procedures to guide the *collective bargaining* process. Ground rules typically include such matters as how many persons may participate, how often meetings will occur, whether the parties may take time out to caucus, agreeing to refrain from discussing the negotiations in public or contacting members of the governing body, etc. Ground rules are not required; they can be helpful in the *collective bargaining* process if the parties can easily agree to their content.

Impasse. Despite everyone's *good faith* efforts, there can come a point in negotiations in which one or both parties determine that their differences are so substantial or discussions so prolonged that future meetings would be futile.²⁰ If this occurs, a local agency can implement the impasse resolution procedures specified in its *employer-employee relations resolution*. After exhaustion of the impasse resolution procedures (including the *fact-finding* process if requested by the recognized employee organization) agencies not subject to *arbitration* may implement the agency's *last, best, and final offer*.²¹

Last, Best, and Final Offer. When the parties have reached *impasse*, the local agency may provide a last, best, and final offer which describes the local agency's position on the mandatory *scope of representation* (wages, hours and conditions of employment). These are the terms which can be unilaterally implemented by the local agency, after going through *impasse* procedures. Imposition of the last, best, and final offer does not create a *memorandum of understanding*. The offer remains in place until the parties negotiate a new *memorandum of understanding* through the *meet and confer* process, prior to the adoption of the agency's next fiscal year budget.

Management Rights. These are prerogatives reserved to management, relating to the merits, necessity and organization of the services the agency provides to the community. Management rights are outside the mandatory *scope of bargaining*. Examples including the right to hire, fire, determine whether a public program is necessary and to what extent it should be staffed. Matters which fall within a local agency's management rights are generally not subject to *meet and confer*. However, to the extent that exercise of management rights, affects wages, hours or conditions of employment, *effects bargaining* may be required. Related concepts: *meet and confer*, *meet and consult* and *effects bargaining*.

Mediation. A method of resolving *impasse* in which a mutually agreed upon third-party (a mediator) assists the parties in identifying areas of shared interest and facilitating agreement. The public agency and the recognized *employee* organization(s) share the mediation costs.²² The mediator acts as a facilitator in helping the parties resolve their differences. Typically, mediation is not final and binding nor does it require an evidentiary hearing. If the parties do not resolve the *impasse* through mediation, the recognized employee organization may request *fact finding*. Alternatively, in *interest arbitration*, the arbitrator (or arbitration panel) acts as a decision-maker and resolves disputed issues.

"Me-too" Clause. This can be a clause in a *memorandum of understanding*. It says that if another employee *bargaining unit* within the local agency negotiates or receives a better benefit, then that *memorandum of understanding* with the "Me-too" clause is automatically enhanced in the same way.

Meet and Confer. Public agency management and employee representatives have a mutual obligation to bargain in *good faith* to reach agreement on issues relating to wages (including pensions and other post-employment benefits), hours and other terms and conditions of employment (sometimes referred to as "the mandatory *scope of representation*").²³ This obligation does not extend to issues relating to the merits, necessity, or organization of a particular public service activity (so called "*management rights*"), except to the extent that any proposed changes impact wages, hours or other terms and conditions of employment.²⁴

Meet and Consult. This is a lesser standard of consultation between public agency management and employee representatives. It applies to changes to public agency policies, rules and regulations regarding management rights to the extent that they do not affect the mandatory *scope of representation*.

For example, changes to personnel rules, department policies or general orders or (depending on content) the *employee-employer relations resolution* require that the public agency notify the recognized employee organization of the proposed changes and offer to discuss the new policy prior to implementation. However, under the meet and consult standard, the parties are need not to reach negotiated agreement on the policy prior to implementation.²⁵ Where the new policy affects or impacts the mandatory *scope of representation*, the parties must *meet and confer* to attempt to reach negotiated agreement prior to implementation by the public agency.

Memorandum of Understanding (MOU). Also referred to as a contract or a *collective bargaining* agreement, this is a written agreement between the local public agency and the recognized employee organization. It describes the wages, hours and other terms and conditions of employment for the organization's *bargaining unit* members for a stated period of time, as *collectively bargained* by the parties.²⁶ To be binding, both the employee organization and the governing body must approve the memorandum of understanding.²⁷

Meyers-Milias-Brown Act. This is the California law²⁸ that provides a framework for resolving labor issues (such as wages, hours and other terms and conditions of employment) between local public agencies and public employee organizations. It is sometimes referred to by its acronym "MMBA."

The act recognizes the right of public employees to join labor organizations of their own choice and be represented by those organizations in their employment relationships with public agencies.²⁹ It covers cities, counties, and special districts but does not cover public school districts, community colleges, the University of California, the State University system or the State of California.³⁰

Past Practice. These are practices or policies which have not been reduced to writing, but have, over a period of time, become accepted by both management and the recognized employee organization. A past practice may show how a provision in a *memorandum of understanding* has been interpreted by the parties. An established past practice can be ended or changed with proper notice and process. A *zipper clause* can also be used to try to defeat a claim of entitlement to a past practice.

Public Employment Relations Board (PERB). This is a California agency that helps resolve *collective bargaining* disputes between public employers, employees and their unions. It upholds and administers California law concerning the *collective bargaining* statutes covering California public employees. PERB's jurisdiction is limited to resolving claims of *unfair labor practices* and interference with employee organization rights (right to unionize and be free from reprisal for *collective bargaining* activity), over which it has exclusive initial jurisdiction (this means that the parties cannot file a lawsuit prior to asking PERB to resolve the dispute). PERB does not enforce terms in a *memorandum of understanding* or an *Employee-Employer Relations Resolution*.

Regressive Bargaining. This occurs when a party backs away from a proposal submitted during negotiations. Such action can be the basis of a claim of not negotiating in *good faith*.

Reopener Clause. This is a clause in a *memorandum of understanding* which sets a date or an event which reopens negotiations on a particular issue within the agreement. An example of a reopener clause is an agreement to revisit a cost of living raise for employees in the event that the local agency receives new revenues.

Scope of Representation. The “scope of representation” refers to all matters relating to employment conditions and employer/employee relations, including, but not limited to, wages, hours, pensions, benefits and other terms and conditions of employment.³¹ It does not include consideration of the merits, necessity or organization of any service or activity provided by law or executive order, which is sometimes referred to as *management rights* within the “permissive” scope of representation.³²

Tentative Agreement (“TA”) Issues that have been agreed to during bargaining are set aside as being the subject of a tentative agreement or “TA.” The parties then can continue to work on the other unresolved issues at the bargaining table. A *tentative agreement* on any issue does not in and of itself become an agreement until all the issues have been resolved and both parties have approved the final agreement.

Transparency. The state’s open meeting laws generally balance the values of transparency and *confidentiality* in regards to labor negotiations. For example, the governing body of a public agency must describe the nature of a particular *closed session* item on its agenda.³³ This makes the public aware of the fact that instructions are being given to the agency’s labor negotiators in *closed session*; it also provides the public the opportunity to offer their thoughts prior to the governing body’s *closed session*.³⁴

Once labor negotiations are completed and the *bargaining unit* approves the agreement, the *memorandum of understanding* must be approved in an open meeting by the represented employees.³⁵

The governing body can choose to publicly disclose more than the information required under the open meeting laws, but it can never provide less information.

Another element of transparency is the fact that public agency salaries and benefits are generally considered public records, as are contracts between public agencies and employees.³⁶ Public records law requires agencies to disclose records upon request. Given the recent public interest in public agency salaries and benefit packages, one policy and transparency issue for local agencies to consider is to make public records readily available (for example, through the agency’s website) without waiting for a public records request. For more information on website transparency, see www.ca-ilg.org/post/local-agency-website-transparency-opportunities.

Unfair Labor Practice Charge (ULP). This is an allegation of failure to bargain in *good faith* or interference with an employee's rights to form a union or participate in the *collective bargaining* process. Either the employee, recognized employee organization or the local agency can file an unfair labor practice charge with the *Public Employment Relations Board*, which has exclusive initial jurisdiction to hear the matter. An unfair labor practice charge must be filed within six months from the date the charging party knew about the conduct alleged in the charge.

Zipper Clause. This is a provision in a *memorandum of understanding* that states that the written *memorandum of understanding* is the complete agreement negotiated between the parties. Such a clause typically states that nothing excluded from the written *memorandum of understanding* is agreed to unless it is put in writing, signed by all parties and attached to the *memorandum of understanding*.

About the Institute for Local Government

ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on personnel and labor relations visit www.ca-ilg.org/personnellabor-relationspensions. If you would like to access this resource directly, go to www.ca-ilg.org/post/labor-relations-terminology.

The Institute welcomes feedback on this resource:

- *Email:* info@ca-ilg.org Subject: *Labor Relations Terminology*
- *Mail:* 1400 K Street, Suite 205 • Sacramento, CA • 95814

Endnotes, References and Resources for Further Information

¹ Cal. Gov't Code §§ 3502.5.

² See Cal. Civ. Proc. Code § 1299 and following, declared unconstitutional in *County of Riverside v. Superior Court*, 30 Cal. 4th 278 (2003); *County of Sonoma v. Superior Court*, 173 Cal. App. 4th 322 (2009).

³ *Covina-Azusa Fire Fighters Union, Local 2415 v. City of Azusa*, 81 Cal. App. 3d 48, 59 (1978).

⁴ Cal. Gov't Code §§ 3507.

⁵ Cal. Gov't Code § 54957.6(a) ("Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated Representatives.")

⁶ Cal. Gov't Code § 54957.6(a) ("Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.")

⁷ Cal. Gov't Code § 54957.6(a) ("Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.")

⁸ Cal. Gov't Code § 54957.6(a) ("Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.")

⁹ See *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App. 2d 41, 46 (1968) (noting in the context of settlement discussions that “If the public’s ‘right to know’ compelled admission of an audience, the ringside seats would be occupied by the government’s adversary, delighted to capitalize on every revelation of weakness.”).

¹⁰ See Cal. Gov’t Code § 3505.1.

¹¹ See Cal. Gov’t Code § 54963.

¹² See Cal. Gov’t Code § 54963(a) (“A person may not disclose confidential information that has been acquired by being present in a closed session ... to a person not entitled to receive it, *unless the legislative body authorizes disclosure of that confidential information.*” emphasis added).

¹³ For example, the County of Ventura has supplemented its overall mission, values and goals statements with an application of those principles to its labor relations activities. The result is a specific vision, mission and set of labor relations principles adopted by the governing board that guided the county’s negotiations and articulated goals and principles with which bargaining units could agree.

¹⁴ For more insights on the role of elected officials in the bargaining process, see www.mml.org/pdf/hmo/book.pdf (Handbook for Municipal Officials, published by the Michigan Municipal League, 2004—Labor Relations).

¹⁵ Cal. Gov’t Code § 3507(a) (“A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations under this chapter.”)

¹⁶ Cal. Gov’t Code § 3507(a) (“The rules and regulations may include provisions for all of the following:

- (1) Verifying that an organization does in fact represent employees of the public agency.
- (2) Verifying the official status of employee organization officers and representatives.
- (3) Recognition of employee organizations.
- (4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 3502.
- (5) Additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment.
- (6) Access of employee organization officers and representatives to work locations.
- (7) Use of official bulletin boards and other means of communication by employee organizations.
- (8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.
- (9) Any other matters that are necessary to carry out the purposes of this chapter.”)

¹⁷ See Cal. Gov’t Code § 3505.

¹⁸ *Placentia Fire Fighters v. City of Placentia*, 57 Cal. App. 3d 9, 25 (1976).

¹⁹ *Placentia Fire Fighters*, at 25.

²⁰ Cal. Gov’t Code § 3540(f).

²¹ Cal. Gov’t Code § 3505.4.

²² Cal. Gov’t Code § 3505.2.

²³ Cal. Gov’t Code §§ 3505.

²⁴ See *Berkeley Police Association v. City of Berkeley*, 76 Cal. App. 3d 931 (1977).

²⁵ Cal. Gov’t Code § 3507

²⁶ Cal. Gov’t Code § 3505.1.

²⁷ *Valencia v. County of Sonoma*, 158 Cal. App. 4th 644 (2007).

²⁸ Cal. Gov’t Code §§ 3500-3511.

²⁹ Cal. Gov’t Code §§ 3500-3503, 3505.

³⁰ Cal. Gov’t Code § 3501(c)-(d), 3501.5. See Cal. Educ. Code § 88000.

³¹ Cal. Gov’t Code §§ 3504.

³² See *Berkeley Police Association v. City of Berkeley*, 76 Cal. App. 3d 931 (1977).

³³ See Cal. Gov’t Code §§ 54954.2, 54956. See also Cal. Gov’t Code § 54954.5 (“safe harbor” closed session agenda descriptions).

³⁴ See Cal. Gov’t Code §§ 54954.3(a).

³⁵ See Cal. Gov’t Code §§ 54957.1(a)(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or

ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.”)

³⁶ See Cal. Gov’t Code § 6254.8 (“Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 [specific exceptions to records disclosure requirements] and 6255 [general exception/balancing test]”). See also *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319 (2007) (finding no basis to withhold records relating to request to disclose names and salaries of public employees earning \$100,000 or more each year). See also *League of California Cities, The People’s Business: Guide to the Public Records Act*, 2008 at 29 and 30 (available at www.cacities.org/UploadedFiles/LeagueInternet/62/62f84af4-13c5-4667-8a29-261907aea6d6.pdf).

A Local Official's Guide to Pension Terminology

www.ca-ilg.org/PensionGlossary

v.5.1: 9/28/11

About This Guide

As local officials engage in conversations with their constituents, their bargaining representatives and each other about public pension issues, it can be helpful to have a working understanding of what key terms and concepts mean. The Institute for Local Government has prepared this plain-language glossary to assist local officials with these conversations and to offer a level of transparency to the pension process.

The glossary covers concepts relating to pension plan benefits, funding and governance. The terminology is inter-related in many ways. When a definition uses a word or phrase that itself is defined in the guide, the word or phrase will be listed in *italics*. Cross references to related terms are also listed at the end of definitions as “related concepts.”

The Institute for Local Government welcomes your thoughts and suggestions on this resource. Please send them to jspeers@ca-ilg.org (or fax them to 916.444.7535).

Thank You

The Institute wants to express its appreciation to the State Association of County Retirement Systems and the California Public Employee Retirement System for their respective glossaries,¹ which served as useful starting places for this glossary. They also are especially helpful resources for those who participate in those pension systems and/or are interested in understanding the range of options under those systems. They also each contain additional technical terminology relating to actuarial calculations for those who wish to delve into more detail relating to pension funding.

The Institute is very grateful to Institute Graduate Fellow, Shannon Bowley, whose research, writing and incorporation of peer review comments, enabled this glossary to exist.

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By the Numbers

A number of pension-related phrases draw their names from their legal roots—typically a section in the California Government Code, Internal Revenue Code or other law.

- **1937 Act Retirement System.** State law (officially “The County Employees Retirement Law of 1937”) authorizes counties to create and operate pension systems for county and other local agency employees. Twenty California counties operate pension systems under the 1937 Act. Some local agencies also participate in these county-operated systems. Two other cities have pension systems created pursuant to their charters. Other counties and local agencies participate in the California Public Employees' Retirement System ("CalPERS"), which was formed under the Public Employees Retirement Law (“PERL”). These pension systems offer defined benefit pension plans.
- **401(h) Account.** Section 401(h) of the Internal Revenue Code permits a pension plan to provide for tax free payment of benefits for sickness, accident, hospitalization and medical expenses for retired employees, their spouses and dependents. Accordingly, the method for providing tax free medical benefits in a pension plan (or money purchase plan) is by using a section 401(h) account.
- **401(k) Plan.** This is a common form of defined contribution plan. Under this type of plan, employees contribute an amount of their base salary on a pre-tax basis to an account that will be invested for their eventual retirement. Employers may contribute matching funds if they choose.
- **457 Plan.** This is a form of a defined contribution plan. Under this type of deferred compensation plan employees choose to defer a portion of their pre-tax earnings into an investment account. Employees may change their contribution amount, transfer funds among a variety of investment options, or change contribution percentage allocations. Amounts contributed to the plan and the interest earned on these investments is not subject to income tax until the money is taken out during retirement or upon separation from the employer.

Accounting Standards. See *Governmental Accounting Standards Board (GASB)*.

Active Member. *Retirement systems, including CalPERS, CalSTRS, and 1937 Act systems, refer to those who are participating in the system's pension plan as a "member" of the system.*

- A "member" can be active, inactive, or retired; a survivor or beneficiary of an employee who is a pension plan participant is also considered a member.
- "Active" members are pension plan participants who are currently working for an employer and are earning *service credit* in a retirement plan. Active members also include members on authorized leave who are not earning service credit.²

Related concepts: *member, participant*.

Actuary. *Retirement system boards hire these professionals, whose key responsibility is assessing whether a pension fund has sufficient assets to meet its financial obligations.³ They calculate pension plan obligations (often referred to as "liabilities") and assets to then determine the contributions necessary to fund promised pension benefits. They do this by estimating the present (discounted) value of future pension benefit payments, using a variety of assumptions, including worker and retiree life expectancies, past and future earnings, and estimated pension fund investment results. An actuary makes these projections on a long-term basis through a combination of mathematics, statistical analysis and financial theory in an effort to understand the effect future events will have on the pension fund obligations and resources. While not an exact science, the actuarial analysis is an important component of assuring a financially healthy pension plan.*

Related Terms:

- **Actuarial Assumptions.** Actuaries make assumptions about certain events that will affect pension costs. Assumptions generally can be broken down into two categories:
 - **Demographic Assumptions.** These include projections about such things as to when people will die (*life expectancy* or mortality), become disabled, or will retire.
 - **Economic Assumptions.** These include projections about such things as what the *pension system* will receive as a return on its investments, inflation, *base salary* growth and what level of benefits a pension plan member will receive.⁴
- **Actuarial Accrued Liability.** This number can be the result of *actuary* calculations that assess whether a pension fund is on track to meet its financial commitments to *participants*. If there is a projected shortfall, the actuary concludes that the fund has a net liability. This concept is also sometimes referred to by its acronym "AAL." Related terms: *actuarial valuation, actuarial valuation report, expected future benefits, fully*

funded, funded ratio, funding policy, normal cost, present value of projected benefits, and under-funded..

- **Actuarial Valuation.** This is a procedure actuaries use to help *pension funds* establish the amount a plan needs to collect in order to meet the fund's current and future payment obligations. One technique used is to estimate the current (present) value of the future benefits a *pension plan* should expect to pay. Once this number is calculated, then the contribution amounts necessary to cover those benefit costs can be computed. Unfunded costs are costs not currently covered by plan assets.⁵
- **Actuarial Valuation Report.** This report is an assessment of whether, given 1) current and projected levels of employee and employer contributions and 2) current and projected investment earnings, the *pension fund* will have enough money to pay amounts promised to pension beneficiaries. These reports are usually prepared annually in order to determine whether employer contribution rates need to be adjusted. The report uses past performance of plan assets to project contributions necessary to fund current estimated liabilities. A general goal is to fund the amounts necessary to pay employees' estimated pension costs while the employees are working and earning pension benefits.
- **Assumed Rate of Return.** To fund promised pension benefits, employee/employer contributions are invested. The estimated return is the *pension fund's* assumed rate of return or annual expected gain and one of the factors used by actuaries to estimate the cost of funding a *defined benefit pension plan*.⁶ Related concept: *investment policies*.

Additional Service Credit ("Air Time"). This is a practice used by some systems that allows employees to purchase additional retirement credit for time not actually worked. Related concept: *service credit*.

Asset Allocation Plan. *Pension systems* typically invest pension assets in different kinds of investments (a concept known as diversification), based on a balancing of considerations including the relative risk of certain kinds of investments, how those investments relate to inflation, and what kind of returns those investments are likely to earn.⁷ Related concepts: *duty of reasonable care and diligence, fiduciary duty, investment policy*.

Asset Smoothing. This is the practice of spreading a *pension system's* investment gains and losses over a period of time in order to minimize year-to-year contribution rate fluctuations. This is done by assigning a market-related value to a plan's assets in order to determine contribution requirements. This assigned value is called the actuarial value of assets (sometimes referred to by the acronym AVA) or the "smoothed value" of assets.⁸ Related concepts: *employee/employer contribution, investment policy, and pension cost volatility*.

Base Salary. This is the fixed rate of compensation that an employee receives from an employer for a specified job. Base salary does not include employee benefits, bonuses or any other form of special compensation that may be part of an employee's *pensionable wages*. Related concepts: *benefit formulas, one-year final compensation, employer/employee contributions, and pensionable wages*.

Benefit Formula. Also known as a "pension benefit formula," this calculation determines the amount a retiree receives in a *defined benefit pension plan*. This amount is typically based on a mathematical formula contained in statute that takes into account the following factors:

- The number of years of service the employee has in the retirement system (known as "*service credit*");
- The employee's *pensionable wage* level;
- Age at time of retirement; and
- A percentage factor.

For an example please see *defined benefit pension plan*. Related concepts: *enhanced benefit formulas, one-year final compensation, pension systems, pension spiking and service credit*.

Board of Retirement. For *1937 Act retirement systems*, the administration and control of each county *pension system* is entrusted to a "board of retirement," consisting of nine members.⁹ Four members are employees (two general, one safety plus an alternate, and one retired plus an alternate) each elected by their peers for three-year terms; four are appointed to three-year terms by the county's board of supervisors; and one is the county treasurer. In Los Angeles County, this entity is known as the "Board of Retirement and a Board of Investment."¹⁰ Related concepts: *duty of care and diligence, fiduciary duty, plan governance, retirement system board, and third-party administrator*.

California Public Employees' Retirement System (CalPERS) (Formerly PERS). This is a pension system established by the Public Employees Retirement Law¹¹ in 1932¹² for state employees. It was expanded in 1939 to include classified (non-teaching) school employees and employees in California public agencies that contract with CalPERS for retirement and/or health coverage (including local agencies).¹³ Related concepts: *CalPERS Board of Administration, defined benefit pension plan, pension funds, pension system, and Public Employees Medical and Hospital Care Act (PEMHCA)*.

CalPERS Board of Administration. This board oversees the *CalPERS retirement system* and associated programs. Under state law¹⁴ this thirteen member has the following membership:

Six elected members:

- Two elected by and from all CalPERS pension system *members*;
- One elected by and from all state employee *active members*;
- One elected by and from all CalPERS school employee *active members*;
- One elected by and from all CalPERS local agency *active members* (in other words those employed by local agencies who contract with CalPERS);
- One elected by and from the retired CalPERS plan *members*;

Three appointed members:

- Two appointed by the Governor – one of whom must be a local elected official and another from the life insurance industry; and
- One public representative appointed jointly by the Speaker of the Assembly and the Senate Rules Committee.

Four *ex officio* (by virtue of their positions) members:

- The State Treasurer;
- The State Controller;
- The Director of the Department of Personnel Administration; and
- A designee of the State Personnel Board.

The Board of Administration is responsible for the management and control of CalPERS, including the administration and investment of CalPERS' pension *trust fund*. The Board is also responsible for managing a number of other funds and programs, including the system's *457 plan* and long-term care program. In addition, the Board administers the *Public Employees' Medical and Hospital Care Act* and the state's contract with the federal government for Social Security.¹⁵ Related concepts: *duty of care and diligence, fiduciary duty, plan governance, retirement system board, and third-party administrator.*

California State Teachers' Retirement System (CalSTRS). In 1912, this pension system was founded for teachers in California.¹⁶ CalSTRS provides retirement related benefits and services to teachers in public schools and community colleges. CalSTRS provides three basic benefits:

- Service retirement based on a *benefit formula*
- Survivor benefits
- *Disability retirement*¹⁷

The system is administered in accordance with the Teachers Retirement System Law.¹⁸ Related concepts: *defined benefit pension plan, pension funds, pension system, retirement system board, Teachers Retirement Board, and third party administrator.*

Collective Bargaining. California's labor relations law, known as the *Meyers-Milias-Brown Act (MMBA)*,¹⁹ requires local agency employers to negotiate with groups of employees in good faith to try to determine mutually agreeable employment conditions. Salaries and benefits are a common subject of such negotiations—including pension and other post-employment benefits. For a glossary of terms relating to labor relations, please see the Institute's *A Local Official's Guide to Labor Relations Terminology* at www.ca-ilg.org/LaborRelationsGlossary. Related concept: *Meyers-Milias-Brown Act.*

Comprehensive Annual Financial Report. This document presents a complete picture of the agency's finances. It is sometimes referred to by the acronym CAFR (pronounced "kay-fur"). A "comprehensive annual financial report" supplements the basic financial statements; its contents are specified by generally accepted accounting principles (sometimes referred to by the acronym "GAAP"). *Pension systems* prepare comprehensive annual financial reports. In addition, when local agencies prepare their own comprehensive financial reports, one of the recommended components of the comprehensive financial report is a report on the agency's funding of pension and other post-employment benefits.²⁰

Contribution. See *employer/employee contribution.*

Contribution Holiday. A practice of not requiring contributions from employers or employees (or both) during years when investment returns are sufficiently high to enable an agency to meet its projected pension obligations without additional contributions, based on actuary calculations. In other words, those contributing to the *pension fund* get a "holiday" from making contributions to the fund. There has been advisement against the use of contribution holidays.²¹ Related concepts: *actuary, asset smoothing, fully funded, funding policy, funding ratio, GASB Statement 50, retirement system funding and super-funded.*

Cost of Living Adjustment. Some public employers have retirement benefits that include an annual cost of living adjustment (sometimes known by the acronym "COLA") that helps maintain the retiree's spending power.²² Related concept: *benefit formula.*

Defined Benefit Pension Plan. This type of plan provides public employee retirees with a guaranteed lifetime monthly income, based on a predetermined statutory formula. This approach contrasts with *defined contribution plans*, although some employers offer a combination of the two kinds of plans—a concept known as a *hybrid plan*. There are a series of considerations that have been identified for local agencies to use in determining what kind of system makes sense for the local agency,²³ and essential design elements for defined benefit pension plans.²⁴

Defined benefit pension plans are typically funded by a combination of a flat employee contribution (which, as a result of labor negotiations processes, some public employers pick up all or part) and a fluctuating employer contribution based on the retirement fund's investment performance and other factors. Under a *defined benefit pension plan*, employers bear the risk of underperforming assets that may not produce sufficient income to support a promised level of retirement benefits.

In California, the promised level of benefits in defined benefit pension plans are typically based on a formula. The formula is based on an employee's age at the time of retirement (which is then tied to a percentage factor), the employee's length of service, and the highest one-year or three-year average *pensionable wages* earned by the employee. An example is the "2 percent at 60 formula" that provides 2 percent of the employee's highest average compensation for each year of service at age 60. This means that someone retiring at 60 after 25 years of service could expect to receive 50 percent of their highest annual average compensation.²⁵ Related concepts: *1937 Act Retirement System, benefit formulas, CalPERS, CalSTRS, employee/employer contributions, enhanced benefit formulas, one-year final compensation, pension benefit, pension spiking, pension systems* and *service credit*.

Defined Contribution Plan. This type of plan starts with a specified annual contribution amount from the employer, the employee or both. This approach contrasts with *defined benefit pension plans*, although some employers offer a combination of the two plans—a concept known as a *hybrid plan*. Finance officials offer a series of factors for local agencies to consider in determining what kind of system makes sense for a particular local agency,²⁶ as well as essential design elements for such plans if they are the primary retirement plan.²⁷

The benefits that the retiree receives are based on any employer and employee contributions and investment earnings reduced by administration fees. The only guaranteed amount is the annual employer and/or employee contributions because future benefits may fluctuate depending on investment earnings. In this way, the employee assumes the risk that investment results may produce lower than hoped-for retirement income. Related concepts: *401(k) plan* and *457 plan*.

History of Defined Benefit Pension Plans and Defined Contribution Plans

Defined Benefit Pension Plans

Pensions date back to before America's founding—to colonial militias. American Express, then a railroad freight forwarder, introduced its defined benefit pension plan in 1875; other railroads followed suit, followed by AT&T in 1906. By 1920, many large corporate employers offered defined benefit pension plans. The trend towards defined benefit plans received a boost in the 1930s, when tax advantages encouraged smaller companies to offer plans.

By 1970, 45 percent of the American workforce participated in defined benefit plans. During this period, however, there were a number of notable pension plan failures. These failures led to closer regulation of private plans through the Employee Retirement Income Security Act (ERISA) in 1974.

Defined Contribution Plans

Defined contribution plans are more of a 20th century development, arising out of company profit sharing plans.

The trend toward defined contribution plans started picking up momentum in the 1980s, with the passage of Internal Revenue Code amendments in 1978 that created the "401(k)" defined contribution option for private employers that allowed employees to save towards their retirement by deferring part of their income into an investment account without having to pay tax on that income. The increasingly extensive regulation of private defined benefit pension plans (for example, through the Employee Retirement Income Security Act and accounting requirements) reinforced this momentum, as did the year-to-year volatility/unpredictability of employer obligations under defined contribution plans in light of the importance of profit margins in the private sector.

Disability Retirement. This form of retirement allows an eligible employee who is unable to perform the usual duties of his or her position due to a disability to retire early or for the duration of the disability. The disability typically relates to an illness or injury that is expected to be permanent or of an undetermined duration. The income amount is determined by a number of variables, including whether the cause of the disability is work-related, the nature of the employee's work, and the specific provisions in the contract between the *pension system* and the employer.²⁸ Related concept: *early retirement*.

Duty of Care and Diligence. Members of public *retirement system boards* are fiduciaries and must perform their responsibilities to their retirement systems with the care, skill, prudence, and diligence under the given circumstances that a person exercising good judgment, acting in a similar capacity, and familiar with these matters would use in performing the same or similar services.²⁹ This is also referred to as the "prudent person standard." Related concept: *fiduciary duty*.

Early Retirement. When an employee must stop working or chooses to stop working before the employee is eligible for normal retirement, some *1937 Act* plans may provide for payment of a retirement allowance. The retirement allowance payable at the time of early retirement is usually lower than the normal retirement allowance.³⁰ Related concept: *disability retirement*.

Employee/Employer Contribution. In public *pension systems*, the amounts paid into a retirement *trust fund* can be divided into two parts: the part paid for by the employee and the part paid by the employer.

- **Employee Contribution.** This is typically a fixed percentage of the employee's *base salary* that is necessary to help fund the retirement program. In some instances, the collective bargaining process has resulted in an employer's agreement to pick up all or part of the employee contribution. In 1937 Act systems, the employee's contribution varies by an employee's age at time of hire.
- **Employer Contribution.** In *defined benefit pension plans*, the employer contribution is typically an amount that an employer must contribute to the employer's pension *trust fund* on a sustained, ongoing basis in order for the agency's pension fund to be able to meet its obligations to employees (known as "*expected future benefit payments*," see below). The employer contribution is the result of actuarial calculations, and generally consists of two components: 1) "*Normal costs*," which are the current and future costs of employee pensions, and 2) Amortization of any *unfunded liability*.³¹ Note that for CalSTRS the employer contribution is determined by statute³².

Under some circumstances (particularly *defined contribution* systems), employers may agree to match employees' contributions.³³ Related concepts: *actuary*, *additional service credit* ("air

time”), *asset smoothing*, *benefit formula*, *contribution holiday*, *funding policy*, *matching contributions* and *retirement system funding*.

Employer Paid Member Contribution (EPMC). As part of the *collective bargaining* process, a local agency may agree to pay all or part of the *employee's contributions* required to be paid by specified members.³⁴ Specific parameters must be met.³⁵ These may or may not be included in *pensionable wages*.

Enhanced Benefit Formulas. In the late 1990s/early 2000s, legislation (SB 400³⁶/AB 616³⁷) was enacted to create more advantageous benefit options for local agencies to offer their safety and miscellaneous public employees (3 percent at 50 or 55 for safety employees and 2.5 or 2.7 percent at 55 and 3 at 60 for miscellaneous employees).

Entry-Age Normal Funding Method. A method for prefunding pension benefits performed by allocating the cost of each member's pension on a level percent of payroll between the time employment begins (entry age) and the member's assumed retirement date. This method is designed to help produce stable employer contributions that increase over time at the same rate as the employer's payroll.³⁸ Related concept: *funding policy*.

Excess Assets. This situation occurs when a *pension fund's* assets exceed its obligations to pension plan *members* (in other words, the *actuary's* calculations indicate the fund has more than sufficient assets to pay all benefits that *members* have earned).³⁹ Related concepts: *fully funded*, *funded ratio*, *funding policy*, *normal cost*, *present value of future benefits*, and *unfunded liability*.

Expected Future Benefit Payments. Payments that are determined through a series of assumptions that include the age when members are expected to retire, how long members are expected to live (*life expectancy*) and economic factors that may affect the value of benefits or the value of assets held in a *pension fund*. Some of the factors that are considered are the inflation rate and the rate of *base salary* increases. Related concepts: *actuarial assumptions*, *actuarial valuation*, *actuarial valuation report*, *actuary*, *assumed rate of return*, and *present value of future benefits*.

Fiduciary Duty. This is the principle that those on *retirement system boards* must perform their duties solely in the interest of the *pension system's participants/members*.⁴⁰ State law requires that *retirement system board* decisions must focus on providing benefits to *members* and their beneficiaries, minimizing *employer contributions* to the system, and covering the reasonable expenses of administering the system.⁴¹ When there is a conflict among these objectives, the duty to *members* and their beneficiaries takes precedence over any other duty.⁴² Related concept: *diligence* and *duty of care*.

Final Compensation. See *pensionable wages*.

Fully Funded. This status is achieved when a *pension fund* has sufficient assets to meet its commitments to *participants* (the financial target is more technically known as *accrued actuarial liability*). Note that a “fully funded” plan does not mean that *employer/employee contributions* should be zero. Related concepts: *funded ratio, funding policy, normal cost, underfunded* and *unfunded liability*.

Funded Ratio. This is the product of a series of calculations that reveals, at a given point in time, the relationship between a *pension fund's* assets and its liabilities.⁴³ A 100 percent funded ratio means that the plan is *fully funded*. The excess of these accrued liabilities over the actuarial value of assets is referred to as the “*unfunded liability*,” and the ratio of actuarial assets to liabilities is referred to as the “*funded ratio*.”

Funding Policy. The fundamental financial objective of a *defined benefit pension plan* is to fund the long-term cost of benefits promised to the plan members. Such resource accumulation typically occurs through *employee and employer contributions*, as well as investment earnings.⁴⁴ In addition, actuarial principles typically require that the total cost of employee services be recognized in the period in which those services are provided. This helps achieve intergenerational equity among those who are called upon to financially support the plan, thereby avoiding the transfer of costs to future generations.⁴⁵ A plan's funding policy reveals a plan's approach to these actuarial and funding issues⁴⁶. Related concepts: *entry-age normal funding method, funded ratio* and *prefunding*.

Governmental Accounting Standards Board (GASB). A nonprofit organization that develops accounting standards for various state and local governments (often referred to by the acronym “GASB” and pronounced “gaz-be”). This board establishes generally accepted accounting principles (sometimes referred to by the acronym “GAAP”) for state and local agencies.

The board operates independently and does not enforce the use of its standards but there are strong incentives to follow these standards. For instance, adherence to these standards are necessary to receive a “clean” audit opinion on an agency's financial statements.⁴⁷ In addition, bond rating firms consider whether or not an agency follows these standards when determining what credit rating to assign to a debt issuance.⁴⁸ Related concepts: *GASB Statements 43 and 45, GASB Statement 50, GASB Statement 63(Proposed)*, and *retirement system funding*.

GASB Statements 43 and 45. These are public agency financial statement and disclosure standards relating to “*other post-employment benefit*” commitments (sometimes referred to by the acronym OPEB) made by public agencies to their employees and retirees. Among other things, these accounting standards, adopted in 2004, state that government employers must report the cost of other post-employment benefits while the employee is working and earning those benefits, rather than in the period (often many years later) when the benefits

are paid or provided (sometimes referred to as “*pay-as-you-go*”).⁴⁹ This approach: 1) requires public agencies to measure and recognize these costs (expenses) over a period of time that approximates employees’ years of service, and 2) provides information about the anticipated financial costs associated with these benefits and whether or not a local agency has adequate resources on hand to pay for those future commitments.⁵⁰ Related concepts: *CAFR*, *GASB*, *GASB Statement 50*, *OPEB*, *pay-as-you-go*, and *retirement system funding*.

GASB Statement 50 (Amending GASB Statements 25 and 27).

A public agency financial statement and disclosure standard relating to *defined benefit pension plans*. Among other things, this accounting standard, adopted in 2007, aligns the financial reporting requirements for pensions with those for other postemployment benefits (see *GASB Statements 43 and 45*). GASB Statement 50 amends prior standards (GASB Statements 25 and 27) to require *defined benefit pension plans* to disclose various information regarding the plans’ funded status and the methodologies and assumptions used to determine that status. As with *GASB Statements 43 and 45*, the goal of the changes is to improve the transparency and usefulness of financial reporting by *pension systems* and public employers participating in such systems.⁵¹ Related concepts: *GASB*, *GASB Statements 43 and 45* and *retirement system funding*.

GASB Statement 63 (Proposed--Amending GASB Statement 34). This proposed financial statement and disclosure standard is intended to help those who review public agency financial reports understand how past transactions may impact an agency’s future financial statements.⁵²

Government Finance Officers Association (GFOA). This is a membership organization (sometimes referred to by the acronym “GFOA”), whose mission is to enhance and promote the professional management of governments for the benefit of the public. The association does this by identifying and developing financial policies and best practices and promoting their use through education, training, facilitation of member networking, and leadership.⁵³

Hybrid Pension Plans. These types of plans offer a combination of *defined benefit pension plans* and *defined contribution plans* to employees.⁵⁴ Related concepts: *defined benefit pension plans* and *defined contribution plan*.

Internal Revenue Code (IRC). The Internal Revenue Code is where federal tax law is found and codified with other federal law in the United States Code. These code books are divided into numbered “titles” or sections based on subject matter. The Internal Revenue Code is also known as Title 26 of the United States Code.

Investment Policies. California law requires public *pension systems* to diversify their investments to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.⁵⁵ Because investments involve risk, the

Association of Public Pension Fund Auditors issued a report to *retirement system boards* and other pension *trust fund* managers so that they could better understand, categorize and manage the investment risks. A clear framework for understanding and categorizing risk is a fundamental step in managing pension funds effectively.⁵⁶

Related concept: *asset allocation*.

Investment Return Sensitivity Analysis. This analysis identifies potential pension costs to employers if investment returns fall below or rise above a targeted investment return threshold. The analysis provides additional information to employers about potential future costs of *defined benefit pension plans*.⁵⁷ Related concepts: *actuarial assumptions*, *actuary*, and *assumed rate of return*.

Life Expectancy. This is the length of time a person of a given age is expected to live. The period of time is a statistical average, based on mortality tables showing the rate of death at each age. Life expectancy assumptions factor into cost calculations for *defined benefit pension plans*, since the plan is committed to make payments for the balance of each retiree's post retirement life. Related concept: *actuary*.

Market Value of Assets. This is the cash value or the amount that a *pension fund's* assets could be sold for.. Related concepts: *actuary (assumed rate of return)*, *asset smoothing* and *investment policies*.

Matching Contributions. These are contributions made by an employer to a *defined contribution plan* on an employee's behalf when the employee makes elective or non-elective contributions.⁵⁸ Related concept: *employee/employer contribution*.

Member. *Pension systems* often refer to those who are participating in the plan as a "member" of the system. This term also is defined and used in most California public pension laws. A "member" can be active, inactive or retired; a survivor or beneficiary of an employee who is a plan member is also considered a member. Related concepts: *active member*, *miscellaneous employees*, *participant*, and *safety employees*.

Member Contributions. See *employee/employer contributions*.

Meyers-Milias-Brown Act. The California labor relations law⁵⁹ that requires local agency employers to negotiate in good faith with groups of employees to try to determine mutually agreeable employment conditions, including pension benefits and *other post-employment benefits*. Related concept: *collective bargaining*. For a glossary of terms relating to labor relations, please see the Institute's *A Local Official's Guide to Labor Relations Terminology* at www.ca-ilg.org/LaborRelationsGlossary.

Miscellaneous Employees. These are “non-safety” or general employee participants in public *pension systems*. “Safety” employees are involved in law enforcement, fire suppression, or the protection of public safety.⁶⁰ “Miscellaneous” employees are everyone else eligible to participate in a *pension system*. The reason underlying the distinction is that the *benefit formula* for safety employees typically yields higher pension benefits. Related concepts: *benefit formula* and *safety employees*.

Non-pooled Agency. This is a public agency that has more than the legally mandated number of employees necessary to establish an individual *pension fund*.⁶¹ These non-pooled agencies are large enough to allow them to spread the risks associated with *defined benefit pension plans* among a larger number of employees. Related concepts: *pooled agency* and *risk-sharing pool*.

Normal Cost. Computed differently under different funding methods, the employer’s annual “normal cost” represents the *present value* of benefits that *pension system members* earn during the valuation year. This term is sometimes also referred to as “current normal cost.” Related concepts: *actuary*, *assumed rate of return*, *employer/employee contribution*, *funding policy*, and *present value of future benefits*.

One-Year Final Compensation. In *defined benefit pension plans*, an approach to the *benefit formula*, in which the final average *pensionable wages* amount used to compute the employee’s retirement benefit, is based on the final or highest one year. An alternative approach is to use an average of the final or highest three years’ *pensionable wages*.

Other Post-Employment Benefits (OPEB). In addition to pensions, many state and local governmental employers provide other post-employment benefits (OPEB) as part of the overall compensation package a public agency offers to its employees. This includes employer-provided health insurance for retirees, as well as other forms of benefits that can be received after retirement (for example, life insurance).⁶² Related concepts: *GASB Statements 43 and 45*.

Over-Funded. See *excess assets*.

Participants. Often referred to as “members” of an agency’s *pension system*, this term refers to those that participate in an agency’s pension plan and include the following:

- Active members;
- Deferred members;
- Retired members; and
- Beneficiaries, former spouses and survivors of members.

Related concepts: *members*, *miscellaneous employees*, and *safety employees*.

Pay-As-You-Go Benefits. A situation in which agencies pay for the cost of benefits as those costs are incurred, as opposed to *pre-funding* such benefits (also known as the “current disbursement cost method”⁶³). Agencies sometimes use this approach for paying for *other post employment retirement benefits*. Related concepts: *GASB Statements 43 and 45*, *GASB Statement 50* and *retirement system funding*.

Pension Benefit. See *benefit formula* and *other post-employment benefits*.

Pension Cost Volatility. Volatility is the measure of the price of a financial instrument over time. These financial instruments may experience swings in value from year to year due to the fluctuating nature of financial markets. In an effort to minimize volatility in pension costs, some *pension systems* use a “smoothing” approach, in which investment gains and losses are recognized over an extended period allowing employer contributions to be more evenly allocated.⁶⁴ Related concept: *asset smoothing*.

Pension Fund. This is a pool of assets made up of the contributions to a *pension system* and investment earnings on those contributions that will be used to finance pension benefits. The *participants/members* have a legal or beneficial right to or some other contractual claim against the assets of the pension fund.⁶⁵ Related concepts: *pension system* and *trust fund*

Pension Obligation Bonds. When a public agency has an *unfunded liability*, it normally reduces that liability over time as part of its annual required pension contribution. Some agencies, however, have elected to incur debt through the issuance of pension obligation bonds in an effort to reduce their unfunded actuarial liability as a part of the overall strategy for managing pension costs. Finance professionals counsel caution in using this approach.⁶⁶

Pension Spiking. A practice of increasing an employee’s retirement benefits (without a change in the *benefit formula*) by dramatically increasing, just prior to retirement, the employee’s *base salary*; another way the increase can occur is by including special compensation or non-salary items (such as unused vacation pay, mileage pay, uniform allowance or other allowances) in the employee’s final *pensionable wages* used to calculate the employee’s retirement benefits.⁶⁷ Related concepts: *benefit formula* and *one-year final compensation*.

Pension System. In California, there are a number of kinds of entities through which public agency employers provide pension benefits: The *California Public Employees Retirement System*,⁶⁸ county plans adopted under the state law known as the *1937 Act*,⁶⁹ and the *State Teachers Retirement System*.⁷⁰ Some charter agencies have systems established under their charter authority. Related concept: *pension fund*.

Pensionable Wages. For purposes of retirement, this is an employee’s *base salary* plus any special compensation allowed to be counted as part of an employee’s overall compensation for purposes of calculating pension benefits under a *pension system’s benefit formula*. Special

compensation may include any payments for special skills as well as such items such as bonus pay, incentive pay, longevity pay, and value of *employer paid member contributions*.⁷¹ Related concepts: *base salary, benefit formulas, one-year final compensation* and *employer/employee contributions*.

Plan Governance. Generally refers to the systems and processes that *pension systems* use to administer pension benefits and manage the investment of retirement assets, with the objective of maximizing investment returns at an acceptable level of risk and reducing potential conflicts of interest. Governance systems and processes cover areas such as organizational transparency (including having clear, documented, and accessible policies) and commitment to knowledge and skill enhancement.⁷² Plans have begun to address increased organizational transparency and disclosures of potential and real conflicts of interest. There are a series of recommendations relating to governance practices.⁷³ Related concepts: *duty of reasonable care and diligence, fiduciary duty, and investment policies*.

Plan Sponsor. This is the agency or entity that contracts with a *pension system* to provide a vehicle for funding pension benefits. Beyond the public agency context, plan sponsors can include private businesses acting for their employees, unions acting on behalf of their members as well as state and local agencies operating on behalf of their employees.⁷⁴

Pooled Agency. A group of employers that join together because individually they do not have the required number of employees needed to establish an individual *pension fund*.⁷⁵ Pooling of agencies allows these agencies to combine investments and actuarial risks that are associated with *defined benefit pension plans*, and spread them among multiple agencies. This practice helps to reduce *pension cost volatility* for smaller agencies. Related concepts: *non-pooled agency* and *risk-sharing pool*.

Pre-Funding. This is a process of accumulating resources for future benefit payments during the active service life of employees.⁷⁶ Such resource accumulation typically occurs through *employer and employee contributions*, as well as investment earnings.⁷⁷ This also helps to achieve intergenerational equity among those who are called upon to financially support the plan, thereby avoiding the transfer of costs to future generations.⁷⁸ The *Government Finance Officers Association* recommends prefunding *other post-employment benefits*, for example health and life insurance.⁷⁹ This contrasts with the *pay-as-you-go* approach. Related concepts: *employer/employee contributions, funding policy, GASB Statements 43 and 45, GASB Statement 50, investment returns, and retirement system funding*.

Present Value. The key task for *defined benefit pension plan* administrators and their *actuaries* is to determine how much the *pension trust fund* needs to have on hand in order to meet current and future pension benefit obligations. The concept of “present value” is useful in calculating how much in *employer/employee contributions* a *pension fund* needs to receive and invest now in order to meet its projected obligations. The present value of a future payment is

what money is worth now in relation to what someone thinks it will be worth in the future based on expected earnings. For example, if one expects to make a 10 percent return on an investment, \$1,000 is the present value of the \$1,100 one expects to have a year from now. Related concepts: *actuary*, *assumed rate of return*, *employer/employee contribution*, *funding policy*, *investment policy*, *present value of future benefits*, and *unfunded liability*.

Present Value of Projected Benefits (PVB). This is a calculation in which future pension benefit payments (*actuarial accrued liability*) are expressed in today's dollars using *assumed rates of return*. This discounted value calculation of all future expected benefit payments is based on various *actuarial assumptions*. This concept is relevant to a *pension system's* effort to determine such things as a plan's *funded ratio* and whether *employer/employee contributions* need to be increased in order to satisfy the agency's *funding policy*. Related concept: *actuary*, *expected future benefits*.

Public Employees' Medical and Hospital Care Act (PEMHCA). This is the state law that governs the administration of CalPERS' health benefits program for those who participate in it.⁸⁰

Public Records and Pensions. Information given to the retirement system by a member, such as date of birth, social security number, is confidential member information. Information to or from the pension plan and the employer is general public information.⁸¹ An appellate court has held that, other non-confidential public information is subject to disclosure if requested including the name, date of retirement, department retired from, last position held, years of service, base allowance, cost of living adjustment, total health allowance and monthly pension benefit of each retiree.⁸²

Qualified Plan. This is a type of retirement plan established by an employer that meets the requirements of federal law.⁸³ A qualified plan may be a *defined benefit pension plan* or a *defined contribution plan*. Amounts contributed to the plan, and the interest earned on these investments, are not subject to income tax until the money is taken out during retirement or upon separation from the employer. An example of such a plan is a *401(k)*.

Reciprocity or Reciprocity Agreements. These agreements allow public employees to maintain *portability* when moving from one public employer to another. Depending on the specifics of the agreement or governing regulations, some systems may recognize a member's participation in each system when determining eligibility for benefits and when calculating retirement benefits.⁸⁴ Related concept: *portability*.

Replacement Benefit Plan (RBP). Federal tax law limits the annual benefit an individual can receive from a tax-qualified pension plan at a certain dollar amount per year,⁸⁵ which may be less than what an employee expects to receive under the agency's *benefit formula*. "Replacement benefit plans" are a mechanism to enable the employee to receive the full amount

promised. These amounts are subject to federal taxes to the extent the employee was subject to these taxes during duration of employment.⁸⁶ Employers pay for the benefit; CalPERS has a sheet that explains such plans further.⁸⁷ Note that there have been state legislative efforts to limit the availability of such benefits for future hires.⁸⁸

Retired Annuitant. This is an employee who has retired and is collecting pension benefits under a *defined benefit pension plan*.⁸⁹ Because of these employees' skills and expertise (or the employees' desire to transition more gradually into full retirement), agencies will sometimes hire them for limited periods. For those who are receiving benefits under the CalPERS' system, there are limits on: 1) how many hours such retirees may work, and 2) the duration of their tenure.⁹⁰

Retirement System Board. The group of individuals that, as a governing board, make decisions on behalf of a public *pension system* --sometimes referred to as a board of administration, board of trustees, or board of directors.⁹¹ The board has the sole and exclusive fiduciary responsibility over the *pension system's* assets.⁹² State law requires that the board administer the system in a manner that will assure prompt delivery of benefits and related services to the *members* and their beneficiaries.⁹³ The membership of a board is typically established by state law and cannot be changed without local voter approval.⁹⁴ Related concepts: *board of retirement, CalPERS Board, duty of care and diligence, fiduciary duty, and Teachers Retirement Board.*

Retirement System Funding. *Employee/employer contributions* are placed in a dedicated *trust fund* set up for the sole purpose of paying benefits. The contributions are invested and earn investment returns. Benefits and expenses associated with *the trust fund* are paid out of the fund. Any increase in the benefits and expenses will necessitate an increase in *employee/employer contributions*, a higher investment return or both. *Pension fund* assets are invested in a variety of investment vehicles including, but not limited to, stocks, bonds, and real estate.⁹⁵

Risk-Sharing Pools. This is a tool to moderate volatility in pension costs for smaller employers by spreading the risk of demographic gains and losses across small plans that offer the same *benefit formula*.⁹⁶ Related concepts: *non-pooled agency* and *pooled agency*.

Safety Employees. In pension benefit formulas, police, sheriffs, firefighters, and other public safety employees have their pension benefits calculated at a higher rate, with corresponding higher *employer/employee contributions*.⁹⁷ Some safety employees do not receive Social Security benefits. Related concepts: *benefit formula* and *miscellaneous employees*.

Second Tier Options. A "tier" refers to a group of employees whose retirement benefits are different from those of other colleagues at the agency. For example, a new benefit tier might apply to employees hired after a specific date, while those hired previously receive different (usually higher) benefits. Second tiers may combine *defined benefit pension plan* and *defined*

contribution plan designs (also referred to as a *hybrid pension plan*). Second tier options also include lowering benefit formulas or removing certain optional benefit upgrades from the employer's contract (for example: employer paid member contributions, post-retirement survivor allowance, *cost-of-living allowances* and *disability retirement*).⁹⁸

Sensitivity Analysis. See *Investment Sensitivity Analysis*.

Service Credit. Under a *defined benefit pension plan*, the length of an employee's employment or total years of service within the pension system is one element used to calculate the *benefit formula*. Public employees generally receive one year of service credit for each year worked. Related concepts: *air time*, *portability*, *benefit formula*, and *reciprocity*.

Social Security and Pension Plans. Some local agencies have elected to have their employees contribute to Social Security. Other agencies, however, do not and therefore are not part of the Social Security system. Employees who are not members therefore are not entitled to Social Security benefits upon retirement, death or disability.⁹⁹ Related concept: *three-legged stool*.

Super-Funded. This is a condition existing when the actuarial value of assets exceeds the present value of benefits. When this condition exists on a given valuation date for a given plan, *employee/employer contributions* for the rate year covered by that valuation may be waived.¹⁰⁰ A *pension trust fund* is considered to be "super-funded" when assets exceed the amounts necessary to meet the anticipated current and future demands on the fund. Related concept: *contribution holiday*.

Teachers Retirement Board. This board oversees the *CalSTRS retirement system* and associated programs. The board is comprised of 12 members:

- Three positions representing current educators elected by *members*;
- A retired CalSTRS member appointed by the Governor and confirmed by the Senate;
- Three public representatives appointed by the Governor and confirmed by the Senate;
- A school board representative appointed by the Governor and confirmed by the Senate; and
- Four board members who serve in an *ex-officio* capacity by virtue of their office: Director of Finance, State Controller, State Superintendent of Public Instruction, and State Treasurer.¹⁰¹

Related concepts: *California State Teachers' Retirement System*, *duty of care and diligence*, *fiduciary duty*, *plan governance*, *retirement system board*, and *third-party administrator*.

Three-Legged Stool. This is the theory that a combination of an individual's savings, Social Security, and pension will provide secure retirement income.¹⁰² Related concept: *Social Security and pensions*.

Total Compensation. See *pensionable wages*.

Trust Fund. Money and assets of a *pension system* are held in a separate fund, separate from other employer assets and are protected from third-party creditor claims. The fund may only be used to provide benefits to *pension system members* (and their beneficiaries) and to defray reasonable expenses of managing the *pension fund*.¹⁰³

Two-Tier Retirement Systems. See *second tier options*.

Under-Funded. When a *pension fund's* obligations to pension plan *members* exceed the fund's assets (in other words, the *actuary's* calculations indicate the fund has insufficient assets to pay all benefits that *members* have earned) the plan has *unfunded liabilities* (sometimes referred to by the technical term "unfunded actuarial accrued liability"). When this condition occurs, a pension plan is deemed under-funded.¹⁰⁴ Related concepts: *actuarial accrued liability, fully funded, funded ratio, funding policy, normal cost, present value of projected benefits, and unfunded liability*.

Unfunded Liability. This exists when the value of benefits estimated to be payable to plan *members* as a result of their service exceeds the projected value of plan assets available to pay those benefits. This phenomenon is sometimes referred to as "unfunded actuarial accrued liability" (sometimes referred to by the acronym UAAL). This amount changes over time as a result of changes in benefits, pay levels, rates of return on investments, changes in other actuarial assumptions, and changes in the demographics of the employee base.

Public entities typically reduce an unfunded pension liability over time as part of their annual *employer contribution*. Under standards set by the *Governmental Accounting Standards Board (GASB)*, unfunded liabilities should be addressed over a period of not more than 30 years in order to provide reasonable assurance of the payment of future benefits.¹⁰⁵ Related concepts: *actuary (actuarial assumptions), fully funded, funded ratio, funding policy, normal cost, pension obligation bonds, present value of projected benefits, and under-funded*.

Vested Benefits. In a *defined benefit pension plan*, vesting means the *pension plan participant* is eligible to receive pension benefits when he or she meets the length of service and age requirements. A *member's* vested benefits cannot be taken away even if:

- The member stops working for the employer; and
- Never works in covered employment again.

For example, in the *CalPERS* system, if the former employee is younger than the minimum age for retirement, they may leave their contributions on deposit with the system. After they reach or exceed the minimum age, they can apply for retirement benefits consistent with *service credit* earned before they left their employment.¹⁰⁶

When an employee becomes vested in a retirement account, it can also mean that the employee has a right to withdraw the money contributed to their agency's *pension fund* on their behalf.¹⁰⁷ Amounts distributed amounts may be subject to taxes and early withdrawal penalties.¹⁰⁸

Vested Rights. The legal concept that, once earned, the employee becomes entitled to the benefit promised. In California, this concept constrains public agencies from repealing or modifying their pension plans for those employees who have performed the necessary service to be entitled to benefits given that level of service.¹⁰⁹ However, under limited circumstances, certain kinds of changes to pension plans have been upheld.¹¹⁰ Whether and to what extent public employers are permitted to alter vested rights of their employees is a topic that is receiving a significant amount of attention and continues to be the subject of litigation. Close consultation with agency counsel should occur as part of any analysis relating to changing pension benefits.¹¹¹

Volatility. See *pension cost volatility*.

Caveats

This document is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties.

The Institute acknowledges the complexity of these issues. This glossary has attempted to translate these highly technical concepts into understandable terms that can be a starting point for elected officials, policy makers, the media and the general public to participate in conversations about pension issues. Readers should understand that the effort to be as clear as the subject allows has resulted in the omission of certain technical and legal nuances. . These materials should not be relied on as complete statements of the concepts described, nor should they be considered legal advice relating to pension issues. Officials are encouraged to consult with staff and other technical experts for up-to-date information and guidance on how these concepts apply in specific situations.

The Institute welcomes feedback on this resource:

- Email: info@ca-ilg.org Subject: A Local Officials Guide to Pension Terminology
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Endnotes, References and Additional Resources

¹ See State Association of County Retirement Systems, *New Trustee Handbook/CD*, available from <https://web.memberclicks.com/mc/quickForm/viewForm.do?orgId=slgs&formId=82555> (“SACRS Glossary”); CalPERS Glossary, available online at <http://www.calpers.ca.gov/index.jsp?bc=/utilities/glossary/home.xml>.

² SACRS Glossary at 276.

³ See Cal. Const. Art. XVI, § 17(e); see also Cal. Gov’t Code § 7504(a) (“(a) All state and local public retirement systems shall, not less than triennially, secure the services of an enrolled actuary. An enrolled actuary, for the purposes of this section, means an actuary enrolled under subtitle C of Title III of the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406) and who has demonstrated experience in public retirement systems. The actuary shall perform a valuation of the system utilizing actuarial assumptions and techniques established by the agency that are, in the aggregate, reasonably related to the experience and the actuary’s best estimate of anticipated experience under the system. Any differences between the actuarial assumptions and techniques used by the actuary that differ significantly from those established by the agency shall be disclosed in the actuary’s report and the effect of the differences on the actuary’s statement of costs and obligations shall be shown.”)

⁴ SACRS Glossary at 275-294.

⁵ SACRS Glossary at 275-294.

⁶ SACRS Glossary at 275-294.

⁷ The *Government Finance Officers Association* publishes best practice recommendations for asset allocations for both defined benefit and defined contribution plans. See GFOA, *Asset Allocation Guidance for Defined Benefit Plans (1999 and 2009) (CORBA)*, available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1605, *Asset Allocation Guidance for Defined Contribution Plans (1999 and 2009) (CORBA)*, available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1606.

⁸ See *CalPERS Toolkit* at 19.

⁹ See Cal. Gov’t Code §§ 31520-31538.

¹⁰ See Cal. Gov’t Code §§ 31520.2.

¹¹ Cal. Gov’t Code §§ 20000 and following.

¹² CalPERS, *Facts at a Glance (June 2011)*, available online at <http://www.calpers.ca.gov/eip-docs/about/facts/general.pdf>.

¹³ SACRS Glossary at 278.

¹⁴ Cal. Gov’t Code § 20090.

¹⁵ See CalPERS website: <http://www.calpers.ca.gov/index.jsp?bc=/about/organization/board/structure-responsibilities.xml>.

¹⁶ SACRS Glossary at 278.

¹⁷ See CalSTRS at a Glance at <http://www.calstrs.com/About%20CalSTRS/ata glance.aspx>.

¹⁸ See Cal. Gov’t Code §§ 22000-28101, available at

http://www.calstrs.com/Help/forms_publications/printed/TeachersRetirementLaw.pdf.

¹⁹ Cal. Gov’t Code §§ 3500-3511.

²⁰ See GFOA, *General Purpose Checklist for [Comprehensive Annual Financial Report] Preparer*, available at <http://www.gfoa.org/downloads/GENERALPURPOSECHECKLIST.pdf>. See also GFOA, *Governmental Accounting, Auditing, and Financial Reporting Practices (1983, 1997, and 2006) (CAAFR)*, available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1461, and GFOA, *Web Site Presentation of Official Financial Documents (2009)*, available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1472.

²¹ See GFOA Advisory, *Responsible Management and Design Practices for Defined Benefit Pension Plans (2010)*, available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1665.

²² See, for example, Cal. Gov’t Code §§ 21310 and following (cost of living provisions for CalPERS).

²³ See GFOA, *Developing a Policy for Retirement Plan Design Options (1999, 2007) (CORBA)*, available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1608.

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- ²⁴ See GFOA, Essential Design Elements of Defined Benefit Retirement Plans (2008) (CORBA), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1611; Sustainable Funding Practices of Defined Benefit Pension Plans (1994, 2005, 2008 and 2009), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1627; Responsible Management and Design Practices for Defined Benefit Pension Plans (2010), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1665.
- ²⁵ *CalPERS Toolkit* at 11 and 14.
- ²⁶ See GFOA, Developing a Policy for Retirement Plan Design Options (1999, 2007) (CORBA), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1608.
- ²⁷ See GFOA, Essential Design Elements of Defined Contribution Plans as the Primary Retirement Plan (2008), available at <http://www.gfoa.org/downloads/DCPlansFINAL.pdf>.
- ²⁸ See Cal. Gov't Code §§ 21154-21176 (PERS), §§ 31720-31755.3 (1937 Act County Systems).
- ²⁹ Cal. Const. Art. XVI, § 17(c). See also Cal. Gov't Code §53216.6(b).
- ³⁰ See *SACRS Glossary* at 280.
- ³¹ See *SACRS Glossary* at 288.
- ³² California Education Code §§22950 and 22951
- ³³ See *SACRS Glossary* at 275-294.
- ³⁴ CalPERS Compensation Review, available at <http://www.calpers.ca.gov/eip-docs/employer/er-forms-pubs/pubs/manuals/pa-ret-manual/pm-compensation-review.pdf>
- ³⁵ See, for example, Cal. Gov't Code § 20691. See also 2 Cal. Code of Regs §569.
- ³⁶ SB 400, Chapter 555 of the Statutes of 1999, amended Government Code Sections 20391, 20392, 20393, 20395, 20397, 20398, 20405.1, 20405.3, 20407, 20409, 20677, 20683, 20687, 20822, 21070, 21071, 21072, 21073, 21073.5, 21077, 21130, 21337, 21353, 21353.5, 21362, 21363, 21363.5, 21369, 21372, 21373, 21374, 21403, 21407, 21572, 21573, and 21581; it added Government Code Sections 20035.5, 21070.5, 21070.6, 21073.1, 21073.7, 21251.13, 21328, 21354.1, 21362.2, 21363.1, and 21369.1; and repealed Government Code Sections 21363.6 and 21573.5; and added and repealed Government Code Section 21574.7. The bill is available online at http://info.sen.ca.gov/pub/99-00/bill/sen/sb_0351-0400/sb_400_bill_19990929_chaptered.html.
- ³⁷ AB 616, Chapter 782 of the Statutes of 2001, amended Government Code Sections 20677 and 31621.11; added Government Code Sections 21354.3, 21354.4, 21354.5, 31621.8, 31676.17, 31676.18, 31676.19, and 31808.9. It is available online at http://info.sen.ca.gov/pub/01-02/bill/asm/ab_0601-0650/ab_616_bill_20011013_chaptered.html.
- ³⁸ CalPERS On-line Glossary. Available online <http://www.calpers.ca.gov/index.jsp?bc=/utilities/glossary/home.xml#eg>
- ³⁹ See CalPERS Glossary, available at <http://webcache.googleusercontent.com/search?q=cache:LQCClmlt3ikJ:www.calpers.ca.gov/index.jsp%3Fbc%3D%2Futilities%2Fglossary%2Fhome.xml+calpers+and+%22excess+assets%22&cd=2&hl=en&ct=clnk&gl=us>.
- ⁴⁰ See *Hittle v. Santa Barbara County Employees Retirement*, 39 Cal. 3d 374, 392-93, 216 Cal. Rptr. 733, 743-44 (1985) (noting the fiduciary relationship between retirement system boards and participants).
- ⁴¹ Cal. Const. Art. XVI, § 17(b). See also Cal. Gov't Code §53216.6.
- ⁴² Cal. Const. Art. XVI, § 17(b).
- ⁴³ *SACRS Glossary* at 280.
- ⁴⁴ GFOA Best Practices Sustainable Funding Practices of Defined Benefit Pension Plans http://www.gfoa.org/index.php?option=com_content&task=view&id=1627
- ⁴⁵ GFOA Best Practices Sustainable Funding Practices of Defined Benefit Pension Plans http://www.gfoa.org/index.php?option=com_content&task=view&id=1627
- ⁴⁶ GFOA Best Practices Sustainable Funding Practices of Defined Benefit Pension Plans http://www.gfoa.org/index.php?option=com_content&task=view&id=1627
- ⁴⁷ Government Accountability Office, State and Local Government Pension Plans: Governance Practices and Long-term Investment Strategies Have Evolved Gradually as Plans Take On Increased Investment Risk (August 2010). Available at <http://www.gao.gov/new.items/d10754.pdf>

⁴⁸ Government Accountability Office, State and Local Government Pension Plans: Governance Practices and Long-term Investment Strategies Have Evolved Gradually as Plans Take On Increased Investment Risk (August 2010). Available at <http://www.gao.gov/new.items/d10754.pdf>

⁴⁹ Governmental Accounting Standards Board (GASB) Summary of Statement No. 45 *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions* (Issued 6/04), available at <http://www.gasb.org/st/summary/gstsm45.html>; Governmental Accounting Standards Board (GASB) Summary of Statement No. 43 *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans* (Issued 4/04), available at <http://www.gasb.org/st/summary/gstsm43.html>. See also GASB 43 and 45 Resource Center: <http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1175804831062>.

⁵⁰ Governmental Accounting Standards Board (GASB) Summary of Statement No. 45 *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions* (Issued 6/04).

⁵¹ Governmental Accounting Standards Board (GASB) Summary of Statement No. 50 *Pension Disclosures—An Amendment of GASB Statements No. 25 and No. 27* (Issued 05/07), available at <http://www.gasb.org/st/summary/gstsm50.html>.

⁵² Governmental Accounting Standards Board (GASB) Summary of Statements No. 63 and 64 (Issued 7/11), available at http://gasb.org/cs/ContentServer?site=GASB&c=GASBContent_C&pagename=GASB%2FGASBContent_C%2FGASBNewsPage&cid=1176158736377

⁵³ See About GFOA, http://www.gfoa.org/index.php?option=com_content&task=view&id=76&Itemid=96.

⁵⁴ See, for example, GFOA, *Essential Design Elements of Hybrid Retirement Plans*, (2008), available at <http://www.gfoa.org/downloads/HybridPlansFINAL.pdf>

⁵⁵ Cal. Const. Art. XVI, § 17(d). See also Cal. Gov't Code §53216.6(c).

⁵⁶ GFOA, *Endorsing a Framework for Understanding Pension Fund Risk* (2001), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1609. The *Government Finance Officers Association* has issued a number of checklist and recommended practices for investment policies and choosing investment advisors. GFOA, *Investment Policies Governing Assets in a Deferred Compensation Plan* (2004), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1620, and Checklist, available at <http://www.gfoa.org/downloads/InvestmentPolicyChecklistforDCPlans.pdf>; *Pension Investment Policies* (2003), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1623, and Checklist available at <http://www.gfoa.org/downloads/PIPchecklist6.pdf>, *Public Employee Retirement System Investments* (1993, 1995, 1997 and 2009), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1624; GFOA Advisory, *Selection of Investment Advisers for Pension Fund Assets* (2000) (CORBA), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1666.

⁵⁷ *CalPERS Toolkit* at 17.

⁵⁸ *SACRS Glossary* at 282

⁵⁹ Cal. Gov't Code §§ 3500-3511.

⁶⁰ *CalPERS State Member Benefits* (February 2002) available at http://www.calstatela.edu/univ/hrm/docs/CalPERS_55.pdf

⁶¹ Cal. Gov't Code § 20000-2170.

⁶² The *Government Finance Officers Association* offers a set of recommended best practices relating to funding these benefits as well as a set of cautions concerning the use of bonds to finance them. GFOA, *Considerations for Prefunding OPEB Obligations* (2008) (BUDGET and CORBA), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1551. *Ensuring the Sustainability of Other Postemployment Benefits* (2007) (CORBA & BUDGET), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1610.

⁶³ *SACRS Glossary* at 285.

⁶⁴ *CalPERS Toolkit* at 20.

⁶⁵ OECD, *Private Pension: OECD Classification and Glossary* (2005) at 47.

⁶⁶ The *Government Finance Officers Association* has issued recommendations on the analytic factors that should be evaluated before an agency decides to issue pension obligation bonds. GFOA Advisory, *Evaluating the Use of*

Pension Obligation Bonds (1997 and 2005) (DEBT & CORBA), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1655.

⁶⁷ *SACRS Glossary* at 287.

⁶⁸ Cal. Gov't Code §20000-2170.

⁶⁹ Cal. Gov't Code § 31450 and following, which authorizes counties to create and operate retirement systems for county and other local agency employees. Twenty California counties operate retirement systems under the 1937 Act.

⁷⁰ *See generally*, Cal. Educ. Code § 22000 and following, available at

http://www.calstrs.com/Help/forms_publications/printed/TeachersRetirementLaw.pdf.

⁷¹ *See, for example*, Cal. Gov't Code § 20636; 2 Cal. Code of Regs. § 571(a) and (b); CalPERS Compensation Review, available at <http://www.calpers.ca.gov/eip-docs/employer/er-forms-pubs/pubs/manuals/pa-ret-manual/pm-compensation-review.pdf>.

⁷² Government Accountability Office, *State and Local Government Pension Plans: Governance Practices and Long-term Investment Strategies Have Evolved Gradually as Plans Take On Increased Investment Risk* (August 2010), available at <http://www.gao.gov/new.items/d10754.pdf>.

⁷³ GFOA, *Governance of Public Employee Post-Retirement Benefits Systems* (2010) (CORBA), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1628.

⁷⁴ *SACRS Glossary* at 285.

⁷⁵ Cal. Gov't Code §20000-2170

⁷⁶ GFOA, *Best Practices Sustainable Funding Practices of Defined Benefit Pension Plans*, available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1627.

⁷⁷ GFOA, *Best Practices Sustainable Funding Practices of Defined Benefit Pension Plans*, available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1627.

⁷⁸ GFOA, *Best Practices Sustainable Funding Practices of Defined Benefit Pension Plans*, available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1627.

⁷⁹ *Considerations for Prefunding OPEB Obligations* (2008) (BUDGET and CORBA), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1551.

⁸⁰ Cal. Gov't Code § 22751-22948.

⁸¹ Cal. Gov't Code §6250-6270 (known as the California Public Records Act).

⁸² *Sacramento County Employees' Retirement System (SCERS) v. Superior Court*, 195 Cal. App. 4th 440 (2011).

⁸³ Specifically Internal Revenue Code Section 401(a), 26 U.S.C. § 401(a), and the Employee Retirement Income Security Act of 1974 (ERISA). Portions of ERISA are codified in various places of the United States Code, including 29 U.S.C. ch.18, and 26 U.S.C §§ 219, 408 (relating to the Individual Retirement Account), 410- 415, 4971, 4974, 4975.

⁸⁴ *CalPERS Toolkit* at 15. *See also* CalPERS, *When You Change Retirement Systems*, available at https://www.calpers.ca.gov/mss-publication/pdf/x3tUNJH0WDfg_pub16-booklet.pdf.

⁸⁵ *See* 26 U.S.C. § 415(b).

⁸⁶ *CalPERS IRC Section 415 & CalPERS Replacement Benefit Plan Fact Sheet*, available at <http://www.calpers.ca.gov/eip-docs/about/pubs/member/general/miscellaneous-information/internal-revenue-code-section415.pdf>

⁸⁷ *CalPERS IRC Section 415 & CalPERS Replacement Benefit Plan Fact Sheet*, available at <http://www.calpers.ca.gov/eip-docs/about/pubs/member/general/miscellaneous-information/internal-revenue-code-section415.pdf>

⁸⁸ AB 1184, introduced during the 2011-12 California Legislative Session.

⁸⁹ *See* Cal. Gov't Code § 20012.

⁹⁰ *See* Cal. Gov't Code § 21221(h) (annuitant cannot work more than 960 hours in any fiscal year, *and* an appointment under this section may not exceed 12 months total; governing body resolution required to “appoint” the annuitant); § 21224 (annuitant may provide specialized skills for a limited duration as long as the hourly rate paid is the same as paid by the employer to other employees performing the same or comparable duties; no governing body resolution required, annuitant is limited to 960 hours in a fiscal year, and position is supposed to be of “limited duration”).

⁹¹ Cal. Const. Art. XVI, § 17(h).

⁹² Cal. Const. Art. XVI, § 17(a).

⁹³ Cal. Const. Art. XVI, § 17(a).

⁹⁴ Cal. Const. Art. XVI, § 17(f).

⁹⁵ *CalPERS Toolkit* at 18.

⁹⁶ *CalPERS Toolkit* at 20.

⁹⁷ See Cal. Gov't Code § 20420 (CalPERS); *SACRS Glossary* at 275-294.

⁹⁸ The *Government Finance Officers Association* has a set of recommendations on creating multi-tier systems. See GFOA, *Designing and Implementing Sustainable Pension Benefit Tiers* (2011), available at http://www.gfoa.org/index.php?option=com_content&task=view&id=1887.

⁹⁹ *CalPERS Toolkit* at 15.

¹⁰⁰ *SACRS Glossary* at 287.

¹⁰¹ See <http://www.calstrs.com/About%20CalSTRS/Teachers%20Retirement%20Board/index.aspx>.

¹⁰² *SACRS Glossary* at 288.

¹⁰³ Cal. Const. Art. XVI, § 17(a). See also Cal. Gov't Code § 53216.6.

¹⁰⁴ *SACRS Glossary* at 288.

¹⁰⁵ Government Accountability Office, *State and Local Government Pension Plans: Governance Practices and Long-term Investment Strategies Have Evolved Gradually as Plans Take On Increased Investment Risk* (August 2010), available at <http://www.gao.gov/new.items/d10754.pdf>.

¹⁰⁶ CalPERS. (2008). *Refund Rollover Election*, available at https://www.calpers.ca.gov/mss-publication/pdf/xtA7O21Bave73_refund_rollover_election.pdf

¹⁰⁷ *CalPERS Toolkit* at 15; *SACRS Glossary* at 288.

¹⁰⁸ See CalPERS (2008). *Refund Tax Information*, available at https://www.calpers.ca.gov/mss-publication/pdf/xtA7O21Bave73_refund_rollover_election.pdf.

¹⁰⁹ *Kern v. Long Beach*, 29 Cal. 2d 848 (1947) and *Allen v. City of Long Beach*, 45 Cal. 2d 128 (1955).

¹¹⁰ *Packer v. Board of Retirement*, 35 Cal. 2d 212 (1950).

¹¹¹ CalPERS. (July 2011). *Vested Rights of CalPERS Members: Protecting the pension promises made to the public employees*, available at <http://www.calpers.ca.gov/eip-docs/about/press/news/vested-rights.pdf>.

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Preamble

The County Administrator form of organizational leadership is representative in a majority of California's 58 counties. Functioning as the Chief Executive for a county, the County Administrator reports to and is hired by the Board of Supervisors. The Board of Supervisors is responsible for the legislative function of the County, including establishing policies, passing local ordinances, and setting the overall goals and vision for the County.

County Administrators are responsible to the Board of Supervisors and all countywide residents, for the effective and efficient delivery of a multitude of services and the implementation of all policies and goals. It is a partnership that requires the involvement and commitment of both the County Administrator and Board of Supervisors.

County Administrators are required to be experienced and knowledgeable in public safety, budgeting, legislative affairs, human resources, social services, organizational development, community and economic development, public works, court operations, community services, cultural activities and a variety of state mandates. Functioning in a diverse environment is typical for County Administrators, particularly due to complex funding sources and regulations for state and federally mandated programs that counties provide. County Administrators play an instrumental role in budget formation, budget approval and the fiscal health of counties, including helping to lead labor negotiations and address pension issues.

Recruiting for and retaining quality individuals that serve as County Administrators requires a Board of Supervisors to be strategic and deliberate in developing appropriate job duties and related compensation.

To establish compensation for County Administrators, the recommended practice should be based on the County Administrator's job requirements, the complexity of both the make-up of the county's organization and community, the leadership needed, labor market conditions and the organization's ability to pay. In addition to these factors, there are ethical considerations about what is just and fair. The salaries public employees receive impact public perception and trust and therefore should always be transparent.

Compensation Guidelines for County Administrators

These guidelines are intended to assist Boards of Supervisors in setting and/or negotiating a County Administrator's compensation and/or contracts, but they should not be interpreted as requirements that must be precisely followed. They may also be used to renew or amend current contracts. These guidelines support Board of Supervisors in exercising reasonable judgment in determining the most appropriate terms of employment for the County Administrator.

Setting Compensation (prior to recruitment for a CAO)

1. Determine the requirements of the job and the experience needed to successfully perform the job duties.
2. The appointing authority should ensure compliance with all local, state and charter regulations and local ordinances prior recruitment when setting or revising the job description or compensation.
3. Examine market conditions to learn what comparable public sector executives earn and to gather information based on similar type positions in other public agencies.
4. Compensation of the County Administrator should be set in relation to other top managers in the organization recognizing the highest level of responsibility and accountability of the position.
5. Identify the County's current financial position, its ability to pay and the existing policies toward compensation relative to market conditions. The immediate and anticipated long-term financial resources of the organization always should be taken into account.
6. An annual performance evaluation should be considered for the County Administrator.

Negotiating Compensation

1. Evaluate the candidate's level of understanding, expertise and proven ability to resolve issues regarding services provided by the County and current issues within the community and the organization.
2. The individual's credentials, experience and expertise may be used as factors to set salary.
3. In an area where cost of living is high and the Board may desire the County Administrator to reside in the County, salary negotiations may take into account this unique situation. In addition, other unique and special circumstances may be taken into consideration, such as difficult recruitment markets and the particularly challenging needs of the County.

Compensation Changes

1. Benefits and salary increases should be comparable to those that County Administrators receive within the designated benchmark entities or regional market area (employer size, geographic proximity, number and nature of services provided).
2. For counties that provide across-the-board cost of living adjustments (COLAs) a consistent and pre-determined measure for establishing the annual COLA should be followed.
3. Annual increases should be consistent with those being made available to other employees within the organization.
4. Provisions regarding consideration of periodic merit adjustments or pay for performance should be pre-determined.

5. Should an employment agreement/contract be desired by the appointing authority, a process should be followed or outlined in the document that allows for amendments and final adoption of any amendments in a public meeting.
6. County Administrators will avoid taking steps regarding their own pension that would serve to solely profit them. Examples include dramatically increasing salary thereby leading to pension spiking. Recommending or implementing single highest year to determine retirement benefits is not recommended.
7. County Administrators should not put their personal compensation interests ahead of the good of the overall organization and that of the citizens.
8. An annual performance evaluation should be a factor in setting the annual compensation of the County Administrator.

Transparency

1. County Administrators should provide their total compensation package to the Board when requesting compensation changes so that the Board has a comprehensive view of the County Administrator's compensation.
2. The County Administrator's complete compensation package and any changes must be considered and approved in a public meeting and the contract is made available to the public.
3. The salary plan and ranges for county positions, including the County Administrator, should be publicly accessible on the agency's website.
4. County Administrators should receive a single salary that recognizes all duties and responsibilities assigned rather than different salaries for different assignments.

While the above guidelines were provided to assist Boards of Supervisors, the County Administrator's role in the compensation setting process is critical. The County's Human Resources department should also be consulted by Boards of Supervisors in determining all compensation elements. It is important the County Administrator has a comprehensive understanding of the position and firm commitments to the public, the organization and the Board of Supervisors.

County Administrators Code of Ethics

Ethical Provisions

1. CAOs shall at all times serve the public, beyond serving oneself.
2. CAOs shall respect the laws that define the responsibilities of public agencies, employees and all citizens and the constitutional principles of equality and fairness.
3. CAOs shall demonstrate the highest standards of personal integrity in all activities related to salaries in order to inspire public confidence and trust. This includes a commitment to:
 - a. Maintain truthfulness and honesty and to not compromise them for advancement, honor or personal gain.
 - b. Zealously guard against conflict of interest or its appearance including improper outside employment, misuse of public resources or acceptance of gifts.
 - c. Promote accountability through appropriate controls and procedures.
 - d. Shall not have a financial interest in any public contract approved or deliberated upon in their official capacity.
4. Appointment Commitment: Individuals who accept an appointment to a position should not fail to report for that position. Oral acceptance of an employment officer is considered binding unless the employer makes fundamental changes in terms of employment.
5. Length of Tenure: A minimum of two years is generally considered necessary in order to render a professional service to the county. A short tenure should be the exception. Under special circumstances, it may be in the best interests of the local government and the CAO to separate in a shorter time.
6. It is the responsibility of an applicant for a position to ascertain conditions of appointment. Inadequately determining terms of employment prior to arrival does not justify premature termination.
7. Adherence to the International City and County Management Association and American Society of Public Administration Code of Ethics is encouraged.