

PENSION REFORM UPDATE- Clarification Regarding Switch to Defined Contribution Plans by California Public Employers

It has been brought to our attention that one item included in a [summary we produced last January](#) regarding various technical correction bills to the California Public Employees' Pension Reform Act of 2013 ("PEPRA") may have been misunderstood by some readers. This is always a danger in doing "brief summaries" of highly complex legislation.

In order to be sure there is no misunderstanding, we are publishing this clarification of the information provided about technical corrections made to provisions in PEPRA regarding the ability of a California public employer to offer its employees a defined contribution retirement benefits program rather than a defined benefit pension program.

As we noted in our original summary of SB-13, the PEPRA technical clean-up legislation that was signed into law October 4, 2013, was intended primarily to clarify existing law. This meant that it was generally effective January 1, 2013, PEPRA's original effective date. One of the items we noted was that SB-13 "Confirms that PEPRA doesn't prohibit an employer from offering a defined contribution plan or even a defined-contribution-only program on or after January 1, 2013, even if the employer didn't offer a defined contribution plan before that date. Employers may now consider providing a PEPRA-compliant defined contribution plan instead of the PEPRA-mandated defined benefit plan to new members."

The comment noted above was intended to be read in the context of why the technical correction was needed. After PEPRA was originally passed, those people trying to interpret the words of the original statute thought that the terms of PEPRA could be read to say that all public employers subject to PEPRA were required to offer a defined benefit pension plan that met the new PEPRA-mandated terms for a public pension plan. Some commentators were arguing that this was the case even for public employers who had previously offered only a defined contribution plan program prior to PEPRA's enactment. This meant that some public employers felt they were forced to adopt new PEPRA-compliant defined benefit pension programs in order to be certain they were not violating PEPRA, even though they had never offered any defined benefit program in the past.

by *Judith W. Boyette & Edward M. Bernard*



Our specific comment quoted above was intended to let those public employers know that the technical corrections under SB-13 had confirmed that they were not prohibited from offering a defined contribution plan, or from having a defined-contribution-only program, by the terms of PEPRA itself - that is, that they were not required by PEPRA's language itself to have a defined benefit pension program in all cases. And, as we further commented, this meant that employers could consider, among other options being reviewed, whether it might be possible to utilize a PEPRA-compliant defined contribution plan instead of the PEPRA-mandated defined benefit plan for new members (i.e. first time public employees hired after January 1, 2013 as defined under PEPRA).

Unfortunately, we understand that some individuals may have read our comment to mean that public entities could implement a defined-contribution-only program for either all members or new members without reviewing whether or not there were other restrictions under applicable law (such as any constraints under California "vested rights" law or specific statutory restrictions) that would constrain an employer's ability to implement such a new program. Our comment was intended only to make clear that PEPRA itself did not prohibit considering such a program. Any other legal constraints that might limit or prevent an employer from making such a change remain applicable and must be carefully analyzed in making decisions about changes to an employer's retirement plan offerings.

If you have any questions about this issue or any other benefits-related question, please contact a member of the Hanson Bridgett Employee Benefits Group.

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