CalPERS Issues Guidance on Uniform Allowance Reporting

by Edward M. Bernard

A few weeks ago, CalPERS issued a Circular Letter to provide guidance to contracting agencies about reporting the uniform allowance, a statutory form of special compensation that applies only to classic CalPERS members. The Circular Letter provides much needed guidance about the uniform allowance, specific examples of reportable and non-reportable items, and reporting standards. While this guidance is helpful, it may not answer all contracting agencies' questions about how to report the uniform allowance.

Background

The uniform allowance is a form of special compensation, one of the two components of compensation earnable (the other is payrate) reportable for classic members – those who are not new members under the California Public Employees' Pension Reform Act of 2013 (PEPRA). As such, the uniform allowance is subject to specific statutory and regulatory requirements, including incorporation into a written labor agreement.

However, this hasn't always been the case. CalPERS didn't include the uniform allowance in compensation until 1981, when the Court in *Rose v. City of Hayward* concluded that the city-provided uniform allowance was reportable because it was for "a ready substitute for personal attire" employees would otherwise have to buy. By contrast, the city-provided ammunition allowance was for work-related safety equipment the employee would not otherwise have to buy and, therefore, not reportable. This is still the critical distinction today.

Recently, CalPERS audits have flagged contracting agencies for failing to report the uniform allowance. A number of those agencies appealed the CalPERS finding. On appeal, an administrative law judge decided in one agency's favor, but CalPERS rejected that decision. As a result, most of those agencies have now settled their uniform allowance reporting disputes with CalPERS. CalPERS issued the Circular Letter in response to the widespread confusion about the uniform allowance that those cases revealed.

Uniform Allowance Defined

The Circular Letter recites the definition of uniform allowance in the CalPERS regulations. Under that definition, the amount paid by the employer to employees, or the rental, purchase, or maintenance cost paid by the employer, for required clothing that is a ready substitute for personal attire the employee would otherwise have to acquire and maintain must be reported. This includes clothing made from specially designed protective fabrics, but excludes items that are *solely* for personal health and safety, such as protective vests, pistols, bullets, and safety shoes.

Reportable Uniform Allowance Items

The Circular Letter provides several rules for determining reportable uniform allowance items.

First, a uniform allowance for required clothing that is a ready substitute for personal attire is reportable even if the clothing is made from specially designed protective fabrics, such as fire-resistance or anti-bacterial fabrics, or includes other specific features (such as color) that serve a personal health and safety purpose. For example, a fire district's cost to furnish required uniforms to firefighters is reportable, even if the uniform is made from a fire-resistant fabric. An employer's cost to purchase orange or other high-visibility T-shirts for employees who work in traffic would also appear to be reportable under this standard despite that safety feature.

Second, in CalPERS's view, merely labeling required clothing as "safety" items in a written labor agreement, or failing to include a reportable uniform allowance in such an agreement altogether, is neither determinative nor a valid basis for failing to report the employer's cost for those items to CalPERS. Instead, CalPERS's position is that this means only that the agency should revise the agreement to include the uniform allowance as reportable compensation.

Examples given in the Circular Letter of common uniform allowance items, though far from exhaustive, include dress shoes, pants, polo shirts, polo shirts, slacks, and socks.

Non-reportable Items

The Circular Letter does, however, provide quite a few examples of items that CalPERS generally would not consider a ready substitute for personal attire. These include:

- Ammunition
- Aprons
- Ballistic vests
- Batons
- Citation booklets
- Coveralls
- Duty belts
- Fire extinguishers
- Firearms
- Firearm accessories
- Flashlights
- Foul weather apparel
- Goggles
- Hand axes
- Handcuffs
- Helmets

- Holsters
- Knives
- Lab coats
- Motor breeches
- Narcotic kits
- Safety harness
- Self-contained breathing apparatus
- Shop coats
- Steel toe boots
- Turnout gear
- Window punches
- Whistles

It is helpful to consider what makes some of these items not reportable. For example, coveralls and lab coats are not a ready substitute for personal attire because they are protective and are worn over and in addition to personal attire. It should also be noted that CalPERS cautions that these are just examples; CalPERS's actual determinations are made on a cash-by-case basis.

Other miscellaneous, non-reportable items include:

- Badges
- Batteries
- Buttons
- Chevrons
- Embroidery
- Ensigns
- Epaulets
- Insignias: brass, collar, or rank
- Labor for affixing patches
- Laces
- Metal bars
- Patches
- Shoe polish
- Shoulder braids
- Tie bars
- Zippers

Reporting Standards

The Circular Letter also provides that contracting agencies can report special compensation related to uniform allowances by either:

- reporting the aggregate amount for each pay period in the earned period report, or
- reporting a retroactive special compensation adjustment that includes a payroll record start and end date matching the start and end date of the uniform allowance for each fiscal year. Thus, for example, the start and end date for an annual uniform allowance with a 2019 fiscal year effective date would be July 1, 2019 and June 30, 2020, respectively.

For questions about the impact of this Circular Letter on your agency's CalPERS compensation reporting and related issues, please contact Edward M. Bernard, Hanson Bridgett Partner.

For more information, please contact:

Edward M. Bernard, Partner
415-995-5807
ebernard@hansonbridgett.com