



[AB 340](#) and [AB 197](#)

Public Employees' Retirement

KEY PROVISIONS

Updated September 1, 2012 – 9:17 AM

- **Who's exempt under AB 340?**
 - ✓ University of California and charter cities and counties that do not participate in CalPERS (i.e. LA City, San Francisco, San Diego, San Jose, etc.)
- **How does AB 340 affect existing state and local CalPERS and '37 Act safety employees?**
 1. **COST SHARING:**
 - **Current state employees:** Required to contribute 50% of the normal cost of their pension benefits;
 - **Local CalPERS safety employees:** Required to reach a cost sharing of 12% of pay or 50% of normal cost of benefits, whichever is less, through collective bargaining between by January 1, 2018. If not achieved by 2018 through collective bargaining, employer may unilaterally impose cost sharing after satisfying any required impasse procedures;
 - **'37 Act safety employees:** Required to reach a cost sharing of 33% or ½ of normal cost of benefits, whichever is less, through collective bargaining by January 1, 2018. If not achieved by 2018 through collective bargaining, employer may unilaterally impose after satisfying any required impasse procedures.

Note: *Bargaining "Flexibility" of Current Employee Contribution Rates* – AB 340 allows bargaining of employee contribution rates at any amount (i.e. not restricted).
 2. **'37 ACT "COMPENSATION EARNABLE"**: Specifies that payments for termination pay and leave may not exceed what is earned in a year and payable, consistent with two applicable court cases on the issue: *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003)110 Cal.App.4th 426.

NOTE: The provisions in AB 340 relating to this issue, as approved by the Legislature, were further clarified on the last night of the legislative session with the adoption of [AB 197](#). To avoid a chaptering out problem since AB 340 was sent to the Governor first, AB 197 will be transmitted to the Governor by the Legislature with the request that it be signed after AB 340, so that the two sections in AB 197 will chapter-out the same sections in AB 340.
 3. **RETROACTIVE PENSION IMPROVEMENTS:** Prohibits applying pension improvements to prior service for any enhancement to a system's retirement formula or benefit that is adopted on or after January 1, 2013. Instead, would apply enhancement only to service performed on or after the operative date of the enhancement;

4. **FELON PENSION FORFEITURE:** Requires public officials and employees to forfeit their pension (and related benefits) if convicted of a felony that is associated with carrying out their official duties, in seeking an elected office or appointment, or in connection with obtaining salary or pension benefits -- effective on the date of final conviction;
5. **“AIR TIME”:** Eliminated effective January 1, 2013. Air time applications made and received by the retirement system by this date will be honored;
6. **RETIREMENT CONTRIBUTION HOLIDAYS:** Prohibits all employers from suspending employer and/or employee contributions necessary to fund annual pension costs.
7. **CALPERS INDUSTRIAL DISABILITY RETIREMENT:** Until January 1, 2018 -- unless legislation deleting or extending the date is enacted prior to then -- AB 340 modifies the industrial disability retirement (IDR) allowance of CalPERS safety members in a manner that is ***equal to the greater of the following:***
 - 50% his or her final compensation attributable to the DB plan, plus an annuity purchased with his or her accumulated contributions, if any;
 - A service retirement allowance, if he or she is qualified for service retirement; or
 - An actuarially-reduced factor for each quarter year of service age that is less than 50 years of age, multiplied by the number of years of safety service subject to the applicable retirement formula (if he or she is not qualified for service retirement).

- **How does AB 340 *additionally* affect new safety employees?**

1. **“SALARY CAP”:** Establishes a cap on the amount of compensation that can be used to calculate a retirement benefit on for all new members of a public retirement system, which is equal to:
 - The Social Security wage index limit (\$110,100) for employees who participate in Social Security; or
 - 120% of that limit (\$132,120) if they do not participate in Social Security.

Note: Existing law CalPERS final compensation benefit cap of 90% is not applied. Also, AB 340 requires that the above compensation limits be adjusted annually based on the Consumer Price Index.

2. **FINAL COMPENSATION:** Requires final compensation for all new employees to be calculated using the highest average annual compensation over a three-year period.
3. **3% @ 50/55 RETIREMENT FORMULA “ROLLBACK” & HIGHER SAFETY RETIREMENT AGE:** Provides three retirement formulas that will apply to new safety employees (with the applicable formula being determined as the formula, which most closely resembles the current formula for active employees):
 - 2% at age 57;
 - 2.5% at age 57; and
 - 2.7% at age 57
4. **COST SHARING:** Requires contributions from new employees to equal 50% of normal cost of their pension benefits. AB 340 allows employee contributions to be more than 1/2 of the normal costs if agreed to through collective bargaining, but would prohibit the employer from using impasse procedures to increase an employee contribution rate.
5. **VOTER-APPROVED PENSION CHANGES:** Allows employers that offer a retirement benefit plan approved by the voters prior to January 1, 2013, which has lower benefit formulas and

results in a lower normal cost to continue offering those plans to new employees. *These provisions imply that no city can come in AFTER 2013 and establish a lower benefit.*

6. **“NEW EMPLOYEE” DEFINED** - AB 340 defines a new employee as either of the following:
 - An employee, including one who is elected or appointed, of a public employer who is employed for the first time by any public employer on or after January 1, 2013, and who was not employed by any other public employer prior to that date; or
 - An employee, including one who is elected or appointed, of a public employer who is employed for the first time by any public employer on or after January 1, 2013, and who was employed by another public employer prior to that date, but who was not subject to reciprocity under subdivision (c) of Section 7522.02 [of the Government Code].

Other AB 340 Provisions of Interest:

1. New retired annuitant rules and exceptions to those rules:

AB 340 generally prohibits a person who retires on or after January 1, 2013, from returning to work as a retired annuitant for a period of 180 days after retirement **UNLESS** the action is approved in an open meeting, as specified by the governing body of the employer, or if a state employee, by California’s Department of Human Resources. However, in no case could a person who receives a retirement incentive return to work as a retired annuitant for a period of 180 days after retirement. **A public safety officer or firefighter is among a handful of exceptions to these new 180 day provisions.** Other exceptions to the rule are: a) A retiree participating in the Faculty Early Retirement Program pursuant to a collective bargaining agreement with the California State University; or b) A retiree is a trustee, administrator, or fiscal advisor appointed to address academic or financial weaknesses in a school or community college district, pursuant to specified requirements.

2. Provisions primarily affecting managers:

- Limits the maximum salary taken into account for any retirement plan to the federal limit established under 401(a)(17) of the Internal Revenue Code (IRC) and prohibit an employer from seeking a federal exemption from the limit;
- Prohibits an employer from making contributions to any public retirement plan on any amounts of compensation that exceed the 401(a)(17) limit;
- Prohibits a public employer from offering a benefit replacement plan for any member (or survivor) who is subject to the federal limit on benefits established by section 415(b) of the IRC for an employee first hired on and after January 1, 2013, or to any group of employees that was not offered a benefits replacement plan prior to that date; and
- Authorizes a public retirement system to continue administering a 415(b) benefit replacement plan for employees first hired prior to January 1, 2013.