Regional Employees Association of Professionals January 2016 News

Dating and Mating on the Job

Does your employer have the right to restrict you from dating someone at work? Could your job be in jeopardy if you marry a co-worker? Where do we draw the line between "dating" and sexual harassment? What about same-sex relationships between co-workers?

While the law doesn't address the subject of workplace "liaisons," the truth is work is where most people spend the majority of their waking hours. So, the likelihood that people will establish relationships (both friendships *and* intimacies) on the job is very, very great. Public sector workplaces seem particularly populated with married couples, along with their extended families -- and employers do have the obligation to deal with <u>other</u> employees' complaints about favoritism. The County also has an obligation to investigate claims of harassment, when workplace love affairs "cross the line" or turn into workplace nightmares. The whole subject is a very difficult one from the employer's point of view, and nepotism policies only begin to scratch the surface. What follows, then, is our best summary of your rights *and the County's rights* regarding dating and mating on the job.

The Facts of Life…

On the one hand, we all know that workplace romances are a fact of life; and on the other, we know that they may be hazardous, not only to your heartstrings, but to your livelihood! Workplace relationships always start out happily: you see each other across a crowded cubicle; you imagine that this is the man (or woman) of your dreams, and you begin to 'see one another.' Almost immediately, everyone in the department knows about it. But, if you're lucky, the relationship blossoms, you marry, and your co-workers are invited to the wedding. Perhaps the only negative fallout is a bit of jealousy…

But then, perhaps it is more than a *bit* of jealousy. You may be faced with accusations of receiving better work assignments, or promotions, or getting first choice of vacation, or any one of a dozen "special opportunities" because of your new family relation. *This is where the County's Nepotism Policy comes into play*. It is the employer's job to make sure that personal relations do not enter into work-related decisions. For obvious reasons, married couples (and family members as well) should not fall into supervisor/subordinate relationships. All too often, therefore, it is necessary that one person be transferred -- or face the possible

loss of his/her job altogether. (Unless you have rules controlling this, it's usually the subordinate who gets transferred -- and usually this is the woman…)

Not a Marriage….

When there's an ongoing relationship that is NOT a marriage, the employer's problem is much, much messier. Favoritism IS a real possibility and co-workers DO complain, but there is no formal policy being violated! Management may be forced to investigate, to take action (often useless) to discourage the relationship or to separate the employees. Innocent people may be harassed, falsely accused, or even "punished" because co-workers contend that they are receiving "favors." Or legitimate complaints may be filed while Management may "look the other way." (And while tempers rise and morale deteriorates)

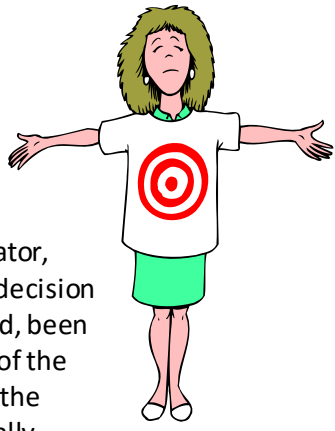
Even worse, when an on-the-job romance goes sour, everyone in the workplace may suffer. The "victim" is often desperate *NOT* to work in the same department - or not to come to work at all. This means that other peoples' workloads may be affected. The anger may well pollute the workplace. Further, the "victim" may file a sexual harassment complaint, which can cost the County a lot of money, as well as productive time.

Your Right to A Personal Life…

But much as employers may want to establish policies restricting employees from dating, these policies are largely unenforceable, and may quite possibly violate your personal liberties. There are simply no federal or state laws that prohibit employees from seeing one another. After all, this is America: you have the right to do what you wish with your private life.

Private companies sometimes create "dating policies" that include disclosure of relationships between supervisors and their direct reports. "Dating contracts" are actually a reality in some places. Signed by both employees, they try to protect the employer from liability by stipulating that the relationship is freely entered into, that the private relationship will not affect business, and that either party may leave the relationship without fear of retaliation or loss of their employment.

The public sector in California, however, is not so "evolved." Here, the issue of "dating" is usually referenced only in sexual harassment policies, and the goal is that employees clearly understand what is and what is not considered to be harassment. The question of when a consensual relationship might cross the line to "harassment" remains entirely unresolved -- because public employers generally pretend that such relationships do not exist at all!



What is HARASSMENT?

Since the early '90's, the Courts have made clear two things clear: 1) employers have an obligation to investigate, using a trained investigator, *any* claim of harassment and 2) the decision about whether someone *has,* indeed, been harassed lies very much "in the eye of the beholder." This legal theory (called the "Reasonable Person" theory) generally means that the employer should operate as if claims of harassment, unequal treatment or gender-based discrimination are true, until and unless they are proven untrue. And THIS means that almost *any* personal interaction between co-workers holds potential for becoming a lawsuit.

It also means that employees are left "on the defensive" about what is, or is not, appropriate behavior. The best response, obviously, is NOT to get involved with co-workers. Given human nature however, it is likely the people will continue to "mate" at the workplace. So, the next best rule is **don't have a relationship with a supervisor or subordinate.** After that, avoid any personal contact that could be construed as coercive. For example, it is okay to ask someone to have dinner with you; but it is not okay to keep asking after the person has said "no." It's OK to go out with someone from work, but it's not okay to tell them that if they'll go out with you, that you will help them get a better assignment or a raise. It's also not okay, when a person rejects your offer to go out, to threaten them with difficulties on the job. This is retaliation and it's blatantly illegal.

What IS Nepotism?

Nepotism is defined as preference *of any sort* given by one employee to another because of a marital or family relationship. The fact that some people have special relationships with the boss can outrage employees who are NOT part of 'the family.' The anger may persist even when there is not proof of actual favoritism.

Nepotism policies, like all personnel-related policies, are negotiable. Some public employers have no Nepotism Policy at all, and some are completely

outdated. If you have problems with apparent favoritism, it's within your Association's right to request to meet with the County to initiate (or update) a Nepotism Policy. At minimum, the policy should establish the County's right to prevent an employee from holding a position in the same department, division or facility, where his/her relationship to another employee has the potential for creating adverse impact on supervision, safety, security or morale, or involves a potential conflict of interest.

The Nepotism Policy should also determine what happens when two employees marry or enter into a domestic partnership relationship (and in California same sex relationships are recognized as legal relationships.) If there is a conflict of interest on the job, *which* of the two employees gets transferred? What criteria are used to determine this?

Particularly in California, employers have good reason to be nervous about romantic relationships on the job. Lawyers make a fortune over claims of harassment and discrimination. But dating and mating are fundamental human drives, and no amount of employer "discouragement" will deter it. The next best thing, therefore, is probably a decent Nepotism Policy (and a fair amount of forewarning about the consequences….)

New Labor and Employment Laws

California legislators passed these laws last year. They went into effect THIS MONTH, January 2016.

1. AB 987 expands the Fair Employment and Housing Act (FEHA) to make requests for a reasonable accommodation for a disability or religious beliefs a protected activity. Your employer can't retaliate against you for asking for accommodations.

2. AB 1509 protects employees from retaliation if a family member engages in a protected activity.

3. SB 623 protects employees receiving Workers Compensation benefits against discrimination due to citizenship or immigration status.

4. SB 579 modifies the State "Kin Care Law" which allows you to use ½ your sick time for taking care of a sick family member. It makes two major improvements: 1) you can now take kin care sick leave for family members for almost any reason for which you'd be able to take sick leave for yourself: diagnosis, treatment of an existing health condition, or for preventative care for either yourself or a family member; and 2) expanded childcare activities leave. This leave allows a parent with a child in grades 1-12 to take up to 8 hours a month (max 40 a year) for childcare related activities. Those activities now include school or childcare emergencies as well as time spent finding a school or childcare. The new law also expands the definition of 'parent'.

5. SB 667 improves state disability insurance benefits. If an injury recurs within 60 days of an employee returning to work, s/he doesn't have to go through a second 7-day waiting period before receiving benefits.

6. SB 501 reduced the amount of an employee's wages that can be garnished due to lawsuits.

7. SB 570 details out the kind of notice that agencies send to employees when they suffer a computer data breach that includes personal information.

Your Right to Time Off for Jury Duty, for Victims of Crime or Response to Domestic Violence

In 2001, California's labor law was modified to include an employees' right to attend to Court matters or to seek a restraining order in response to domestic violence. Specifically, Section 230 of the Labor Code clarifies that:

- No employer shall discharge or in any manner discriminate against an employee for taking time off to serve on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is required to serve.
- No employer shall discharge or discriminate or retaliate against an employee who is a victim of a crime, for taking time off to comply with a subpoena or other court order as a witness in any judicial proceeding.
- No employer shall discharge or discriminate or retaliate against an employee who is a victim of domestic violence as defined in Section 6211 of the Family Code for taking time off from work to obtain relief, including, but not limited to, a restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of a domestic violence victim or his or her child.

Last year California passed the Healthy Workplaces, Healthy Families Act of 2014 which requires employers to allow employees to use sick leave if they are victims of domestic violence, sexual assault, or stalking. If you have any questions regarding your potential rights under these circumstances, please give CEA staff a call at 562-433-6983.

Judge Found Guilty of a Felony Forfeited His Right to Retirement Benefits

A judge for the Santa Clara County Superior Court was indicted on one felony count of conspiracy to obstruct justice and eight misdemeanor counts. He was found guilty of conspiring with a Los Gatos police officer to dismiss traffic tickets for friends and professional sports teams and granted preferential treatment in the disposition of cases. In 2003, he retired as a judge, with a CalPERS account valued at nearly $249,000.

Shortly after he retired, CalPERS informed the judge that due to his criminal conviction, he had forfeited any retirement benefits and would be receiving back (only) his own member contributions. He was sent a lump sum totaling nearly $113,000.

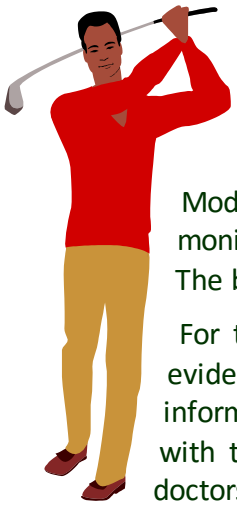
Government Code section 75526 provides that a judge who is "found guilty of a crime committed while holding judicial office that is punishable as a felony under California or federal law and which either involves moral turpitude under that law or was committed in the course and scope of performing the judge's duties, and the conviction becomes final shall not receive any benefits from the system, except that the amount of his or her contributions to the system shall be paid to him or her by the system."

In 2006, the Santa Clara Superior Court reduced the judge's felony conviction to a misdemeanor, and

granted his petition for expungement. He then contacted CalPERS and asked for a restoration of his previous account. CalPERS denied the request, and the judge appealed. The trial court denied his petition. He appealed to the next step and was denied, again.

In his appeal, the judge had argued that CalPERS lacked jurisdiction to decide whether he forfeited his retirement benefits. The Court of Appeal said that PERS is responsible for administering its own programs and for determining the right of a member to receive benefits.

The judge also argued that there was no felony conviction because, after a probation period, court reduced the felony to a misdemeanor. However, just because the trial court reduced his crime to a misdemeanor at the conclusion of his probation that did not change the fact that he was found guilty of a crime "punishable" as a felony. Similarly, just because the Penal Code permits a defendant to have criminal charges expunged after a period of time, under certain circumstances, this doesn't mean that the original conviction has been declared "null and void." The dismissal of the judge's case in 2006 did not erase the fact that a jury found him guilty of a crime nor did it free him from the forfeiture consequences set forth in Government Code Section 75526. So, the Court of Appeal affirmed CalPERS' decision to cancel his retirement benefit.



Watch Out!

Your Exercise Monitor Could Be Used Against You!

Modern technology is amazing. The good news is that you can now purchase a device that will monitor your physical activity, your blood pressure, and even tell you when you're awake or asleep. The bad news is that it can tell OTHER PEOPLE the same information.

For the first time that we know of, a Canadian law firm introduced its client's "Fitbit" data into evidence to show that there was a drop in her activity level following a work-related accident. The information from her monitor was processed by a company that collects such data and compares it with the health and activity levels of the general population. Until now, attorneys have relied on doctors' observations to assess a patient's condition. But now, we have the potential of around-the-clock "hard" data.

However, this kind of information can also damage a client's case. In Lancaster, PA, a rape complainant's "Fitbit" data was used to disprove her claim that she was assaulted. She claimed that she was asleep when attacked; but the monitor showed that she was awake and active most of the night. She was charged with filing a false report.

For more than decade, employers have been using social media to challenge employees' claims. Most often this has to do with claims of illness or injury, when the claimant looks perfectly healthy on his/her Facebook posts. Now, a variety of monitors hold the potential for serving as "truth serum."

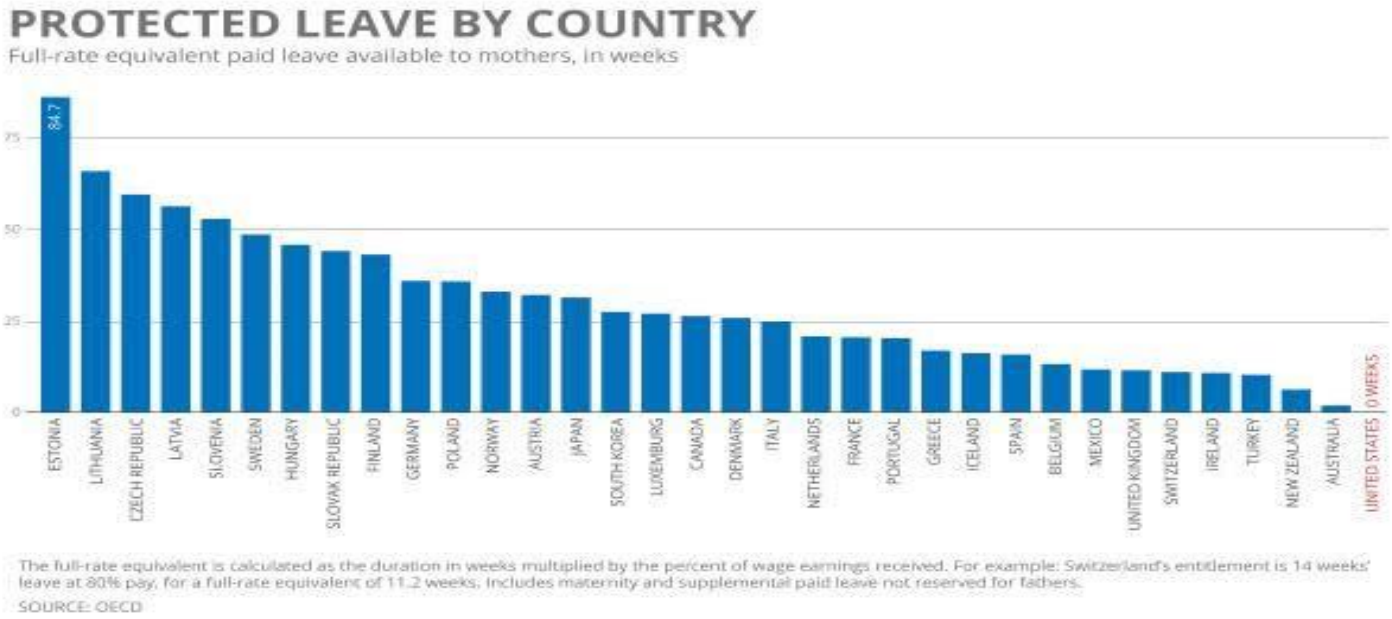
If you are assuming that the data from your personal health monitor is **private,** think again. This data (which can show, for instance whether you are exercising when you are supposed to be sick) can, under certain circumstances, be subpoenaed. (Luckily, the vast majority of public employees are scrupulously honest!)

DEPARTMENT OF LABOR PUSHES FOR PAID FAMILY LEAVE

When the Family Medical Leave Act went into effect in 1994, it was a huge benefit for working people. Before that, anyone, anywhere could be terminated for taking too much time off the job with illness…one's own illness or a family member's. There was no definition of "too much"; some employers were generous and some were punitive. But, legally, taking any amount of time off the job could be cause for losing your job.

The FMLA gave all employees who work more than 1250 hours for a large employer the right to use up to 12-weeks' time off, consecutively or intermittently, with protection against termination to take care of themselves or family members. It covers illness or injury, and even "baby bonding," for the employee and his immediate family. What it does NOT cover, however, is PAY. People who take time off under the FMLA may use their accrued leave and, after that… they are on their own.

The Federal Department of Labor is working to change this. Pointing out that the United States is practically the only industrialized country that fails to provide ANY paid family leave (see the chart below) they are campaigning hard for a nation-wide program to be implemented by the end of the decade.

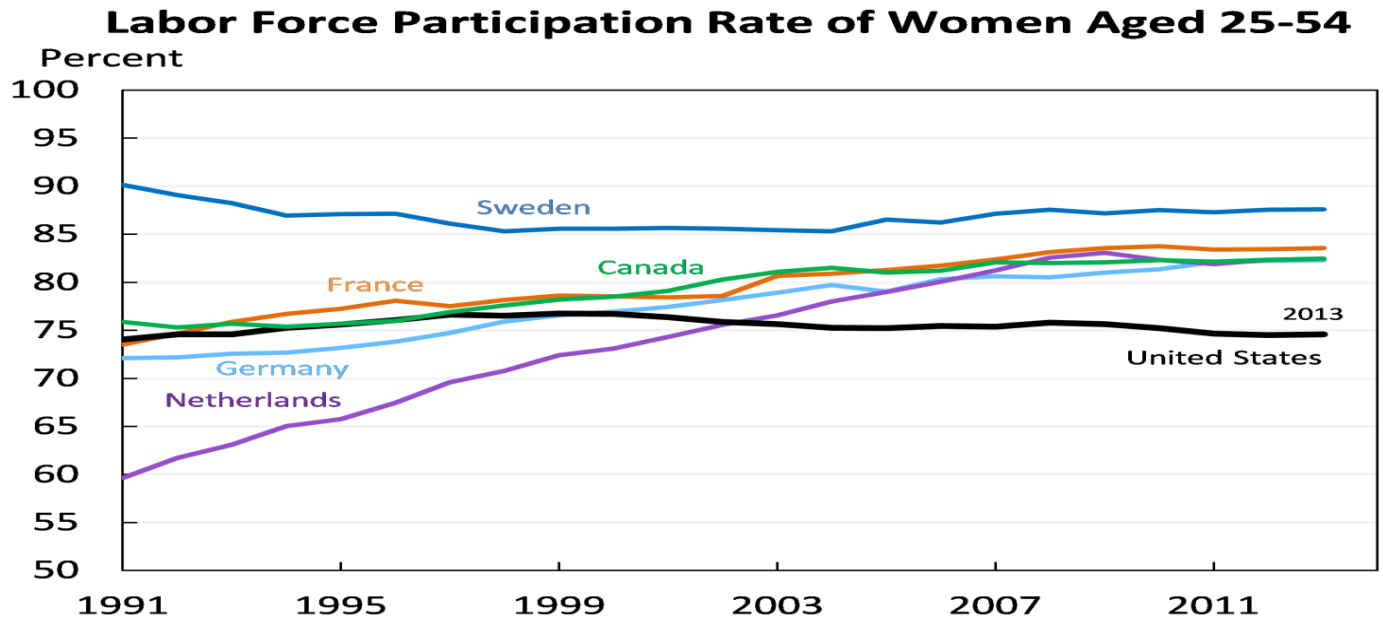


LEAVE RUNS OUT BEFORE TIME HAS ELAPSED…

The DOL's website points out correctly that without PAID leave, many employees – most of them women – can't take advantage of Family Medical Leave, even when they desperately need to. While California now requires employers to provide three paid sick days, most states have NO sick leave laws mandates at all. Full-time public employees (who are mostly unionized) have much better benefits: generally accruing 6 to 8 hours' sick leave per month. But even this time can run out long before someone has recovered from a catastrophic illness or injury.

IMPACT ON FEMALE WORKERS' PRODUCTIVITY

Family leave programs have been in effect, in most Western countries for almost a generation now. It is possible to track their effect on productivity, nationally. Not surprisingly, those countries with the best family leave PAY programs have the highest participation of women in the workforce. One consequence of the U.S.'s *unpaid* policy is that we have the *lowest* participation of women of childbearing age in the workforce:



Is the Public Employee Retirement System "Unsustainable"?

Robin Nahin, CEA Staff

Of the 80 public retirement systems in California, CalPERS (California Public Employee Retirement System) is the largest. In fact, it is the second-largest retirement fund in the country. Founded in 1931, PERS currently holds $194.7 billion in assets, belonging to more than 1.7 million state, city and utility county employees. There's been a lot of attention in the media lately about PERS' "sustainability." The goal of this attention is create anxiety about whether "the tax-payers" can really "afford" to support your opulent retirement plan.

The purpose of *this article* is to deal with this "sustainability question" head-on: to explain how the funding for you plan **really** works, why PERS is (and will continue to be) solvent, and why "the taxpayer" has very little connection with your retirement benefit at all. **The fact is your benefits are <u>not</u> in jeopardy and PERS is NOT "in trouble,"** -- except possibly, at the hands of overzealous, misinformed taxpayers who are NOT your friends…

THE NEGATIVE HYPE…

First of all, although there's been lots of hype about public employees' exorbitant benefits, the average PERS non-sworn retiree today receives $3,006 per month. It's true that large portions of PERS' money were generated by, and invested in, the stock market. When the market crashed in 2008, more than half of that money evaporated (although now it has, just as miraculously, "come back.")

Either way, the way PERS invests its money has no bearing on the safety of YOUR retirement fund, nor on the amount you will receive in your pension. This is because CalPERS is a "defined benefit" plan, which means that the amount of benefit you receive is defined by contract and backed by law. Whether your Association's PERS contract is at the 2%, 2.5%, or 2.7% at 55 the 3.0% at 60, or the 2.0% at 62, the formula (which multiplies this percentage by your age, your years of service and your highest years' earnings) MUST be implemented when you retire.

The amount you receive when you retire has nothing to do with how much money PERS is "holding" in your County's account. That amount "in the bank" *does* go up and down

with fluctuations in the stock market, *but there is always more than enough to pay for your retirement.* This is because your account is funded by YOU and your employer. You pay some portion of the employee cost; your employer pays *its* cost. The employer cost can go up and down with "experience," which means usage of the plan AND it can be affected by the stock market. (When the market is doing well, employer rates go down…)

YOUR cost CANNOT go up, except through negotiations, (and by law it cannot go higher than 8% of your salary).

So… There is no relationship between the amount of money your employer's PERS account "earns" in the stock market and the amount that must be paid to you when you retire.

The only real effect that the stock market and your county's PERS account has on YOU, is that when your employer's retirement expenses are high, they may have to divert money to this expense *instead of giving YOU a decent raise.* At the end of the Recession, this effect was real: the stock market had collapsed, so employers' retirement rates went up at the same time that they still had limited revenues. The impact of the collapse was that until very, very recently most public employees got small (or non-existent) raises.

However, TODAY, this problem is being alleviated: the stock market is "back," and new employees are CHEAP, at least when it comes to retirement expenses. This is because of PEPRA, the 2012 "reform," which reduced all new hires to the "2.0 at 62" plan. (They will never be able to afford to retire, but they are CHEAP…)

For pre-2012 employees, your plan and your "pay outs" are fixed. The County can never negotiate a less expensive plan for "classic" employees. (But they can, and probably have, asked you pay a portion of the monthly employee contribution.)

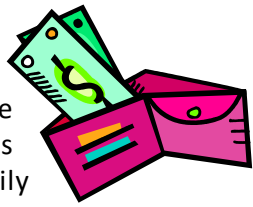
A Little Perspective, Please…

Throughout PERS' history, most of the money that went into employees' retirement accounts came from *their employers* -- NOT the stock market. In the early 1980s, for example, employers' contributions were generally between 10% and 14% of your paycheck. As the stock market skyrocketed in the '90s, PERS earned so much on its investments, *that the need for employer contributions actually dropped to zero.* This phenomenon was called "super-funding" and, during this period (which lasted nearly a decade) the vast majority of money being paid to retirees was being generated by stock market investments.

Don't be Tricked By the Stock Market

"Super funding" lasted so long that a great many public employers got used to having no retirement payments at all. Then, when the crash hit, they were forced to make payments again – and to make up for stock market losses, *quick*. Some agencies that had a lot of police and/or fire employees (*most of whom managed to negotiate the lucrative "3% at 50 plan,")* found themselves with PERS rates bordering on 40% of payroll. This was a tough bullet to bite, on top of all the other losses of the Recession, and it resulted in the huge public backlash known as PEPRA. This law enacted retirement benefits for new hires which are lower than any plan ever seen in CalPERS history.

The bottom line for you, though, is that your nest egg is safe with PERS. **The fund is "sustainable" because PERS' money comes directly from employees and employers, themselves.** When PERS' investments are good (as they are today) employers' rates go down. But the fund is not primarily dependent on the stock market.



Here are a few other statistics PERS has published:

1) PERS' losses and gains are short-lived (and don't matter to the average public employee.) At the market's lowest point in 2008, PERS' assets dropped by $100 billion. Today, however, it has regained all of its loss.

2) PERS does NOT make "risky investments." Investment decisions are based on thorough staff analysis, following set Board policies and using third-party independent investment consultants. The PERS Board and staff must adhere to strict codes of ethics, disclosure guidelines, and governance principles which guide their investment decisions.

3) Public retirement benefits are NOT excessive and NOT a drain on the public. Only 1% of the nearly half million PERS retirees receive pensions of $100,000 a year. One-third of them receive less than $18,000 per year! Most PERS members do not receive Social Security; their PERS pensions are usually their sole source of income after retirement.

4) PERS retirees' spending stimulates the economy. One study found that pension income to 674,000 CalPERS and CalSTRS (teachers) retirees generated an economic impact of $21.1 billion to the State's cities and counties. Overall, California's public retirees put back $2 into the economy for every $1 they receive in benefits.

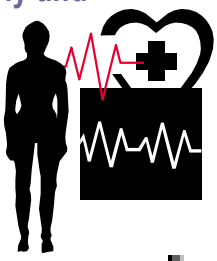
5) There is no truth to the myth that the Baby Boomers retirement will "bust" the CalPERS system. There ARE a lot of Baby Boomers. Luckily, they and their employers began paying into the system for them on the day they started working. (In fact, in the early '80s, when it became obvious that cities were trying to evade the PERS system by hiring part-time labor, PERS passed the "1000-hour rule," which required all employees to go into the system after any year with 1000-hours of continuous employment.)

6) It is NOT true that individual PERS members can manipulate the system to "spike" their earnings, so they can receive inflated retirement benefits. Several different laws have been passed to make these practices illegal. Even before they were illegal, they were not widespread. "Spiking" is now a felony, and PERS staff actively investigates and prosecutes pension fraud.

Answers to Questions About Your Medical Plan

Q: When I started working here, the County provided FULLY paid health care for me and my family. It's one of the reasons I took this job. Now, the County is saying that we will begin paying over $300 a month toward our plan. The only way I can avoid this is by switching to an HMO. Do I have grounds for legal action?

A. If the County is simply "saying" this, *without bargaining with your union*, then, yes, you and everyone similarly affected would have grounds for action. However, if the County has negotiated properly and this loss is part of an overall agreement, then there is no violation. Almost all public employees used to have fully paid health care, and almost none of them do any longer. It is part of the political trend to make public employees "share" in their benefit costs. Hopefully, next time you negotiate, you can make up for this with a pay increase.



Q: Since I retired four years ago the County has been paying $350 toward my health care. Now they are saying that the retiree health care fund is running out of money and my contribution is being reduced to $100. Can they just do this?

A. Probably not. Retiree health care and other retirement benefits are considered forms of deferred compensation. You *earned* this benefit and the courts have generally ruled that it can't be taken away. We say "probably" because the benefit depends on the language in the MOU in place when you were working. If it says that the amount can be reduced or depends on the solvency of some fund, then the amount CAN change.

Q: I've been told that the County is going to get out of Kaiser and go with a different HMO. I'm very attached to my doctor and have been undergoing some specialized treatment. Can they just DO this?

A. Employers normally can't change your plan without bargaining. If the parties have negotiated the change, it's legitimate (and you should have been given an opportunity to vote on this.) Sometimes employers claim to have the right to change medical providers without bargaining "as long as there are no changes to the plan." However, plans are NEVER exactly the same. If you must change doctors, the plan is not the same! If you determine that this change was made without your union's agreement, you may have grounds for a significant grievance.

Questions and Answers:
Your Rights on the Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, feel free to talk to your Board Rep or Association Staff at (562) 433-6983 or cea@cityemployees.net.

Question: My department has a policy that we need to call in two hours before the start of shift if we are going to be sick. This means that we need to call in before 5:30 a.m. I was very sick and feverish didn't wake up until almost 7 a.m. When I called in, my boss said that because I called late, I needed to come into work. I was still feverish (and probably contagious) but managed to get there. My boss took one look at me and sent me home. I think this is very harassing. Is there anything we can do about this policy? Also, will I be paid for the day or required to use my sick leave?

Answer: That's ridiculous – and abusive! If you're too sick to wake up in time to call your employer, then you're too sick to work. It's a job; not slavery! You can NEVER be "forced" to work when you are truly not well.

Having said this, your policy is fairly typical. Employers would LIKE to know, in advance, if they are going to have a staffing shortage. If you called in late, and were disciplined for this, you could have appealed, and explained that you were truly very sick and slept through the call in time. Most employers are reasonable about this; yours just ran amuck. You should be paid for the time you spent at work.

Question: I'm going on maternity leave in a few weeks and want to know if the County has to give me my holiday in-lieu pay (for Xmas and New Year's) while I'm off?

Answer: Probably. Technically, while you are on Family Medical Leave (or Pregnancy Disability Leave) AND YOU ARE still "on the books" (using up paid leave) all benefits and work conditions should remain in effect. However, when you go into unpaid status, the County doesn't need to continue any benefits except your medical contribution. In your case, you should check your MOU. There may be specific language about what benefits are, or are not, continued for employees on medical/pregnancy leave.

QUESTION: I have Class A License and I do the driver training for my Department. How I would be affected if the student driver I was training got into an accident or a received ticket while I was in the cab with them? Would I take points on my driving record? In the case of an accident, who pays for the damages?

Answer: Good question! In order for a student driver to begin training for the Class A license, he/she must have received a Commercial Learner's Permit (CLP.) This permit allows the individual to get behind the wheel -- and it makes him liable for mistakes. The student driver is responsible for any accident he causes or ticket he receives. Although your license would not be impacted, your employer might have doubts about your training skills if you allow your co-workers to speed or drive dangerously. If you are in an accident while your "trainee" is driving, you are covered by workers compensation.

Question: Our Association is having a holiday party and we want to invite the County board. Is it illegal for us to invite more than two people?

Answer: Not at all! As leaders of your organization you have a right to engage with your board. However, if you have more than two Board members together, you should NOT talk about business. What's illegal would be for you political leaders to discuss political issues -- matters of public policy -- when they are not in session.

Question: After a supervisor gives a performance review to an employee, and the employee signs, can the Department head change the review and ask the employee to sign again?

Answer: This is really a question about reasonable practice. Certainly the Department Head has authority over the supervisor; but the situation sounds unfair. If *anyone* changes an employee's review in such a way that the review no longer reflects his performance (as agreed- upon by the employee and his supervisor,) then he may (and SHOULD) appeal. You have the right to ask why the criticisms on the review weren't raised initially. You may want to call your union rep for help with this.