



**CALIFORNIA TEACHERS ASSOCIATION**  
DEPARTMENT OF LEGAL SERVICES

## CTA LEGAL BULLETIN

January 11, 2011

### Cal-STRS Retirement: Possible Pitfalls and How to Avoid Them

Prepared by Ted Lindstrom, Esq.  
Langenkamp, Curtis & Price, LLP

It is increasingly common for teachers and other certificated professionals to face complex and costly legal problems related to their STRS retirement benefits. The purpose of this Legal Alert Bulletin is to advise CTA staff representatives, union leaders, and certificated professionals regarding some of the most common legal issues that may arise at or after the time of retirement and to give guidance on how to avoid these potential pitfalls.

This Bulletin is intended to supplement the information contained in the STRS Handbook ("Handbook"), which is published by STRS annually. It is not intended to describe or explain routine matters, concerns, or other more common questions which are adequately addressed in the Handbook.

Most public school teachers and certificated professionals receive their retirement benefits from the California State Teachers Retirement System ("STRS"). The California Legislature created a state pension fund to pay teachers a defined benefit upon retirement and, at the same time, it created Cal-STRS to manage and operate that fund. The body of statutory law which governs Cal-STRS and prescribes the actual retirement benefits is found in Education Code §§ 22000 *et seq.* These code sections have been amended, changed, and/or abolished over the years and still continue to change regularly. Therefore, it is crucial that every certificated professional know her rights and how to avoid the most common problems.

This Bulletin is not intended to be a definitive guide to teachers' retirement law, and should not be construed as legal advice. This Bulletin is designed to provide general information and guidance on complicated retirement issues. If a teacher has a legal question or concern, the teacher should consult with a STRS representative or, if necessary, she should consult with a knowledgeable attorney regarding her issue. CTA provides legal referrals for certain, limited STRS issues. To inquire about such a referral, contact Michi Higashi of the CTA Legal Department at (562) 478-1349 or [mhigashi@cta.org](mailto:mhigashi@cta.org).

## ISSUES TO CONSIDER PRIOR TO RETIREMENT

### I. EMPLOYEES MUST TIMELY FILE FOR RETIREMENT WITH STRS.

Retirees must understand that resigning from the District for retirement purposes does not automatically cause STRS to initiate payment of retirement benefits. Unlike private sector employers, where the employer sometimes administers the retirement plan, STRS is its own entity, and completely separate from the employing school district. Consequently, STRS will not pay a retirement benefit until notified by the member that he or she has retired. It is the retiree's duty to notify STRS of his or her retirement and to take the necessary steps to apply for a retirement benefit.

Consider the effects of an untimely STRS application in this example:

Teacher resigned her position June 30, 2008 in order to begin retirement. However, she did not submit her STRS application to receive retirement benefits until November 28, 2008. Consequently, STRS paid her retirement benefits, beginning November 1, 2008; it refused to pay her any benefits from July-October 2008. STRS relied on Education Code section 24204(c) which provides that the effective date of a service retirement can be no earlier than the first day of the month in which the application is received at the system's headquarters office.

The same is true when converting disability to service benefits:

Teacher applied for and received a disability retirement benefit beginning in 1998 or 1999. Toward the end of 2009, STRS sent her a letter indicating that her *disability* retirement benefit would convert to a *service* retirement benefit, effective March 1, 2010, her 60<sup>th</sup> birthday. However, the teacher was required to apply for the service retirement, just as if she had been working the entire time. She did not submit her service retirement papers until June 2010, believing that STRS would grant her a retroactive benefit payment upon receipt of her paperwork. STRS denied her benefits for March-May, 2010, citing Education Code section 24204(c) which provides that the effective date of a service retirement can be no earlier than the first day of the month in which the application is received at the system's headquarters office. Since STRS did not receive her retirement paperwork until June 2010, it began payment of benefits effective June 1, 2010.<sup>1</sup>

---

<sup>1</sup> Only members under Coverage A need to convert their disability retirement into a service retirement. Coverage A is composed of individuals who became STRS members before October 15, 1992 and who did not elect to come under Coverage B. Individuals under Coverage B are not required (or permitted) to convert to a service retirement. STRS members under Coverage A continue to accrue service credit while on disability; while members under Coverage B do not.

## II. SALARY MAY NOT BE "SPIKED" TO INCREASE STRS BENEFITS.

A number of problems and pitfalls have recently developed in regard to retirees' "final compensation" figures, which is an important variable in determining his or her retirement benefit. A retiree's defined retirement benefit is calculated by multiplying three variables: 1) service credit, 2) age factor, and 3) final compensation. If any of these variables increases, the total benefit increases.

One of the problems here is that districts sometimes do not understand the idea of "creditable compensation" and erroneously misreport employees' final compensation. It is important that employees review their variable figures, including final compensation, and ensure STRS computes their retirement benefits correctly.

In other situations, the districts entice teachers to participate in total compensation schemes, which, if not administered properly, can end up costing retirees significantly in lost retirement income.

If your District is approaching certificated staff about the possibility of participating in a total compensation program, request guidance from STRS, CTA, or an attorney.

### A. Extra Duty Assignments Are Not Creditable Compensation.

STRS benefits are based on final compensation figures. However, not all earnings can be credited toward that amount. Consider this case example:

Teacher retired from District after serving for 38 years in a 1.0 FTE position. During her final year of employment she taught one extra class in both fall and spring semesters, giving her a 1.20 FTE load that final year. Teacher received approximately \$14,000 in extra income for teaching these two extra classes. District reported this extra \$14,000 as regular compensation, which caused Teacher's final compensation to rise sharply or "spike" during her last year of service. After 3 years of receiving a retirement benefit based on an artificially high final compensation figure, STRS became aware of the District's error and moved to reduce the teacher's benefit while simultaneously recouping the overpayment from the newly lowered benefit.

STRS relied chiefly on Education Code §§ 22119.2(a), 22112.5(a), and 22138(a) to argue that Teacher's extra-duty stipend could not be counted as Creditable Compensation. STRS' claims were found to have merit.<sup>2</sup>

---

<sup>2</sup> However, it should be noted that Education Code § 23008(c) STRS may recoup the overpayments from the school district where the district is at fault for the income reporting error.

**B. Total Compensation Programs Must Provide Valid Employee Choices.**

Total Compensation Programs ("TCP") are "cafeteria-style" benefit plans that employers can offer their employees; these plans are governed by Internal Revenue Code § 125.<sup>3</sup> In a TCP plan, employees may choose among various qualified benefits (eg, health insurance benefits) and/or taxable benefits (eg, extra cash). In this manner, the employee may choose the type of compensation that is most advantageous to her. In order to be a proper and viable TCP, employees must have a choice between taking qualified benefits or taxable benefits. If a District gives employees an option, but then orders them to select one particular option, it is a false choice and, therefore, not a true TCP plan.

In recent years, some school districts have approached their CTA chapters to discuss adoption of TCP plans which are deficient because employees are, in fact, not free to choose between qualified benefits and taxable benefits. You cannot have a TCP plan without this choice. The following example illustrates how this situation may contravene STRS law:

In this instance, the District added the money value of the each teacher's health and welfare benefits to his or her salary for STRS reporting purposes only; the teachers did not actually receive this extra sum as cash compensation. In fact, the teachers were not given the choice to take the cash value of the health benefits in lieu of the benefits; the District mandated that teachers take health benefits (*i.e.*, a qualified benefit). Each participating teacher paid the required 8% on the value of his benefits and the District paid its required 8.25% on the same. The end result of this arrangement was that retired teachers' final compensation figures were artificially spiked, which resulted in each retiree receiving a higher retirement benefit than what she was allowed.

This plan was found to be illegal because the District did not give teachers the option of electing to take the cash; the District required all teachers to elect health care benefits. As a result, STRS immediately took action to recover the overpayments. By contrast, consider this lawful TCP example:

District negotiates with the CTA chapter to provide a lawful TCP where teachers may select either a health and welfare benefit plan valued at \$700 per month, or, instead, they may elect to take an extra \$700 in cash per month, which will be added to their monthly salary. Teachers who opt for cash are entitled to have their higher salary reported to STRS as creditable compensation. Both the District and employee pay their required 8.25% and 8% of this sum, respectively, to STRS.

---

<sup>3</sup> A TCP requires knowledge and expertise in the Internal Revenue Code, and, in particular IRC § 125. Neither Langenkamp Curtis & Price LLP nor CTA provides advice in taxation matters. Nothing in this Bulletin is intended to convey legal advice regarding taxation matters. For further information, interested parties should contact a tax attorney or CPA.

## ISSUES TO CONSIDER FOLLOWING RETIREMENT

### I. STRS CAPS THE AMOUNT A RETIREE CAN EARN.

Retirees should be aware of certain restrictions on their ability to work and earn income after they retire. As it relates to STRS, the only restrictions on working after service retirement is within the California public school system.<sup>4</sup> A teacher may work full-time, and earn any salary, without penalty or restriction, so long as the work is outside of the California public school system (*i.e.*, work not covered by STRS). The type of work subject to the earnings limitation is described in Education Code § 22119.5 (a) and (b) (work of teachers, instructors, district interns, academic employees, education and vocational counseling, guidance, and placement services).

A common problem occurs when retirees return to work as substitute or part-time teachers in order to supplement their income, and then inadvertently exceed the post-retirement earnings cap imposed by law. This cap is recalculated annually by STRS and, for the 2010-11 year, the cap is: \$31,020.<sup>5</sup> When a retiree exceeds this earnings cap, by performing STRS covered work as described above, STRS will act promptly to recover any amount of money paid in excess over the earnings cap. Consequently, retired teachers must carefully observe the relevant rules.

#### General Rules Applying to Post-Retirement, STRS-Covered Work

1. A retired teacher must not exceed the earnings cap noted above, unless an exemption applies.
  - a. Exemption: The earnings cap is not applicable to compensation earned by a retiree who has returned to work after the date of retirement and, for a period of at least 12 consecutive months, has not performed STRS covered work set forth in Education Code § 22119.5 (a) or (b) (see discussion above). The 12-month period shall begin no earlier than the effective date of the member's most recent retirement. Education Code § 24214(e).
2. Teachers below normal retirement age (*i.e.*, 60 years old) are prohibited from earning any salary for work described in Education Code § 22119.5 (a) or (b) for a period of six months following retirement. Any salary earned by teachers less than 60 years old, for work detailed in these Education Code sections, within the six month post-retirement period, will be recouped by STRS, on a dollar for dollar basis. Education Code § 24214.5.

---

<sup>4</sup> See Pg. 61 of the CalSTRS Member Handbook, 2009-10

<sup>5</sup> See Pg. 62 of the CalSTRS Member Handbook, 2009-10; this figure changes annually.

Consider these examples, which either incurred or avoided penalties:

1. Teacher retired from full-time teaching in June 2006 in District X. Subsequently, he performed 4 days of substitute teaching May 2007 in District Y. In August 2007, he took a full-time, 1.0 FTE job on District Z.

STRS was able to recover \$20,953 from this teacher for exceeding the earnings cap, because the teacher failed to wait twelve (12) full months before performing certificated work. Had he not done the 4 days of substitute teaching, he would not have incurred any penalties.

2. A 58-year old teacher retired for service pursuant to a golden handshake agreement. As a term of the agreement, teacher was to receive \$20,000 as a retirement incentive, shortly after signing the deal. On advice from the County Office of Education, and as informally confirmed by STRS, the \$20,000 payment was delayed by six months to ensure it could not be characterized as retirement income for work performed in a California public school district.

### PRACTICAL ADVICE

Because each teacher's situation is different, each STRS matter must be approached and analyzed individually. However, there are some practical things all teachers can do to avoid the problems described herein.

1. Get it in Writing. STRS representatives are notorious for giving out false, incomplete, or inaccurate advice regarding the teacher retirement laws. If you need to talk to a benefits counselor over the phone, be sure to ask the person for something in writing that confirms what he or she told you. You should also be sure to get the person's name and/or ID number, if applicable.
2. Review and Understand your Paperwork. Retirees should review all STRS correspondence they receive and should also make sure they understand it. Retirees should also review their benefit statements periodically, to make sure there are no significant changes to their benefit levels.
3. Attend a Retirement Workshop. If you are contemplating retirement, consider attending a STRS retirement workshop. Be sure to review any retirement literature you receive and to ask questions if you do not understand something.
4. Total Compensation Plans. If your school district is proposing a TCP, or any other scheme which seems out-of-the-ordinary, contact CTA and/or its Legal Department for advice and assistance.
5. Be Timely. If you notice something unusual in your benefits statement, or if STRS contacts you about a problem, you should inquire with STRS immediately. If the answer you receive is not satisfactory, do not delay in seeking assistance.