



**Los Angeles County
Office of Education**

**INFORMATIONAL
BULLETIN # 6640**

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Debra Duardo, M.S.W., Ed.D., *Superintendent*

January 26, 2023

TO: Chief Business Officials/Chief Personnel Officials
HRS Coordinators
Payroll Managers
Los Angeles County K-12 School and Community College Districts
Regional Occupational Programs/Center (ROP/Cs) and Charter Schools

FROM: Talina Ornelas, Retirement Systems Coordinator
District Personnel Information Services
Division of School Financial Services

SUBJECT: New 2023 Statutes Impacting CalSTRS – Assembly Bill 1667 Benefits Overpayments

Assembly Bill 1667 (Chapter 754, Statutes 2022) was signed into law by the Governor on September 29, 2022. Most of the bill will take effect on January 1, 2023. Under the bill, overpayment liability is only prospective, and changes in liability under the bill do not apply to members whose overpayment has already been established. CalSTRS is currently crafting a new process for billing employers for overpayments they are responsible for paying, as well as a process for recovering the state's and employer's shares of overpayments resulting from CalSTRS error on an annual basis.

AB 1667 requires:

- Overpayments occurring because of information submitted by or on behalf of a benefit recipient to be recovered from that benefit recipient.
- Overpayments occurring because of employer reporting to be recovered from the employer.
- Overpayments occurring because of CalSTRS' error to be recovered with interest from the state and employers each fiscal year. This process will begin July 1, 2024, for overpayments that take place within the fiscal year ending June 30, 2023, and continue each fiscal year thereafter.

CalSTRS has posted a Frequently Asked Questions page on CalSTRS.com to help answer some employer questions about what the bill does and when it takes effect. The webpage can be found at calstrs.com/assembly-bill-1667-employer-faq.

Here is a list of recent CalSTRS audit findings that could potentially result in benefit overpayments.

- **The employer did not provide documentation to support reported compensation.**
Stipends need to be contained in a public written contract or agreement.
 - Example: A district has been paying employees an annual stipend for working in a specialized program for years. However, the district does not have a written document with information related to this stipend.
- **The employer incorrectly reported extra-duty earnings.**
Extra duty stipends should be paid as time based earnings and reported to CalSTRS with an annual salary. They should not be paid as lump-sum payments.
 - Example: Stipends paid for additional work hours/activities such as Department Chair, Lead Teacher, Program Specialist, etc.
- **The employer incorrectly reported base pay.**
Title 5, California Code of Regulations section 27301- Prohibited Class of Employees: An employer may not establish a class of employees that is distinguished by any of the following: (1) The retirement benefit formula or retirement program. (2) A minimum or maximum threshold for age or service credit. (3) The characterization or restructuring of compensation, in the absence of the criteria described in Section 27300. (4) An option or requirement for one or more employees who perform similar job duties to work a longer or shorter day, or work more or fewer days per year, performing similar job duties, in the absence of the criteria described in paragraph (2) of subdivision (a) of Section 27300, except as provided in subdivision (c) of Section 22138.5 of the Education Code for the minimum standard for full time in community colleges. (5) Performing only activities related to, and an outgrowth of, the instructional and guidance program of the school, because those activities must be performed in addition to other activities described in Section 22119.5 of the Education Code in order to be creditable service.
 - Example: Including 6th period in the base pay
- **The employer reported non-creditable compensation.**
Compensating members in the same class of employees with two different percentages is considered inconsistent treatment and does not meet the criteria of creditable compensation.
 - Examples: Paying employee's different percentages/rates for bilingual and longevity based on their hire date. Teachers covering classes paid in cash or select various other options in lieu of cash such as compensatory time, assigning a teacher's aide, etc.; is not creditable compensation to CalSTRS in accordance with Education Code 22119.2. Y-rated salaries are not creditable.

- **The employer reported non-creditable service.**
Compensation reported needs to meet the criteria of creditable service based on Education Code sections: 22115, 22119.2, 22119.3, 22119.5, 22711, 22906 and 23008. California Code of Regulations, title 5, section: 27401 must also be met.
 - Example: Paying employees for helping in vaccinations clinics or serving as technology lead/website maintenance.
- **The employer incorrectly reported post-retirement earnings.**
The annualized rate of pay for retired member activities may not be less than the minimum, nor exceed the maximum, paid by the employer to other employees performing comparable duties.
 - Example: A district hires a retired principal to assist with principal related work duties but pays them as a substitute teacher.

Please note the statements above are only examples we have encountered in recent CalSTRS audits. They are not an exhaustive list of potential audit findings. These scenarios may also not apply to your district based on the bargaining unit agreements established for your employees. If you have questions regarding current or new payments processed by your district, please send a detailed request with documentation to submit to CalSTRS for review.

Please contact me at (562) 922-6295 or via email at Ornelas.Talina@lacoe.edu.

Approved:
Nkeiruka Benson, Director
Division of School Financial Services

TP:sm
Attachment

SFS-A35-2022-2023

Employer Information Circular

Volume 38; Issue 4

December 27, 2022

New 2023 Statutes Impacting CalSTRS

CalSTRS is working to implement bills signed into law this year, including a few that have a major impact to current CalSTRS and employer processes. As these bills take effect in 2023, CalSTRS will provide employers with further detailed updates.

This Employer Circular does not take precedence over the law; it is meant to summarize the legislation impacting CalSTRS that will take effect in 2023. If you have any questions regarding this circular, please contact CalSTRS Employer Training at EmployerTraining@CalSTRS.com.

Assembly Bill 1824 (Assembly Public Employment and Retirement Committee) – Public employees retirement systems housekeeping

Employer impact: We do not anticipate any of the CalSTRS-sponsored amendments to affect employers' current processes around reporting or remitting contributions.

Effective date: January 1, 2023

AB 1824 (Chapter 231, Statutes of 2022) was signed into law by the Governor on September 2, 2022. AB 1824 makes various technical, minor and conforming changes to the California Education Code to facilitate efficient administration of CalSTRS. It also makes various technical and conforming changes to the Public Employees' Retirement Law and the County Employees Retirement Law. The provisions sponsored by CalSTRS clearly confirm that trustee service is creditable to the Cash Balance Benefit Program and clarify that a member does not have to terminate their retired member or retired participant activities in order to apply for a Cash Balance retirement or termination benefit. The bill also specifies Cash Balance participants can name certain organizations as beneficiaries consistent with choices available under the Defined Benefit Supplement Program and makes other technical amendments to the California Education Code.

Senate Bill 868 (Cortese)—Supplemental Benefit Maintenance Account increase

Employer impact: We do not anticipate any significant effect to employers' current processes resulting from this bill.

Effective date: July 1, 2023

SB 868 (Chapter 818, Statutes of 2022) was signed into law by the Governor on September 29, 2022. This bill increases the Supplemental Benefit Maintenance Account benefit paid to members and the beneficiaries of members who retired, were disabled or died prior to 1999. The increase, which is effective July 1, 2023, is between 5% and 15% of their total benefit, depending on the date the member retired, became disabled or died, is to be paid quarterly, and is expected to commence with the October 2023 payment.

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Senate Bill 1402 (Umberg)—Military service credit purchase

Employer impact: We do not anticipate any significant effect to employers' current processes resulting from this bill.

Effective date: January 1, 2023

SB 1402 (Chapter 196, Statutes of 2022) was signed into law by the Governor on August 26, 2022. The bill permits members of the Defined Benefit Program to elect to purchase additional service credit for up to four years of service in the U.S. Armed Forces or in the U.S. Merchant Marine prior to CalSTRS membership. The bill allows members to purchase up to one year of service credit for each five years of credited service with CalSTRS and requires a member electing to purchase this service credit to have at least 10 years of service with CalSTRS on the date of election.

Assembly Bill 1667 (Cooper) – Benefit overpayments

Assembly Bill 1667 (Chapter 754, Statutes 2022) was signed into law by the Governor on September 29, 2022. Most of the bill will take effect January 1, 2023. Under the bill, overpayment liability is only prospective, and changes in liability under the bill do not apply to members whose overpayment has already been established. The bill includes amendments and additions to CalSTRS benefit overpayment recovery requirements, the delivery of creditable compensation and creditable service reporting guidance, and employer audits and appeals processes:

Advisory letters

Employer impact: CalSTRS is currently crafting a new process for employers, as well as local union organizations, to submit their requests for advisory letters. As we implement this provision of the bill, further detailed information will be communicated.

Effective date: July 1, 2023.

AB 1667 establishes a process for employers and local union organizations to request formal written guidance relating to compensation that is included, or proposed to be included, in a publicly available written contractual agreement in the form of an "advisory letter" from CalSTRS. The advisory letter is a written determination for the proper reporting of such compensation consistent with the laws and regulations governing creditable compensation. Advisory letters will be provided to the requestor within 30 days of receipt of all information requested by CalSTRS.

Annually published resources

Employer impact: CalSTRS intends to publish these resources in line with the upcoming school term. As we implement this provision of the bill, further detailed information will be communicated.

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Effective date: July 1, 2023.

AB 1667 requires CalSTRS to at least annually provide resources that interpret and clarify the applicability of creditable compensation and creditable service laws and regulations. The bill also prohibits new or different interpretations in the resources, regulations, or an employer information circular or similar means from taking effect before notice is issued to employers and local union organizations and from being applied retroactively to compensation reported prior to that notice, unless required by law or executive order. Any such changes are not applicable before the next July 1, unless a law, executive order, advisory letter or program requires the revision of the creditability of compensation to be applied earlier.

Audits and appeals processes

Employer impact: CalSTRS is implementing the requirements for the new employer audits and appeals processes under AB 1667 at each step in the employer audit process.

- All employer audit engagement letters that were sent to employers in 2022 will follow the existing process. All engagement letters sent out on or after January 1, 2023, are subject to the new employer engagement letter process and will be sent to employers requesting that they submit a list of local union representatives' contact information.
- All draft audit reports that were sent out in 2022 will follow the existing process. All draft audit reports sent out on or after January 1, 2023, are subject to the new draft audit process and will be sent to employers and local union representatives, giving both parties 60 days to provide any additional information for CalSTRS to take into consideration when drafting the final audit report.
- All final audit reports that were sent out in 2022 will follow the existing process. All final audit reports sent out on or after January 1, 2023, are subject to the new final audit process and will be sent to employers and local union representatives. The date of the final audit report begins the 60 days those employers have to submit the complete list of impacted members for each finding in the audit to CalSTRS; it also begins the 90 days employers have to request an administrative hearing. As we implement these provisions of the bill, further detailed information will be communicated.

Effective date: January 1, 2023

AB 1667 requires the employer audit process to include specific notifications to employers and local union organizations regarding the audit. In addition, employers must provide CalSTRS with a list of members known to be affected by an audit within a certain period, and CalSTRS must provide an explanation of appeal rights to the employer and each member affected by the audit. The bill also requires CalSTRS to make all final employer audit reports available on the CalSTRS website, excluding personal information regarding members.

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Overpayment recovery

Employer impact: CalSTRS is currently crafting a new process for billing employers for overpayments they are responsible for paying, as well as a process for recovering the state's and employer's shares of overpayments resulting from CalSTRS error on an annual basis. As we implement these provisions of the bill, further detailed information will be communicated.

Effective Date: CalSTRS is following the current overpayment recovery process for members and other benefit recipients who receive notification of a benefit reduction through a CalSTRS award or adjustment letter on or before December 31, 2022. Members and other benefit recipients who receive notification of a benefit reduction through a CalSTRS award or adjustment letter on or after January 1, 2023, are subject to the new overpayment recovery process under AB 1667, except in cases of active litigation or pending Compensation Review Unit matters.

AB 1667 requires:

- Overpayments occurring because of information submitted by or on behalf of a benefit recipient to be recovered from that benefit recipient.
- Overpayments occurring because of employer reporting to be recovered from the employer.
- Overpayments occurring because of CalSTRS error to be recovered with interest from the state and employers each fiscal year. This process will begin July 1, 2024, for overpayments that take place within the fiscal year ending June 30, 2023, and continue each fiscal year after that.

While CalSTRS will bill the counties for the overpayments occurring because of employer error, AB 1667 also includes language allowing county superintendents of schools to recover the cost of overpayments because of employer error from the employer directly in certain circumstances.

Additional Information

As CalSTRS implements these bills, further detailed information will be presented through appropriate communication channels.

For more information about 2022 legislation and Teachers' Retirement Board positions, please visit us online at calstrs.com/2022-legislation.

Attachment to:

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