



CalSTRS and CalPERS 101 – Hot Topics

Presented by:
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Overview

Eleanor M. Welke is a Partner in Lozano Smith's Los Angeles office. She is a member of the Labor and Employment and Special Education Practice Groups. Ms. Welke provides legal advice to administration on personnel matters, including discrimination, retaliation, sexual harassment, disability accommodations, and the Americans with Disabilities Act. Ms. Welke has extensive experience representing clients in both California State and Federal Courts and in front of administrative bodies, including the Equal Employment Opportunity Commission, Department of Fair Employment and Housing, and the California Labor Commissioner. She also provides advice and counsel to clients on a wide range of employment legal issues, including compliance with wage and hour regulations, employee hiring, termination and discipline decisions, investigations, and leaves of absence.

Experience

While in Law School, Ms. Welke served as an extern at the Children's Rights and Special Education Clinic. Ms. Welke has also served as a resource specialist and special education teacher for a California school district.

Education

Ms. Welke received her Juris Doctor from Whittier Law School. She earned a Bachelor of Arts in Classical Civilization, and minored in Public Policy, from the University of California, Los Angeles. She received the CALI Excellence for the Future Award in Contracts while in law school, and she was a member of the UCLA national champion water polo teams. Ms. Welke has received certification through ATIXA as a participant in Level 1 and Level 3 ATIXA Civil Rights Investigator Trainings.

Practices

Labor & Employment
Special Education
Investigative Services

Education

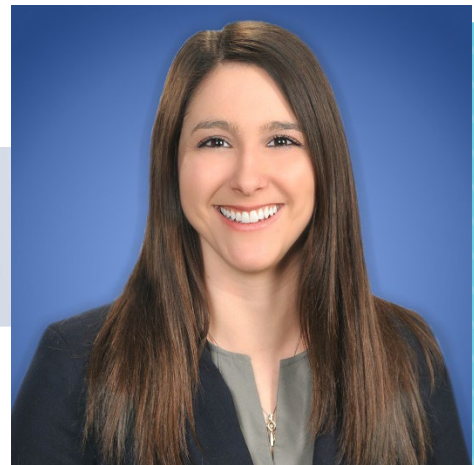
J.D., Whittier Law School
B.A., University of California, Los Angeles

Admissions

California

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Senior Counsel



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Overview

Janae Castellani is senior counsel in Lozano Smith's Fresno office. She is a member of both the firm's Labor and Employment and the Facilities and Business Practice Groups.

Ms. Castellani assists clients through both Certificated and Classified employee discipline, including representing clients in employee dismissal proceedings. Ms. Castellani has experience advising school districts regarding the Brown Act, employee leave rights, negotiations, investigations and CalPERS and CalSTRS retirement issues.

Experience

Ms. Castellani has a wide range of experience in the litigation realm, including preparing discovery requests and responses, pleadings, and motions and has represented clients at various types of administrative hearings.

Ms. Castellani also has prior experience in representing city governments, including responsibility for code compliance, opposing *Pitchess* Motions, and obtaining Nuisance Abatement Warrants on behalf of the City.

Admissions

Ms. Castellani is admitted to the Eastern District of California, the Southern District of California and to practice in all California courts.

Education

Ms. Castellani earned her Juris Doctor degree from the University of Notre Dame Law School, where she was an articles editor for The Journal of College and University Law. She received her Bachelor of Arts in Political Science and Psychology from University of San Diego where she graduated magna cum laude. Ms. Castellani has received certification through ATIXA as a participant in Level 1 and Level 3 ATIXA Civil Rights Investigator Trainings.

Practices

Facilities & Business
Labor & Employment

Education

J.D., University of Notre Dame Law School
B.S., (magna cum laude), University of San Diego

Admissions

California

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- Charter School
- Community College
- Facilities & Business
- Governance
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- Litigation
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- Special Education
- Student
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Overview of Training

- Hiring Retirees
- Developing Multiple Salary Schedules
- Other Retirement Issues at the Bargaining Table
- Changes in the Law-Overpayment Collection

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Overview of Pension Systems

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School District Retirement Systems

CalSTRS ----> Certificated Employees*

CalPERS ----> Classified Employees

Default enrollment is CalPERS unless eligible for CalSTRS

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Retirement Formula- Generally

Service Credit

x

Age

x

Final Compensation

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Pension Reform: 2013-PEPRA

Era of Reform: PEPRA 2013

Two groups of members

Classic: Enrolled before 2013. Normal retirement age of 60 (CalSTRS) or 55 (CalPERS).

New: Enrolled 2013 or after. Increase in normal retirement age to 62 for both systems.

Different rules apply depending on if classic or new member

Era of Accountability

More audits

View from the perspective of the Department of Finance

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Key Concepts

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CalSTRS – Key Terms

- Defined Benefit Account (“DB”)
- Defined Benefit Supplement Account (“DBS”)
- Creditable Service (1.0 FTE)
- Creditable Compensation
- Class of Employees
- Teacher Retirement Law (“TRL”)



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CalPERS- Key Terms

- Compensation Earnable vs. Pensionable Compensation
 - Pay Rate (i.e. Base Salary)
 - Special Compensation
- Class of Employees
- Publicly Available Pay Schedule



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CalSTRS or CalPERS?- System Election Considerations

- For existing CalSTRS/CalPERS members: If an employee takes a position that requires membership in another public retirement system, the employee has a right to elect to maintain membership within 60 days of the hire date of new position.
 - Employer obligation: Provide employee with notice of election rights and written information to assist with election within 10 working days.



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Hiring Retirees

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Hiring Retirees- Why does employment status matter?

- Uncle Sam's concern (tax impact).
- CalSTRS perspective: Is the retiree performing retired member activities (i.e., creditable service)?
 - Duty to report whether an employee, employee of a third party, independent contractor, or consultant.
- CalPERS perspective: Is the retiree an employee or independent contractor?
 - If true independent contractor, exempt from restrictions.
 - Get written confirmation from CalPERS.





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Key Questions to Ask During the Hiring Process

- What public retirement system did the individual retire from?
- Service or disability retiree?
- What position will the retiree hold?
- What is included in the District's employment agreement?



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Post-Retirement Employment Restrictions

CalSTRS Retirees	CalPERS Retirees
1. Comparable compensation	1. Comparable compensation
2. Separation-from-service requirement	2. Separation-from-service requirement
3. Annual earning limit	3. 960-hour limit
4. Notice & employer reporting requirements	4. Employer reporting requirements
5. No classified work	5. Bona fide separation from employment requirement
6. Retirement Incentive Program restrictions	6. Unemployment insurance qualification payment
	7. Limited duration work and retiree skills

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Hiring CalSTRS Retirees

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Post-Retirement Employment Restrictions

CalSTRS Retirees

1. Comparable compensation
2. Separation-from-service requirement
3. Annual earning limit
4. Notice & employer reporting requirements
5. No classified work
6. Retirement Incentive Program restrictions

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CalSTRS - Post-Retirement Work Restrictions

180 Calendar Day Separation-from-Service Requirement

Penalty: dollar-for-dollar reduction

*Narrow exception available



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CalSTRS - Post-Retirement Work Restrictions

Exception to the 180-Day Separation from Service Rule SB 765
(Effective July 1, 2024; Inoperative July 1, 2026)

To qualify for the exception to the 180-day waiting period, the following factors must be met/within the request:

The nature of the employment;

A finding that the appointment is necessary to fill a critically needed position and must be filled prior to the retiree's 180th day of separation from service has passed;

The retiree is at or above normal retirement age (60 for classic members; 62 for PEPPA members);

A finding that the retiree did not receive **any** financial incentive to retire from any public employer;

A finding that the retiree's retirement is not the basis for the critically needed position; and,


Employer must show there was no reduction in force layoff within the prior 18 months

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CalSTRS - Post-Retirement Work Restrictions



Annual Earnings Limit:

2023-2024: \$50,655

2024-2025: \$74,733*

Different earning limits are in place for CalSTRS disability retirees

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Hiring CalPERS Retirees

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Post-Retirement Employment Restrictions

CalPERS Retirees

1. Comparable compensation

2. Separation-from-service requirement

3. 960-hour limit

4. Employer reporting requirements

5. Bona fide separation from employment requirement

6. Unemployment insurance qualification payment

7. Limited duration work and retiree skills

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CalPERS- Post-Retirement Work Restrictions

Strict Limitations on Duration of Work and CalPERS Retiree Skills

Retired Annuitant Positions Only:

CalPERS retirees cannot be hired into permanent or regular staff positions without reinstatement from retirement.

OR

Single Interim Appointment*:

CalPERS retirees can be hired during a recruitment period if for a limited period of time and the position requires specialized skills or during an emergency.

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CalPERS- Post-Retirement Work Restrictions

Single Interim Appointment*: Government Code section 21221(h):

“Upon interim appointment by the governing body of a **contracting agency** to a vacant position during the recruitment for a permanent appointment and deemed by the governing body to require specialized skills or during an emergency to prevent the stoppage of business. . .”

*CalPERS taking the position that school employers can no longer hire retirees into vacant positions on an interim basis because they are **not “contracting agencies”**

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Hypothetical #1

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Hypothetical #1- CalSTRS Retiree

Mr. Smith is a CalSTRS retiree, with prior experience as a Superintendent. Mr. Smith retired on July 1, 2023. The District needs assistance in the District Office, specifically with the District’s budget, as the District’s Director of Finance is on a leave of absence.


- Can the District hire Mr. Smith to assist with the District’s budget?
 - If so, how should his employment be structured?

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Hypothetical #1 continued...



What if Mr. Smith is a CalPERS retiree?

- Can the District hire Mr. Smith to assist with the District's budget?
 - If so, how should his employment be structured?

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Potential Penalties

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Potential Penalties- CalSTRS Rules

180-Day Separation from Service Requirement

- Dollar-for-Dollar withholding from retiree's retirement benefit.

Earnings in Excess of Annual Limit

- Dollar-for-Dollar withholding from retiree's retirement benefit for any earnings above limit.

Inaccurate Reporting

- Employer is responsible for correcting error and notifying CalSTRS of correction.

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Potential Penalties- CalPERS Rules

- Any retiree employment found to be in violation of the retirement laws and regulations is **unlawful employment**.
- If a retiree is found to be unlawfully employed, the retiree may be reinstated to active status as of the first day of unlawful employment.
 - Retiree's retirement allowance will stop.
 - Retiree will be required to reimburse CalPERS the amount of retirement allowance received during unlawful employment.
 - Retiree will be required pay the member contributions plus interest owed retroactive to the reinstatement date.
 - Employer required to submit member contributions and pay employer contributions plus interest retroactive to the reinstatement date.



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Developing Multiple Salary Schedules

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Separate Salary Schedules - CalSTRS Potential Issues

What is a Valid "Class of Employees"?

- Similarity of the **job duties** being performed;
- Employment in the same type of **program**; OR
- The employees share other similarities related to the nature of the work being performed.



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Separate Salary Schedules - CalSTRS Potential Issues

What are "similar job duties"?

- "Job duties"= those activities described as "creditable service" (Ed. Code, § 22119.5), which include:
 - (1) teaching; (2) educational or vocational counseling; (3) instructional planning; (4) selection, collection, preparation, classification, demonstration, or evaluation of instructional materials or other services related to California public school curriculum; (5) examination, selection, in-service training, mentoring, or assignment of teachers, principals, or other similar personnel involved in the instructional program; (6) work of nurses, physicians, speech therapists, psychologists, audiologists, and other California public school health professionals; (7) services as a California public school librarian; (8) activities connected with the enforcement of the laws relating to compulsory education, coordination of child welfare activities involving the school and the home, and the school adjustment of pupils; (9) supervision of persons or administration of creditable service; (10) Superintendents; (11) Consulting teachers employed by an employer to participate in the California Peer Assistance and Review Program for Teachers; (12) Audiometrists who hold a certificate of registration issued by the State Department of Health Care Services.
- The job duties grouped within each paragraph and subdivision of creditable service statute are considered "similar"

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Separate Salary Schedules - CalSTRS Potential Issues

What does it mean to work in the "same type of program"?

- A program is either :
 - (i) An educational program established pursuant to state or federal law.

OR

- (ii) An educational program established under a Local Control and Accountability Plan pursuant to Section 52060 of the Education Code.

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Separate Salary Schedules - CalSTRS Potential Issues


What are Prohibited Classes of Employees?

- Employers cannot distinguish classes of employees based on:
 - The retirement benefit formula or retirement program.
 - A minimum or maximum threshold for age or service credit.
 - The characterization or restructuring of compensation.
 - Workday: Working a longer or shorter day.
 - Work Year: Working a longer or shorter school year.
 - Performing only outgrowth activities.

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The Hours Article

Does your CBA clearly describe the workday and work year of all classes of employees?

- Teachers?
- Ag Teachers?
- Program Specialists?
- School Psychologists & Speech/Language Therapists?




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Hypothetical #2 - There Aren't Enough Hours in the Day

A school district has negotiated for its Teachers on Special Assignment ("TOSAs") to work 186 days, the same duty year as all other teachers. However, TOSAs are allowed to work up to 200 workdays, depending upon need. Any days over 186 are compensated at the employee's daily rate and the school district codes and reports these additional days to the Defined Benefit (DB) Account.


Is this school district properly reporting this information to CalSTRS?



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Other Retirement Issues at the Bargaining Table



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Retirement Issues in Negotiated Contracts

- CalSTRS: “Stipends” versus “Extra Duty Pay”
- CalPERS: Defining compensation/ requirements of salary schedules



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CalSTRS - “Stipends” versus “Extra Duty Pay”

Extra duty pay or stipends are taxable income

Regarding creditability for CalSTRS retirement, there are numerous factors that must be considered:

- classic or new members
- One-time payments or payments over time
- payment for additional duties or payment for outgrowth activities

“Stipends” implies an ad hoc or one-time payment


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Collective Bargaining: CalPERS- Salary Schedules

- Does your classified salary schedule meet the definition of “publicly available pay schedule”?



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Collective Bargaining: CalPERS- Special Compensation

- **For classic members:** To qualify as special compensation, must be listed within California Code of Regulations, Title 2, Section 571 and meet the criteria included in the regulation
- **For new/PEPRA members:** To qualify as special compensation, must be listed within California Code of Regulations, Title 2, Section 571.1 and meet the criteria of "pensionable compensation"
 - List of special compensation more limited for new members

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Issue Spotting Checklist At the Bargaining Table

- ☐ Are separate salary schedules for certificated positions valid?
- ☐ Stipends?
- ☐ Class of employee issues: same hours/same pay/duties?
- ☐ Tentative Agreement includes salary schedule?
- ☐ Special compensation consistent with definitions in regulations?
- ☐ Seek advisory letter?

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Changes in the Law:
Overpayment
Process

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Compensation Reporting Errors

Compensation reporting mistakes are common.

Audit and error correction process.



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Benefit Overpayments

Mistakes reporting compensation can result in retiree benefit overpayments if the erroneous compensation data was used to calculate retirement benefits.

Practice has been for pension system to collect benefit overpayments from the retiree who received the money.

This has been unpopular with retirees and the labor unions.

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CalPERS and SB 278

Effective January 1, 2022

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New Law (SB 278) Moves Liability Risk to the District

Bill's stated intent was to protect retired CalPERS members from retroactive "clawback" of benefit overpayments when mistake was fault of CalPERS or the employer.

Created new term: "**disallowed compensation**" – which is defined to mean compensation reported by the employer that CalPERS subsequently determines is not in compliance with law or regulations.



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Overpayment Errors paid by the District as Penalties

Retiree monthly benefit is still adjusted to the correct amount prospectively-impacts retiree.

Clawback from the retiree is eliminated if certain factors are met- liability is shifted to the employer for the benefit overpayment.

Adds a significant "penalty" paid by the employer.



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Employer Pays if 4 Factors are Met:

1. The compensation was reported, and contributions were made, while the member was actively employed.
2. The compensation was agreed to in a MOU or CBA and the Union did not knowingly agree to compensation that was disallowed.
3. The determination by the system that compensation was disallowed was made after the date of retirement.
4. The member was not aware that the compensation was disallowed at the time it was reported.



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Employer Pays “Restitution” to Retiree

If the 4 conditions are met, the employer must pay:

- The full cost of any overpayment made to a retiree as a result of the disallowed compensation; and,
- A penalty equal to 20 percent of the amount calculated as a lump sum of the actuarial equivalent present value representing the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance for the duration that allowance is projected to be paid by the system
 - 90% of penalty is paid to the retiree as “restitution”
 - 10% of penalty is paid to CalPERS



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Process for Review or MOU or CBA Language

Employers can submit a draft MOU or a CBA, entered on or after January 1, 2022, to CalPERS

CalPERS must provide guidance on how to report the compensation within 90 days



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CalSTRS and AB 1667

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Collection of Benefit Overpayments Shifts to Fault-Based System

Retiree repays benefit overpayment if the error was the fault of the retiree.

If error was due to inaccurate reporting by the employer, the employer repays the benefit overpayment.

If employer followed inaccurate guidance from CalSTRS, then the employee and employer do not repay the overpayment.



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CalSTRS Guidance: Binding on CalSTRS !!

Employers only responsible for following guidance in effect at the time compensation is reported.

If CalSTRS' "rules" or guidance are later determined by CalSTRS to result in "disallowed compensation" then it is a system error and is paid 85% by the State and 15% by all employers.



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CalSTRS Required to Publish Guidance Annually

At least annually, CalSTRS must provide "resources" that interpret and clarify creditable compensation and creditable service laws.

Employers are entitled to rely upon this guidance.

<https://www.calstrs.com/calstrs-employer-resources>



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CalSTRS- Request for Advisory Letter

Employers or the union can submit to CalSTRS for review MOU or CBA language that is intended to form the basis of a pension benefit calculation.

CalSTRS must provide guidance on how to report the compensation within 30 days.

Advisory Letter Request Form- <https://www.calstrs.com/advisory-letter-request>



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Best Practices Moving Forward

- ✓ Submit collectively bargained language to CalPERS/CalSTRS for review and written guidance.
- ✓ CalSTRS- Keep up-to-date on annual CalSTRS guidance




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Take-Aways

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Resources



- CalSTRS Publications
 - <https://www.calstrs.com/>
- CalPERS Publications
 - <https://www.calpers.ca.gov/>
- Lozano Smith Client News Briefs
 - <http://www.lozanosmith.com/news-clientnewsbriefs.php>

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