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LEGAL UPDATE

April 24, 2019

To: **Superintendents, Member School Districts (K-12)**

From: **Ellie R. Austin, Associate General Counsel** ERA

Subject: **California Supreme Court Issues Major Ruling About Pension Benefits**
Memo No. 11-2019

In March, the California Supreme Court decided the long-awaited *Cal Fire Local 2881 v. California Public Employees' Retirement System*,[1] which upheld the 2013 Public Employees' Pension Reform Act's ("PEPRA") elimination of the "air time" benefit, but preserved the so-called "California Rule." Both aspects of the Court's holding are significant for identifying some parameters around which public employee pension benefits may be altered after hire.

"Air time" refers to the ability of public employees to purchase up to five (5) years of service credit for time not actually worked if they pay the employee- and employer-side contributions to CalPERS.

The so-called "California Rule" stems from the 1955 case *Allen v. City of Long Beach*,[2] in which the California Supreme Court recognized that certain pension benefits that were in place at the time of hire could not be altered after hire. In other words, there are certain employment benefits that become vested upon acceptance of employment, and thus cannot be changed post-hire. In the progeny of cases after *Allen*, courts have found that altering post-employment benefits for current employees violated the U.S. and California Constitutions' Contract Clauses.[3] (The Contract Clause is a constitutional limit on the government's ability to impair the obligation of contracts, including public employee post-retirement benefits such as pensions.)

Significantly, while acknowledging the California Rule may apply to certain public employee post-retirement benefits, the Court held that the entitlement to

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[1] 435 P.3d 433 (Cal. 2019).
[2] 287 P.2d 765 (Cal. 1955).
[3] *See, e.g., United Firefighters of Los Angeles Cty. v. Cty. of Los Angeles*, 259 Cal.Rptr. 65 (Cal. Ct. App. 1989); *Protect Our Benefits v. Cty. and Cnty. of San Francisco*, 185 Cal.Rptr. 3d 410 (Cal. Ct. App. 2015).

purchase air time could be discontinued *even as to current employees* because it was not a "vested right" but instead was an "optional benefit," and therefore was not constitutionally protected.[4]

While finding PEPRA's elimination of the benefit of purchasing "air time" permissible, the Court in *Cal Fire* left the California Rule intact, providing:

> Because we conclude that the opportunity to purchase ARS [air time] credit was not a term and condition of public employment protected from impairment by the contract clause, its elimination does not implicate the Constitution. For that reason, we have no occasion in this decision to address, let alone to alter, the continued application of the California Rule.[5]

Please contact our office with questions regarding this Legal Update or any other legal matter.

[4] Other examples of "optional benefits" advanced by the Court include the opportunity to purchase: (1) different types of health insurance benefits from a variety of providers or (2) life and long-term disability insurance, or the opportunity to create a flexible spending account to cover health or child-care costs. The Court explained "[w]e have never suggested that this type of benefit is entitled to protection under the contract clause." (*Cal Fire Local 2881*, 435 P.3d 449).

[5] *Cal Fire Local 2881 v. California Pub. Employees' Ret. Sys.*, 435 P.3d at 437.