

# THE ZAPPIA LAW FIRM

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## SPECIAL UPDATE

### PUBLIC EMPLOYERS

August 18, 2016

#### **Court of Appeal Upholds Revised Formula Designed To Curtail “Pension Spiking” When Calculating Pension Benefits**

**Yesterday, the California Court of Appeal held that revising the formula for calculating pension benefits to current employees to limit pension spiking is not an unconstitutional impairment of the employees’ contracts.**

The court stated, “while a public employee does have a “vested right” to a pension, that right is only to a “reasonable” pension — not an immutable entitlement to the most optimal formula of calculating the pension.”

#### **FACTS:**

The California Legislature amended the County Employees Retirement Law, with the aim of curtailing pension spiking by excluding specified items from the calculation of retirement income. The Marin County Employees’ Retirement Association (MCERA) Board voted to implement the revised formula effective January 1, 2013 and announced a new policy for the calculation of retirement benefits. Under the policy, MCERA began excluding standby pay, administrative response pay, callback pay, cash payments for waiving health insurance, and other pay items from the calculation of members’ final compensation for all compensation earned after January 1, 2013.

A number of individuals employed by various governmental entities in the County of Marin, together with a number of organizations representing current county employees, brought suit to halt implementation of the revised formula. The plaintiffs cited many elements of compensation that had long been included in pension calculations including standby pay, administrative response pay, call-back pay, and cash payments made to employees who waive health insurance coverage. Plaintiffs alleged that they had relied on MCERA and participating employers’ commitment to include these pay items in the calculation of final compensation, and they agreed to accept employment and remain employees of their respective employers based on the promised pension benefit.

Plaintiffs claimed that the elimination of these various pay items from the calculation of MCERA members’ final compensation will result in a reduction in members’ pension benefits below what they had previously been promised, arguing that the value of the benefits are a form of deferred compensation for work already performed, which is protected by the California and United States Constitutions.

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Plaintiffs also alleged that over the years, MCERA and employers who participate in MCERA, such as the County, have repeatedly communicated and committed to MCERA members that these and other elements of compensation would be included in the calculation of members' final compensation and encouraged MCERA members to plan their retirement based on the idea that these pay items would be included in the determination of their pension benefits. MCERA and participating employers made these representations and commitments to members in MOUs, plan documents, newsletters, bulletins, handbooks, handouts, official policy statements, and other publications and correspondence with MCERA members. Plaintiffs argued that by excluding items from the final compensation calculation that MCERA had previously committed to provide, the revised formula unconstitutionally impairs MCERA members' vested rights.

Plaintiffs asked the court to provide declaratory and injunctive relief that the revised formula and MCERA's actions are unconstitutional impairments of vested rights and therefore unenforceable. Plaintiffs also asked the court to compel MCERA to continue to calculate the pensions of its members in a manner consistent with its policies in effect before the law permitting the revision of the formula was passed.

## **Holding:**

The Court held that revising the formula for calculating pension benefits to current employees to limit pension spiking is not an unconstitutional impairment of the employees' contracts. The Court found (1) the amendment to the County Employees Retirement Law is not an unconstitutional impairment of plaintiffs' vested pension rights; and (2) the manner in which MCERA implemented the new formula was not improper.

The court found that the Legislature did not act impermissibly by amending the County Employees Retirement Law to exclude specified items and categories of compensation from the calculation of pensions for current employees. The court stated, "the Legislature may, prior to the employee's retirement, alter the formula, thereby reducing the anticipated pension. So long as the Legislature's modifications do not deprive the employee of a "reasonable" pension, there is no constitutional violation." Here, the Legislature did not forbid the employer from providing the specified items to an employee as compensation, only the purely prospective inclusion of those items in the computation of the employee's pension. Neither the statutory change, nor the implementation of that change by the county pension agency, amounts to an impairment of the employee's receipt of a "reasonable" pension upon retirement.

*Marin Assn. of Pub. Emp. v. Marin Co. Emp. Retirement Assn.* (CA1/2 A139610 8/17/16)

<http://www.courts.ca.gov/opinions/documents/A139610.PDF>