LBAEE
February 2023 News

It's Board Election Time!!!

The following positions are up for election this year. Please be on the lookout for additional information on upcoming election dates.

- ***VP***
- ***Executive Assistant (Secretary)***
- ***Group A- (Building and Safety)***
- ***Group C - (Public Works and Airport)***
- ***Group E- (CM/Survey)***

Tax-Advantaged Employee Benefit Accounts

Tax time has arrived! Although many folks dread the process of filing their tax return, others look forward to hopefully a nice refund check from the IRS and Franchise Tax Board. February is a good month to begin to get your documents in order, and it's also a good time to explore whether you are paying the least amount of tax allowable by law.

Did you know that tax-advantaged employee benefit accounts can help employees save money on their taxes? The tax code includes many different types of accounts for different purposes, all with the same goal – helping employees reduce their tax liability

by using pre-tax income for various expenses. Pre-tax means you do not pay taxes that tax year on certain income you are allowed to earmark for specific, tax-advantaged needs.

For example, defined contribution retirement accounts, like 401(k) plans in the private sector, help employees pay for retirement costs by deferring taxes. Employees get a tax deduction on contributions while they are working (and presumably in a higher tax bracket). These contributions are then invested, and earnings are tax free. Employees only pay taxes once the contributions and earnings are withdrawn in retirement (and presumably the retiree is in a lower tax bracket). 401(k) plans have been around since the 1980s, and they have helped employees save a lot of money in taxes (though they are still no substitute for defined benefit plans, like your pension).

Public sector employees in California are not eligible for 401(k) plans. Most receive a pension, either through CalPERS, CalSTRS, or the various County Pension systems. However, California public sector employees also have access to other similar defined contribution retirement accounts like 457(b) plans. When combined with pensions and in some cases social security, contributing to these tax-advantage plans can help turbocharge your efforts to reach your retirement goals.

There are also many other types of plans that help employees save money on expenses other than retirement, for example medical and childcare costs. This month, we look at some of the tax-advantaged employee benefit accounts that are available to California public sector workers. If you don't participate in any of these plans, you might consider doing so. It could save you a lot of money on your taxes!

457(b) Plan: Many public agencies contract with an outside vendor – such as Voya, Nationwide, or Mission Square (formerly ICMA) – to provide deferred compensation accounts to employees. These accounts are like 401(k) plans for private sector employees. But unlike most private sector employees, public sector employees can enjoy both a pension and a defined contribution retirement account. Because pension benefits were lowered for "new members" by the Pension Reform Act in 2013, it has become more important for new members to make up for lower pension benefits they will receive at retirement through defined contributions into a 457 plan while they are working.

These plans are authorized by Internal Revenue Code Section 457 (hence the name), and subsection (b) allows state or local governments to establish these plans for their employees. Employees authorize salary reductions, and the employer puts those

contributions into the employee's own account established within the plan. Typically, the outside vendor is the custodian of the plan. Employees control the money, including how contributions and any earnings are invested (*e.g.*, into annuities or mutual funds). If an employee leaves that employer, the employee can transfer the funds into another 457 plan (with a future state or local government employer), or rollover the funds into an individual retirement account (IRA) (if the employee leaves for the private sector).

The IRS limits the amount of the contributions to $22,500 in 2023. This was increased due to inflation from $20,500 in 2022. Contributions to the plan are tax-deferred, meaning the employee gets a deduction in their taxes for the year the contributions are made, and pays no taxes until the year funds are withdrawn. Earnings on those contributions are also tax-deferred until the money is withdrawn. Employees who are age 50 or over can make additional "catch-up" contributions of up to $7,500 in 2023 (for a total of $30,000). There are also special 457 catch-up contributions that can be made up to 3 years prior to the year of normal retirement age. These special catch-up contributions are limited to $45,000 for 2023.

Withdrawals are permitted after severance from employment. The employee must start receiving distributions by April 1 of the year they reach age 72 (70 ½ if you turned 70 ½ before January 1, 2020), or April 1 following the year of retirement, if still employed at age 72. Plans may permit loans and distributions for unforeseen emergencies.

The IRS allows 457(b) plans to provide for "Roth" contributions. With Roth contributions, the employee does not get a tax deduction in the year in which the contributions are made. In other words, the employee pays taxes on the income used to make those contributions. But the withdrawals (both the contributions and the earnings) are tax-free. The distributions are not treated as ordinary income in retirement. The plan provider and the employer need to agree to make it part of the employer's plan, but it is allowable under the tax code. Roth contributions are often seen as more advantageous than pre-tax contributions, especially for younger workers who are typically in a lower tax bracket in their early working years and have a much longer period to allow for earnings to grow.

Employers are allowed to make contributions to the employee's account. Some labor contracts (MOUs) include clauses that require the employer to make contributions for each employee, or a matching contribution to the accounts for any employees who are participating in the plan. The subject is negotiable.

401(a) Plan: The Internal Revenue Code also provides for another tax-advantaged account under 401(a). An employer can offer both a 401(a) plan and a 457 deferred compensation plan. Because of the separate contribution limits, the plans can work together to allow for more money to be set aside for retirement.

The same vendors who offer 457 plans - Voya, Nationwide, or Mission Square (formerly ICMA) – may also offer 401(a) plans. A 401(a) plan is less flexible and employee friendly than a 457 plan. Contributions are generally determined by the employer, though it can be a subject of bargaining with the employee organization. These plans may include an employer contribution and they may require an employee to contribute either a certain dollar amount, or a percentage of their pay using pre-tax dollars. Contributions are tax-deferred, meaning they grow tax-free until withdrawn in retirement, when funds are taxed as ordinary income. Depending on the plan, the employee may be permitted to contribute additional after-tax dollars as well (up to 25% of compensation). For 2023, the normal limit for 401(a) plan contributions is $66,000 (up from $61,000 in 2022). This limit includes both employer and employee contributions combined. There are no age 50 catch-up contributions or pre-retirement catch-up contributions.

Employees can roll over funds from a 401(a) plan into a variety of other plans, including 457 plans and IRAs, or transfer funds to another 401(a) plan. Upon leaving employment, participants may withdraw money from their account as they see fit. They have the flexibility to take money as needed and may have payments automatically deposited into their bank account. However, an IRS early withdrawal penalty of 10% may apply to payments taken prior to age 59½. If no longer employed, participants must begin making withdrawals at age 72 according to the rules governing required minimum distributions (RMDs). These are the same rules that apply for 457 plans, 401(k)'s, and IRAs. 401(a) plans may allow for employees to take a loan from their account, allow for hardship withdrawals, or to borrow for a down payment on a home.

401(a) plans are less common than 457 plans, but some agencies offer them. Where they are offered, some MOUs may include language that provides for employer and employee contributions. It's possible, for example, to have leave cash-outs be automatically directed towards the 401(a) plan. This can be beneficial for workers who retire at the end of the year and get large leave cash-outs on top of a full year's salary, placing them in a

high tax bracket. But the plan rules typically require that all employees in the bargaining unit must participate on the same terms, meaning that each employee is not free to make different choices. This is another reason why the plans are less employee friendly than 457 plans. But they do have value and can help employees save money and pay less tax.

RHS Plan: A Retiree Health Savings Account (RHS) is a tax-advantage savings and investing vehicle used to help employees pay for future health care costs in retirement. All contributions are set aside exclusively for qualifying medical expenses in retirement, including paying for retiree medical premiums. Plan sponsors such as Voya, Nationwide, or Mission Square (formerly ICMA) may offer this plan. RHS plans are considered defined contribution plans, rather than a defined benefit plan.

Before the Great Recession, many agencies offered traditional defined retiree medical benefits. Employees who worked a certain number of years with that employer would have a portion or all their future medical premiums paid by the employer in retirement.

But ever since the Government Accounting Standards Board (GASB) issued statement 45, these traditional defined retiree medical benefits have been phased out, particularly for employees hired within the last ten years. GASB 45 requires government employers to measure and report liabilities associated with other postemployment benefits (OPEB), other than pensions. The largest OPEB cost is typically retiree medical benefits. Future health premiums for current employees when they retire are hard to estimate, with projections often having to go out thirty to fifty years. Agencies began implementing GASB 45 in the mid-late 2000's. Since then, public employers have either had to establish and fund an irrevocable trust, pay-as-you-go, or set aside a dedicated reserve. This has made traditional defined retiree medical benefits less common.

However, in the last ten years, more and more agencies have begun using RHS plans. These plans may require participation by employees, so they are less employee friendly than a 457 plan. The employer's plan and any MOU will define and govern who makes contributions, in what amounts, and how frequent. Examples include (1) employer contributions of a fixed percentage or dollar amount or a discretionary employer contribution; (2) mandatory contributions of employee compensation; and (3) mandatory employee contributions of accrued sick and/or vacation leave on a pre-determined schedule. Employee contributions are pre-tax, which reduces taxable income in the year contributions are made. Earnings are tax-deferred. Distributions for qualifying medical

expenses are tax-free. Along with Health Savings Accounts (HSAs), RHS plans are the only triple tax-advantaged vehicles in the entire tax code.

Funds are typically invested – for example, auto-enrolled in a target-date fund, money market or stable value fund, stock or bond fund, or other default investment choice – and employees have flexibility to change those investment choices at any time. Participants may request reimbursements in accordance with the plan, generally at retirement, upon separation from service, or if you become disabled. Expenses that qualify include premiums and out-of-pocket costs (*e.g*., prescriptions, co-pays, and deductibles), as well as other approved medical-related expenses. Direct long-term care expenses are not qualified, but long-term care insurance premiums are allowable. The RHS plan may also be used to pay for qualifying medical expenses incurred by your spouse and dependents.

Contributions to RHS plans often are not coordinated with and do not offset contributions made to 457 and 401 plans. The IRS doesn't set a contribution limit, so contributions can be made in any amount allowed for by the plan. Typically, there are limits. Consult the plan document or Human Resources for more information. Another drawback with RHS plans is that the tax code does not allow for rollovers or transfers to IRAs, 457s, 401s, or other RHS plans with a different employer when you separate from service. So, funds will remain in your employer plan until you use them. You cannot combine them with a new plan. Withdrawals in the event of financial hardship are also not permitted.

HSA Plan: Like the RHS plan, a health savings account (HSA) is a triple tax-advantage account used to pay for qualifying medical expenses. Unlike RHS plans, HSAs are typically used to pay for medical expenses during the benefit year, rather than in retirement or upon separation of employment. The key point to remember about HSAs is that you must be covered under a high deductible health plan (HDHP). HDHPs typically have lower monthly premiums, but much higher out-of-pocket costs. An employee will often have to pay the deductible – which at a minimum must be $1,500 for an individual or $3,000 for a family in 2023 – before the insurance company pays any costs. Because of this, most employees do not elect a HDHP, and therefore are not eligible to contribute to an HSA.

Still, HSAs can be excellent choices for employees who do not anticipate having a lot of medical costs for the year and want to accept lower premiums and higher out-of-pocket costs to save and invest money towards future expenses. You do not have to use your HSA contributions in the year they are made. They can accumulate over time and be used

to pay for medical costs in future years. The annual employee contributions are capped at $3,850 for an individual and $7,750 for an individual with family coverage for 2023. Employees aged 55 and older may make additional catch-up contributions of $1,000 for 2023. These caps are reduced by any amount your employer contributes to your HSA.

As with the accounts discussed above, these funds can be invested. Contributions are pre-tax, which lowers your taxable income. Contributions and earnings are not taxed at all if used to pay for qualifying medical expenses. You can take a distribution at any time, even if you are no longer enrolled in a HDHP. HSAs can only be rolled over to other HSAs.

FSA Plan: Flex Spending Accounts (FSAs) allow employees to save taxes on money used to pay for out-of-pocket medical costs. Unlike with HSAs, though, you do not have to enroll in a HDHP to be eligible. For 2023, the annual contribution limit is $3,050. Employees can get a tax deduction for the amount they set aside, up to the contribution limit. FSAs may require that the funds be spent that calendar year or be forfeited. So, employees need to be sure they will spend the amount they set aside for that year.

FSAs are plans designed to reimburse costs, not to invest. But for many employees – particularly those enrolled in family coverage – their annual medical spending may easily reach the cap. If the employer's plan permits a carryover, the maximum carryover is $610 for 2023.

FSAs reimburse employees for out-of-pocket qualifying medical expenses, not for the costs of medical premiums. Qualifying expenses may include co-pays, deductibles, dental costs, chiropractors, acupuncture, x-rays, medical imaging, lab fees, birth control pills prescribed by a doctor, contact lenses, eye exams, eyeglasses, fertility treatments, hearing aids, lactation expenses, prescription medications, psychiatric care, alcohol and drug counseling or therapy, and smoking cessation programs and weight loss programs approved by a physician.

Dependent Care Plan: A dependent care assistance plan (DCAP), also referred to as a Dependent Care FSA, is an employee benefit plan that helps employees pay for the care of a qualifying dependent as defined under the tax code. The dependent must live with the employee and be 12 years old or younger. A person over 13 may qualify if physically or mentally incapable of self-care and who regularly spends at least eight hours a day in the employee's household.

This type of FSA allows an employee to be reimbursed for eligible dependent care expenses. Employees may be reimbursed up to the IRS cap of $5,000 ($2,500 per parent if married and filing separately).

As with the regular FSA, the employee contribution is pre-tax. But the IRS requires that funds be available only as they are accrued, per payroll deduction. Any unclaimed funds remaining at the end of the year are forfeited. Funds do not roll over from year to year.

This is an excellent plan for employees with regular and predictable childcare expenses, like daycare costs.

News Release - CPI Data!

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

6.5% - CPI for All Urban Consumers (CPI-U) Nationally

6.2% - CPI-U for the West Region

4.9% - CPI-U for the Los Angeles Area

4.9% - CPI-U for San Francisco Bay Area

7.5% - CPI-U for the Riverside Area (from November)

6.7% - CPI-U for San Diego Area (from November)

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.

Question: I was injured on duty, and I have been out for over a year. Last month, I was cleared to return to work with modified duties by both my treating physician and the workers' compensation doctor. I am not

receiving timely responses from Risk Management. I followed up multiple times via email throughout the month and received no reply. Once I called, the employee in Risk Management said he was sorry, but he was new and overwhelmed with cases. He said he saw my email, but he didn't have a chance to reply yet. I am still off work, and I am now submitting paperwork that could have been submitted sooner had Risk Management replied with the next steps for me to return to work. I am off without pay at this point due to no fault of my own. I hear other workers are also affected by similar delays. I understand that everyone is short-staffed, but workers are being inconvenienced in major ways. Is there anything that can be done about this?

Answer: Yes, contact your association if you are fit for duty and Risk Management is not responsive. You may be able to file a grievance if you are fit for duty and are being denied access to the workplace. At the very least, your association staff can help get Risk Management to respond in a timely manner going forward. The Federal Americans with Disabilities Act and the State Fair Employment and Housing Act (FEHA) both require employers to timely engage in the interactive process with employees who need reasonable accommodation in the workplace. If Risk Management is not reasonably accommodating you, or other workers, your association may be able to refer you to a disability attorney who can discuss filing a potential lawsuit with you.

Question: Can you file a grievance over the amount of work you have? I have not been disciplined or spoken to about my work. All my performance reviews are satisfactory. However, I feel like I just have too much on my plate to handle. I'm being set-up to fail. I have spoken to my boss who said it is all work that belongs to my position. My boss said none of the work that I am assigned or perform is outside of my job classification and there is nobody else to assign the work to right now. But I still don't think that's fair. I'm overworked. There must be some way to resolve this. Why do I have to suffer? Please advise.

Answer: Unfortunately, there is no grievance based on sheer workload volume. If the duties you are assigned fall within your official job description, your employer can assign you this work. But contact your association staff if the work volume results in you being denied benefits like vacation or meal or rest periods. You might also have a dialogue

with your boss where you outline the different tasks that you are assigned and ask for guidance on which tasks take priority over others. You can also ask for training to help you perform any tasks in a more efficient manner. If possible, memorialize any conversations in writing so that there is a paper trail. And don't just take your boss's word for it — make a list of the tasks you are assigned and compare it with your job description side-by-side. If you notice tasks that are not listed, contact your association staff. It is possible your boss is wrong and there are tasks you can get reassigned or extra compensation for performing.

Question: I have approved FMLA paperwork with the City. Last week, I was out Monday and Tuesday for an FMLA-qualifying reason. I ran out of sick leave, so I opted to use authorized unpaid leave. When I returned to work on Wednesday, I worked overtime on Wednesday, Thursday, and Friday. My supervisor approved the overtime. Now, HR is saying that I don't qualify for overtime. Is that correct?

Answer: Human Resources is probably correct that you do not qualify for overtime pay. The Fair Labor Standards Act ("FSLA"), which sets forth the federal overtime provisions, does not count paid leave hours as hours worked for overtime purposes. This means any leave accruals you used on Monday and Tuesday, or any unpaid time, does not count towards the forty hours you need to physically work to trigger the overtime rate. But check your MOU. It may include "contractual overtime." For example, there may be a clause that says any paid leave time can count towards hours worked for overtime purposes. Or a clause that says certain assignments – such as scheduled overtime, daily overtime, weekend work, or standby call-outs – be paid at time-and-one half regardless of whether the 40-hour threshold is met. Contact your union representative for any help.

Question: I recently received a notice from my employer about a CalPERS audit. The letter says the audit determined that the value of the uniforms the employer provides must be counted towards my pension. The bad news is the letter also says I now owe retirement contributions on the value of the uniform that is being reported. As a Classic Member, I must pay 8% of the uniform's value. The letter also says that reporting the value of the uniforms as special compensation only applies to Classic Members, and therefore only Classic Members must

pay a percentage. The value of the uniforms is small when broken up over 26 pay periods, and my 8% contribution on that amount is even smaller. But this will result in my paycheck going down slightly. Can I do anything about this?

Answer: Unfortunately, no. Uniforms are pensionable compensation for Classic Members under California Code of Regulations Section 571. That section says compensation paid or the monetary value for the purchase, rental, or maintenance of required clothing that is a ready substitute for personal attire the employee would otherwise have to acquire and maintain is pensionable. This means that the value must be reported, and that you must pay member contributions on this value. But the good news is that this will increase the value of your pension benefits when you retire.

CalPERS requires that uniform pay be reported each pay period as a fraction of the total annual cost per member. The only time uniform pay is not considered pensionable is when it's given to New Members. Uniforms are not pensionable for New Members according to the Public Employees' Pension Reform Act (PEPRA), Gov't Code Section 7522.34(c)(7).

Question: I recently applied for a management job at another City. The City made a conditional job offer and is now requiring various background tests, including a blood sample. I asked why the blood test was ordered and if this is required for all office positions. I've never had a blood test done as part of pre-employment screening and I find it disturbing that I am being asked to do so now. The City said the blood sample is standard practice for all manager positions and above. The City also said the physical exams are administered to ensure that the candidate is able to perform the job duties and to determine if any accommodations are needed. The City said the blood sample is not to test for drugs but is a standard wellness test similar to an annual physical. Can they require this? If I refuse, will I be disqualified from employment? If I do give the sample, can they rescind the job offer based on the blood test results?

Answer: Although it is an unusual request, the City can require a blood panel, but only as part of a conditional job offer if it is job-related and consistent with business necessity. The Americans with Disabilities Act ("ADA") prevents employers from discriminating in

employment based on an applicant's medical history, physical ability, *etc*.

But there are some jobs where the physical requirements of the job are so intense that a physical condition could make an applicant unfit for service (*e.g.*, firefighter, police officer). If this is a management position, it is not likely that the physical demands are rigorous enough to satisfy this standard.

If the City withdraws its offer of conditional employment upon receiving your blood panel results, the City must show: (1) the reasons for disqualification were job-related and consistent with business necessity; and (2) no reasonable accommodation was available that would not impose an undue hardship. You can provide independent medical opinions for consideration before a final assessment on disqualification is made.