

SUMMARY OF CURRENT AND RECENT LEGAL CASES INVOLVING PENSION REFORM

Legal Issue	Key Aspects Relating to Pension Reform	Status
Vallejo Bankruptcy	<p>When Vallejo filed bankruptcy, the list of creditors holding the “20 largest unsecured claims” issued by the City was topped by the California Public Employees Retirement System — \$135 million for retiree health care and \$84 million for pensions. An early ruling of the bankruptcy court allowed Vallejo to nullify its contracts and agreements with existing labor groups. The City did so and, in the process, used language in those agreements to reduce retiree medical benefits by as much as 80% for some retirees. Estimates of the changes place the savings at \$50 million.</p> <p>The City Council ultimately elected not to use bankruptcy to test its ability to lower pensions for retirees, opting instead to implement lower pension packages for new hires.</p>	<p>A hearing on Vallejo’s exit strategy is scheduled for June 2011. Retired employees are challenging the City’s right to lower their medical benefits.</p> <p>Estimates of the cost of bankruptcy vary widely, but a recent Wall Street Journal article cited a figure of \$9 million in legal fees.</p>

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<p><i>County of Orange v Association of Orange County Sheriff's Deputies</i></p>	<p>Led by Supervisor John Moorlach, the Orange County Board of Supervisors sought to overturn a 2001 agreement to enhance its 1937 Act pension plan for Sherriff's deputies to "3% at 50." Two novel arguments were included in the points presented to the Court. First, it was argued that the retroactive application of the enhancement was, in effect, an increase in compensation for work already performed – essentially a gift of public funds. (Violating the State Constitution.) Second, it was argued that the enhanced pension plan produced an unfunded liability in excess of the State's debt limit.</p> <p>It should be noted that, reportedly, the County solicited advice from three outside legal firms before proceeding with this case. All three firms advised that the case could not be won. The County tried the case using Moorlach's former aide as chief counsel.</p>	<p>In January 2011, a California appeals court, in a unanimous decision, rejected the County's argument that the enhanced plan represented extra compensation or a gift of public funds. By rejecting this argument, the Court rendered other points raised by the County as moot. However, the Court did note that the act of enhancing a defined benefit does not, in and of itself, create an unfunded liability.</p> <p>In April 2011, the California Supreme Court chose not to hear the County's appeal of the lower court ruling.</p> <p>Lawyers for the Sheriff's Deputies are seeking fees in the amount of \$5 million. The County reportedly spent more than \$3 million on this lawsuit.</p>

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<p><i>City of San Diego v San Diego City Employees Retirement System</i></p>	<p>City of San Diego employees vest to the San Diego City Employees Retirement System (SDCERS). The City is suing SDCERS, arguing that the methodology SDCERS uses to calculate employer and employee contributions to pension funding violates the City Charter. The City Charter calls for substantially equal payments by employer and employee.</p> <p>The San Diego City Charter states “the city shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances, as certified by the actuary, but shall not be required to contribute in excess of that amount, except in the case of financial liabilities accruing under any new retirement plan or revised retirement plan because of past services of the employees.”</p> <p>Historically, employee contributions have been modeled in a fashion similar to CalPERS and 1937 Act counties, with the City picking up most or all of the employee contribution. In 2010, City Attorney Jan Goldsmith requested that the SDCERS Board adhere to the substantially equal clause and charge each employee one-half of the funding requirement. The Board refused, resulting in the lawsuit.</p>	<p>SDCERS recently requested and was granted a change of venue to Los Angeles County. The case was scheduled to begin on April 29, 2011, but pre-trial motions have delayed the start.</p>

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<p><i>Pacific Grove Police Officers' Association versus City of Pacific Grove</i></p>	<p>In November 2010, Pacific Grove voters approved an initiative amending the City Charter to cap the City's overall contribution to an employee's pension costs at 10% of salary. Pacific Grove employees are part of CalPERS. Currently, the employer rate for Pacific Grove Miscellaneous Employees is 9.629%; they have not been affected by the change. The employer rate for safety (meaning police, as the City does not provide fire protection) is 19.894%; with implementation of the Charter amendment, the City began charging safety employees for the 9.894% above the cap.</p> <p>The Pacific Grove Police Officers' Association (POA) has sued the City, claiming the City is violating its current labor agreement. The agreement runs through December 2012. The agreement states that POA members are only responsible for the employee's share of the CalPERS charge.</p>	<p>The matter sits with the California Public Employees Relations Board, which recently ordered mediation. With the City's hands tied by the Charter amendment, it is unlikely that a settlement can be reached. The POA could then request a hearing before an administrative judge.</p>