



DEPARTMENT OF PERSONNEL ADMINISTRATION ARNOLD SCHWARZENEGGER, Governor

MEMORANDUM



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SUBJECT: ***The California Citizens Compensation Commission's Authority to Adjust Benefits of State Officers***

ISSUE

- I. What benefits does the California Citizens Compensation Commission (“Commission”) have the authority to adjust under Article III, Section 8 of the California Constitution?

BRIEF ANSWER

- I. The Commission may only adjust those benefits that are similar in nature to insurance-based benefits, that is, benefits for which the employee or employer pays a premium in exchange for a guarantee against loss. All other benefits, including travel expenses, are not within the Commission’s adjustment power.

INTRODUCTION

The Commission was created in 1990 by Proposition 112. The Commission is empowered by the California Constitution to alter the salaries and certain benefits of state officers. The Commission derives the entirety of its authority from Section 8 of Article III of the California Constitution (hereinafter “Section 8”).

ANALYSIS

A. Benefits Within the Scope of the Commission’s Adjustment Power

Under the established principle of statutory interpretation, *eiusdem generis*, “a general term or category [used in a statute] is ‘restricted to those things that are similar to those which are enumerated specifically.’” (*Int’l Federation of Professional & Technical Engineers v. Superior Court* (2007) 42 Cal.4th 319, 342). This principle presumes that if the drafter of statute or constitutional provision “intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be mere surplusage.” (*Ibid.*)

Section 8 states in relevant part, “[T]he commission shall . . . adjust the medical, dental, insurance, and other similar benefits of state officers.” (Cal. Const. art. III, § 8 subd. (g)). Under the above principle of statutory interpretation, the Commission’s power to adjust the general “benefits” of state officers is restricted to items similar in nature to those specifically enumerated, that is, “medical,” “dental” and “insurance” benefits.

Medical, dental, and insurance benefits all share common characteristics. They all involve the payment of a premium in exchange for a guarantee against loss or damage caused by a specified contingency. Medical and dental benefits provide health care in the event an employee requires those services, in exchange for a monthly premium. Other forms of insurance include disability benefits, in which an employee pays a monthly premium in exchange for guaranteed compensation in the event of a disabling condition or injury; legal services, in which employees pay a premium for the benefit of legal representation; and employee assistance, in which employees pay a premium for counseling services.

All of these benefits clearly fall within the Commission’s adjustment power because they have the general characteristics of insurance.

B. Benefits Beyond the Scope of the Commission’s Adjustment Power

The corollary to the above conclusion is that any benefit that does not share the characteristics of insurance falls outside the Commission’s adjustment power. For example, travel expenses, employee housing, moving and relocation expenses, vacation, and holidays are all advantages of employment that are categorically different from those items specifically enumerated in Section 8. Therefore, they are not benefits the Commission is empowered to adjust.

1. Travel Expenses (Per Diem, Lodging, Meals, & Mileage)

The Commission is not authorized to adjust travel expenses because they are categorically different from the insurance benefits specifically enumerated in Section 8. Generally, travel expenses are only allowed for necessary expenses incurred by a state employee because of travel for work. (2 Cal. Code Regs. § 599.615; see Cal. Const. Art. IV, § 2, subd. (c)). By contrast, medical, dental, and insurance benefits are paid regardless of the requirements of an employee’s job. Also, the employee gives no premium in exchange for the payment of travel expenses. Thus, travel expenses are categorically different from the types of insurance benefits specifically enumerated in Section 8.

In addition, travel expenses are handled under a separate section of the Constitution. Article IV, Section 4 of the California Constitution states:

Travel and living expenses for Members of the Legislature in connection with their official duties ***shall be prescribed by statute . . .***

(Cal. Const. Art. IV, § 4 subd. (b), emphasis added). Under existing law, the California Victim Compensation and Government Claims Board is charged with setting the rate at which travel expenses for members of the Legislature are paid. (Gov. Code § 8902).

Courts do not presume that a new law nullifies or overthrows existing provisions of law, unless such intention is clearly expressed or necessarily implied. (*Brodie v. Workers’ Comp. Appeals Bd.* (2007) 40 Cal. 4th 1313, 1325 [citing *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199]). Because the method outlined in Section 4 and Government Code section 8902 for

determining legislators' travel and living expenses already existed prior to the enactment of Section 8, and because Section 8 does not expressly overturn those provisions, the legislative intent was clearly not to give the Commission the power to adjust legislators' travel expenses.

Of course, in some circumstances travel expenses can be misappropriated for personal gain, in which case they begin to seem more like "benefits" than necessary requirements for work. For example, an employee could bill the employer for staying at a lavish hotel while on travel for work. But, just because an employee may abuse an advantage of employment for personal gain, does not transform the item into a "benefit" which the Commission has power to grant or deny. To allow such a construction would impermissibly expand the power of the Commission beyond that which was originally intended, in effect allowing the Commission to determine what advantages of employment are necessary to perform one's job and which are not. This is not one of the factors the Commission is allowed to consider under subdivision (h) of Section 8 and therefore, would not fall within its adjustment power.

2. Vacation & Holidays

Similarly, the Commission is not authorized to adjust the vacation or holidays of legislators because these benefits are categorically different from insurance benefits. Vacation and holidays, like travel expenses, do not share any of the characteristics of insurance—no premium is paid for the benefit, nor is the happening of any contingency necessary for in order to take advantage of the benefit. Therefore, the Commission is not authorized to adjust these benefits.

3. Employee Housing and Relocation Expenses

Employee housing and relocation expenses are not within the Commission's adjustment power because they, too, are significantly different from insurance benefits. No premium is paid for these benefits, they are provided regardless of any contingency, and generally they are provided because they are necessary to the performance of the employee's job. As such, they do not fall within the scope of benefits the Commission is authorized to adjust.

4. Retirement Benefits

With respect to Legislators, the Commission is not authorized to adjust their retirement benefits because in 1990 voters approved Proposition 140, which deprived legislators of the right to state retirement benefits. (See Cal. Const., Art. IV § 4.5).

With respect to other state officers, whose retirement benefits are not specifically precluded under the Constitution, the Commission is authorized to adjust those benefits. Retirement benefits fall within the range of benefits outlined in Section 8 since they are similar to insurance benefits. Retirement benefits are provided in exchange for the payment of a premium, and the benefits are paid upon the happening of a specified contingency (i.e., reaching a certain age).

However, because pension benefits are vested rights under the California Constitution, the Commission's power to adjust them is limited. (See *Miller v. State* (1977) 18 Cal.3d 808, 815). Any changes the Commission makes to the retirement benefits of active employees: (1) must be reasonable; (2) must bear a material relationship to the pension system; and (3) when resulting in a disadvantage to employees, must be accompanied by comparable new advantages. (*Allen v. Bd. of Admin.* (1983) 34 Cal.3d 114, 120) With respect to retired employees, the scope of the Commission's power is even more restricted, "the retiree being entitled to the fulfillment without detrimental modification of the contract which he already has performed." (*Id.*)

5. Sick Leave

By contrast, sick leave, it may be argued, falls within the Commission's adjustment power because it is similar to some types of disability insurance. Although no premium is paid, for sick leave, employees must generally work a certain amount of time to earn sick days. As with disability insurance, the employee only receives the benefit (compensation) upon the happening of a specific contingency (becoming sick). Thus, an argument could be made that sick leave is similar to the types of benefits listed in Section 8 and therefore may be adjusted by the Commission.

CONCLUSION

The Commission may only adjust those benefits that are similar in nature to insurance-based benefits, that is, benefits for which the employee or employer pays a premium in exchange for a guarantee against loss. All other benefits, including travel expenses, are not within the Commission's adjustment power.