

State of California

MEMORANDUM

To: PERSONNEL MANAGEMENT LIAISONS

Date: August 8, 1991  
Reference Code: 91-48

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Personnel Officers

From: Department of Personnel Administration  
Office of the Director

Subject: Retirement Program for Employees Not Eligible for Membership  
in the Public Employees' Retirement System

The Omnibus Budget Reconciliation Act of 1990 amended the Internal Revenue Code [26 U.S.C. 3121(b)(7)(F)] to specify that wages of a State or local government employee for service after July 1, 1991, shall be subject to Social Security taxes, unless the employee is a member of a retirement system maintained by the employer. This requirement generally applies to part-time employees who work less than half-time and to employees who are not considered permanent (e.g. seasonal, intermittent, or limited-term), since they are now excluded from membership with the Public Employees' Retirement System (PERS).

Proposed regulations recently issued by the Internal Revenue Service (IRS) indicate that the State's Deferred Compensation Plan (Internal Revenue Code Section 457) qualifies as a retirement plan for purposes of this mandate. The Department of Personnel Administration (DPA) intends to provide all affected State employees with retirement coverage under the Deferred Compensation Plan. Coverage will be effective as soon as the State Controller and the Deferred Compensation Plan can begin accepting deferrals. Coverage is expected to begin with the August payroll, and the regulations do not require coverage back to July 1.

Urgency legislation has been enacted which authorizes the DPA to develop this new retirement plan and to bring the State and its employees into compliance with this federal mandate (see AB 702, Chapter 83, Statutes of 1991, effective June 30, 1991). This new retirement plan will be known as the "PST" (Part-Time, Seasonal, Temporary) Retirement Plan to differentiate it from the traditional Deferred Compensation Plan.

We have prepared the following description of the PST Plan and how employees will be covered:

A. Membership

1. Who must be covered by the PST Plan?

Employees who are not covered by Social Security and are presently excluded from PERS because of time base or length of appointment. Typically, this would include:

- Part-time employees who work less than half-time.

- Seasonal employees (except Seasonal Firefighters who are required to be members of PERS).
- Temporary employees who work less than six months (or 125 days if employed on a per diem basis, or 1,000 hours if employed on an hourly basis) in a fiscal year. This requirement would also apply to "permanent intermittent" employees, including members of boards and commissions who are compensated for services rendered and for meeting attendance.

2. Any exceptions to mandatory coverage?

The following employees are not required to be covered by the PST Plan:

- Employees hired on a temporary basis to handle such disaster emergencies as fires, floods, storms, earthquakes, etc.
- Persons hired through programs designated to relieve unemployment (such as summer youth programs).
- Patients or inmates paid to work in the institutions in which they are housed.
- Nonresident aliens with F, J, or M teaching visas.
- Persons who are employed under the "retired annuitant program," provided they retired from the State.
- Persons who are in multiple positions with the State and one position is already covered by Social Security or PERS.
- "Casual" employees who are provided health and welfare benefits.

3. When is coverage effective?

Coverage is automatic for all employees who meet the criteria on the date the State Controller can begin the PST retirement deferrals. This is expected to be accomplished during the August 1991 payroll period, but will not be retroactive to July 1, 1991.

4. How will employees be reported for membership?

The State Controller's Office (SCO) will implement the PST as a retirement withholding (i.e., Retirement Account Codes will be assigned to identify the PST Plan). Initially, the SCO will identify eligible employees and update their Employment History records effective August 1, 1991. Thereafter, your department will be responsible for establishing the PST coverage for eligible employees. Processing instructions will be issued in the near future.

B. Social Security

Officers and employees who are exempt from civil service and are "optional" members of PERS (excluded from PERS unless they elect to become PERS members) must be covered by Social Security.

C. "Contributions" to the PST Plan

In order for the plan to comply with the IRS rules, it will be necessary for these employees to mandatorily defer compensation at 7.5% of pay. Those wages can be capped at the limit for Social Security (\$53,400 for 1991), however, employees may defer up to the permissible annual limit of \$7,500.

1. Are withdrawals permitted?

Withdrawals are only permitted following a permanent separation of employment or retirement. Hardship withdrawals will not be allowed for employees who are under this program.

2. Can deferrals be temporarily suspended?

The regulations require that an employee must be a qualified participant "as services are performed." So long as an employee is compensated for services rendered, deferrals must be made to the plan.

3. Must a certain amount be deferred before an employee is entitled to a benefit?

Since the regulations require that an employee be immediately "vested" (entitled to receive a benefit from the plan), there is no required amount of deferrals that must be made before an employee qualifies for benefits.

4. Is this contribution in addition to Medicare taxes or can this 7.5% level of deferral be reduced by the 1.45% of Medicare taxes?

The regulations specify that the 7.5% contribution level shall be the minimum contribution level necessary for providing a minimum retirement benefit. Therefore, the deferrals at the 7.5% rate are in addition to Medicare taxes.

D. Benefits from the PST Plan

1. How will the PST Plan qualify as a "retirement system" under the rules?

The regulations define a retirement system as "any pension, annuity, retirement or similar fund . . . that is maintained by a State . . . to provide retirement benefits to its employees who are participants."

2. What are the "retirement benefits" which must be provided?

The retirement benefit which must be provided is one which is "comparable to the benefit provided under the Old-Age portion of the Old-Age, Survivor and Disability Insurance Program of Social Security." Therefore, a single life annuity payout would meet the definition of a retirement benefit.

3. Is there a minimum benefit which must be provided?

Since a deferred compensation program would be a defined contribution plan, for purposes of this IRS mandate, a minimum benefit would depend on the participant's annual allocation. The proposed regulations require that:

- The allocation to the employee's account is at least 7.5% of the employee's wages during the period of service, and
- The employee's account must be credited with earnings at a rate which is reasonable under all facts and circumstances, or
- The account is held in a separate trust that is subject to general fiduciary standards and all employee accounts are credited with actual earnings on the trust fund.

4. What happens to an employee's deferrals if he/she dies prior to retirement?


An employee's deferrals shall be distributed according to the terms and conditions of the existing plan document regarding beneficiaries and form of distribution.

This plan description has been prepared to assist you and your staff in answering questions asked by your department's employees who will be affected.

Please ensure each affected employee is given a copy of the attached notice, which should also be given to new employees.

The Savings Plus Program, which will have responsibility for administering the PST Plan, is currently preparing a brochure that will define all terms and conditions of plan participation. Brochures will be available to all departments as soon as the brochures are returned from the printer.

Questions on this memorandum may be directed to Oscar Alarcon of my staff at (916) 324-0523 or (ATSS) 454-0523.

  
for David J. Tirapelle  
Director

Attachment

**DEPARTMENT OF PERSONNEL ADMINISTRATION**

OFFICE OF THE DIRECTOR  
1515 "S" STREET, NORTH BUILDING, SUITE 400  
SACRAMENTO, CA 95814-7243



(916) 322-5193

August 8, 1991

**TO: EMPLOYEES NOT ELIGIBLE FOR MEMBERSHIP IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS)**

**SUBJECT: Coverage in the "Part-Time, Seasonal, Temporary" Retirement (PST) Plan**

The federal Omnibus Budget Reconciliation Act of 1990 amended the Internal Revenue Code [26 U.S.C. 3121(b)(7)(F)] to require that wages of a State or local government employee for service after July 1, 1991, shall be subject to Social Security taxes, unless the employee is a member of a retirement system maintained by the employer.

Since you are not eligible for membership with the PERS, either because of your time base, length of appointment, or temporary nature of your appointment, the State of California will provide retirement coverage to you under the State's Savings Plus Plan until such time as you qualify for PERS membership. The Internal Revenue System has issued regulations which require your participation in the PST Plan at a deferral level of 7.5% of your pay. These salary deferrals, which will be made on a pretax basis, will be credited to your account to provide an annuity upon your retirement. Your deferrals (including the interest which your deferrals will earn) may be returned upon your permanent separation or paid to your beneficiary in the event of your death.

Your personnel office will notify you when these deferrals will commence. Also, please contact your personnel office if you would like information regarding PERS membership.

If you would like information regarding the PST Retirement Plan, please contact your personnel office or the Savings Plus Program, Department of Personnel Administration, at (916) 322-5070 or (ATSS) 492-5070.

Sincerely,

A handwritten signature in cursive script that reads "David J. Tirapelle".

for David J. Tirapelle  
Director