



# LEGAL DEFENSE TRUST

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## LEARNING POINTS



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# CALIFORNIA SUPREME COURT PRESERVES THE CALIFORNIA RULE WITH A CATCH

*Alameda County Deputy Sheriffs' Association et al., v. Alameda County Retirement Association et al.*

*By Maurice E. Sinsley, Esq*

On July 30, 2020, the California Supreme Court issued its long-awaited decision in the latest challenge to the Public Employee Pension Reform Act of 2013 (PEPRA). In *Alameda County Deputy Sheriffs' Association, et al., v. Alameda County Retirement Association, et al.*, the Court decided in favor of the vested retirement benefits of public employees. It preserved again, for now, the *California Rule*.

### **1. What are the Alameda Cases About?**

As you may recall, PEPRA set limits on public employee pension benefits and expressly excluded some types of pay from the final pensionable calculation. Several county retirement systems<sup>1</sup> ended the practice of allowing one-time payments such as bonus pay, terminal pay, on-call, and call-back pay, to be included in a members' final pension calculation.

The labor organizations sued to protect their members' pension benefits earned before PEPRA was

enacted, alleging the changes violated the contract clauses of the state and federal constitutions. The trial court ruled against the labor organizations finding the members possess a vested right to the continuation of some, but not all of the benefits. The labor organizations appealed.

### **2. The Appellate Court Decision in Alameda**

In August 2016, while the Alameda case was pending, the First District Appellate Court decided the case of the *Marin Association of Public Employees v. Marin County Employees' Retirement Association* (MAPE). Like *Alameda*, MAPE challenged changes to the definition of pensionable compensation under PEPRA and the *California Rule*.

As you may remember from our bulletin on *Cal Fire Local 2881 v. CalPERS* (2019), we discussed how the *California Rule* treats retirement benefits as a form of deferred compensation for services already provided and prevents employers from taking away

<sup>1</sup> Alameda, Contra Costa, and Merced County.

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those benefits without offering a comparable benefit in exchange.

In *MAPE*, however, the Court declined to follow the *California Rule* holding that while reductions in pension benefits *should* be offset by a new benefit, such benefits were *not required*. The Court in *MAPE* further held that while a public employee has a vested right to a pension, it is only to a reasonable pension that may be reduced before retirement. The *MAPE* decision, if it were later upheld by the Supreme Court, would be a serious threat to public employee pension benefits.

In January 2018, the Appeals Court largely upheld the *Alameda* trial court ruling but declined to follow the holding in *MAPE*. The *Alameda* court held that while some of the pension reductions were allowed, others were still required to be offset under the *California Rule*.

### 3. *The Supreme Court Cal Fire Decision*

While both *MAPE* and *Alameda* awaited review, the Supreme Court issued its decision in the first of five cases challenging various reductions under PEPRA. In *Cal Fire Local 2881 v. CalPERS* (2019), the Court, in a unanimous, 7-0 decision, upheld the elimination of the optional “Air Time” credit stating that because the Legislature did not intend to create a contractual right to purchase airtime credit, there was no violation of protected pensions rights when it was eliminated under PEPRA.

As you may remember from our bulletin on *Cal Fire*, the Court provided an extensive analysis of public employee benefits under contract law, emphasizing that a vested right to a benefit only applies where the Legislature intended to create a contractual right through an expressed term. However, the *Cal Fire* decision left untouched the *California Rule*.

### 4. *The Supreme Court Alameda Decision*

On May 5, 2020, the Supreme Court heard oral arguments in the *Alameda* case. The *Alameda* plaintiffs contended the use of one-time payments to increase their final pension is a vested right, and under the *California Rule*, they argued, the benefit cannot be taken away without an offset in benefits.

The State of California, in arguing for the retirement systems, contended the practice was illegal “pension spiking,” and public employee have no vested right to an unlawful benefit.

In its decision, the Court held that the *California Rule* does not always require an offset in benefits. The Court explained that changes to benefits must be made for a constitutionally permissible purpose and must “*bear some material relation to the theory of a pension system and its successful operation.*”

The Court clarified, however, that if the changes are made for such a purpose, and if it would undermine or be inconsistent with the permissible purpose to provide an offset in benefits, then there is no requirement to offset disadvantages with comparable new advantages.

### 5. *Take Away*

We read and analyzed this 90-page opinion, so you don’t have to. Nothing in this decision affects the benefits of current retirees. So, if you are now retired - enjoy.

This decision was narrow in scope. Since the Court held “closing loopholes and preventing abuse of the pension system” was what made the PEPRA changes constitutionally proper, only pension plans that allow pension “spiking” are subject to minimal modification.

**CALIFORNIA SUPREME COURT PRESERVES THE CALIFORNIA RULE WITH A CATCH**

Your basic pension remains the same. Because the *California Rule* has survived, there is no need to retire early or work longer than you have already planned.

As before, in the future, it will be the newly hired employees that will bear the brunt of changes in the public employee pension system.

*Stay Safe!*

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