

Solutions that would affect Current PERS Member

(Current PERS employees)

- 4. Since PERS benefits cannot be changed for as long as the employee remains employed, consider the “nuclear option” and lay-off all State workers effective December 31st and rehire effective January 1st under a new, affordable retirement plan.**

The Oregon Supreme Court stated the following

[The State]...promised a pension benefit that plaintiffs could realize only on retirement with sufficient years of service, that is, after rendering labor for the state. [The employee] accepted that offer by working. See *Taylor*, 265 Ore. at 452. The change [in PERS benefits] mandated by [Measure 8] alters the state's contractual obligation, in violation of *Taylor*, by increasing plaintiffs' cost of retirement benefits for services that, **absent a lawful separation of employment** they will provide in the future. That consequence, if approved, would permit the state to retain the benefit of plaintiffs' labor, but relieve the state of the burden of paying plaintiffs what it promised for that labor. ¹⁸ That result would frustrate [*375] plaintiffs' reasonable contractual expectations that were based on legal commitments expressly made by the state. (*Oregon State Police Officers' Association, et. al. vs. State of Oregon*, 323 Ore. 356 (1995) pgs. 374, 375) (Emphasis added.)

The Court in the above case essentially stated two things. (1.) a PERS employee when hired has a right to receive all the promised retirement benefits, so long as that employee performs the necessary labor and employment longevity to qualify for those benefits; and (2.) the contract, as it relates to earning additional benefits in the future, ends when the employee is lawfully separated from employment.

Thus, if a PERS employee works for 15 years, then leaves employment for whatever reason, that employee has a vested right to ultimately receive 15 years worth of PERS retirement benefits when the employee qualifies to receive them at the age of retirement.

Since PERS Tier 1 benefits cannot be changed for Tier 1 employees, so long as they continue to be lawfully employed, the “nuclear option” is to select a date in the future, and, subject to all applicable laws and collective bargaining agreements, terminate all State PERS employees on that date. Those employees would be fully vested with whatever PERS benefits they had accrued to the date of termination of employment. The State would be fully obligated to fund and pay all vested benefits earned by each and every such State employee from his or her date of employment to the date of termination. All or most State employees would be offered the opportunity to be rehired the following day subject to a new and more affordable 401 (k) style PERS retirement plan that would apply to all new State employees.

There would be savings from such a strategy, since the actuarial calculations for future Tier 1, 2 and OPSRP benefits would end on the universal employment termination date. The political consequences of such a strategy would be dramatic, and its legal outcome would be uncertain.