



# UPDATE: Retirement Board's Limits on Inclusion of "Straddled" Leave Cashouts in Retirement Allowance Determinations Affirmed by Second DCA

01.19.2024 | By **Ashley K. Dunning, Alexander Westerfield**

**UPDATE:** On January 18, 2024, the Second DCA responded to requests for publication of its decision discussed in our last eAlert on this topic (below) and certified the decision for publication. This is an important next step in retirement boards' continuing efforts to implement PEPPRA in accordance with the California Supreme Court's 2020 *Alameda* decision.

Nossaman represented VCERA through the superior and appellate court proceedings. **Ashley Dunning**, co-chair of the Pensions, Benefits & Investments (PB&I) Group, was lead trial and appellate counsel, with PB&I litigation team **Alexander Westerfield**.

On January 4, 2024, the Second District Court of Appeal, Division 6, unanimously rejected the first lawsuit challenging a county retirement board's implementation of the California Supreme Court's *Alameda* decision (*VCERA v. County of Ventura, et al*, [Second DCA, Div. 6, Case No. B325722] (*VCERA* decision)).

(For background on the 2020 *Alameda* decision, which upheld the constitutionality of changes to the County Employees Retirement Law of 1937 (CERL) that were adopted in connection with enactment of the Public Employees' Pension Reform Act of 2013 (PEPPRA), see here: [California Courts Continue to Address Vested Rights Lawsuits](#).)

Specifically, following the *Alameda* decision, numerous county retirement boards, including that of the Ventura County Employees' Retirement Association (VCERA), took actions to implement the state Supreme Court's directive that PEPPRA's changes to CERL must be implemented by county retirement systems.

The issue leading to the *VCERA* decision arose from a practice that the Supreme Court discussed in *Alameda* regarding leave cashouts that “straddle” calendar years and result in the potential inclusion of more cashed-out leave in retirement allowance calculations than would be permitted when applying limiting principles to those inclusions.

The Second DCA concluded as follows: “We follow the Supreme Court’s analysis of subdivision (b)(2) and (4) to conclude that amended section 31461 requires exclusion of compensation for leave cashouts that exceed the one (or three) calendar year’s limits for such cashouts for the purposes of calculating legacy members’ retirement benefits.”

The court further observed, “Designating a 12- or 36-month final average compensation period that straddles multiple years to receive compensation for leave cashouts greater than the amount a member could receive in one or three calendar years, respectively, is the type of manipulation that the PEPRA exclusions sought to eradicate.”

The court of appeal thus affirmed the superior court’s grant of summary adjudication in favor of VCERA on this issue.

### **Takeaway from the *VCERA* Decision**

The *Alameda* decision resolved the constitutionality of one key aspect of PEPRA as it applies to members of CERL retirement systems who first were enrolled in certain California public retirement plans prior to January 1, 2013 (“legacy” or “classic” members). The *VCERA* decision has now given further force, and meaning, to the *Alameda* decision.

As anticipated, however, the scope of *Alameda* and its application in particular circumstances continues to be the subject of debate and litigation.

Indeed, several other pending cases continue to make their way through California superior and appellate courts on this and related topics.

In this context, guidance provided by courts of appeal, such as in the *VCERA* decision, will prove invaluable to other retirement systems and boards with respect to their efforts to comply with the *Alameda* decision and PEPRA, particularly where such courts published their decisions. Given that reality, as of January 8, 2024, efforts to obtain publication of the *VCERA* decision are underway.