



LABOR AND EMPLOYMENT

Cargill: PERS Eligibility for Leased and Temporary Workers

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Temporary or leased workers who are treated like employees of a contracting agency may be eligible for membership in the Public Employees’ Retirement System (“PERS”), said the California Supreme Court in February 2004. In a closely watched case, *Metropolitan Water District of Southern California v. Superior Court (Cargill)*, 32 Cal.4th 491 (2004), the Court found that the Public Employees’ Retirement Law (“PERL”) incorporates common law principles into its definition of a contracting agency employee. The court reaffirmed that all contracting agency employees must be enrolled in PERS unless excluded under a specific statutory or contractual provision.

This case is important to contracting agencies that use temporary or leased employees and to persons who must analyze employment status to determine eligibility for enrollment in PERS.

BACKGROUND

The MWD secured workers through private labor suppliers, sometimes referred to as temporary service agencies. MWD classified the workers as employees of the private labor suppliers. The workers contend they were selected, supervised and controlled by MWD personnel and qualify as common law employees of MWD. Important to its argument before the court, MWD noted that the labor suppliers pay the workers from funds under the control of each supplier. The workers and MWD each disagreed

as to the factual contentions of the other.]

BROAD DEFINITION OF EMPLOYMENT UNDER PERL

A majority of the California Supreme Court rejected MWD’s argument that the definition of a contracting agency employee should be read to include a requirement that the person must be paid out of funds directly controlled by the contracting agency. A similar requirement is expressly applied to state agencies, but not contracting agencies.

The Court also rejected an argument that only those hired through MWD’s merit system could be considered employees, noting that many employees who are not hired through a merit or civil service system are nonetheless eligible for PERS membership.

In rejecting an argument advanced by the labor suppliers, the court ruled that there is no basis in the PERL for a co-employment exception to common law employment. The court also ruled that the workers cannot waive PERS rights because PERS membership is mandatory and benefits under the PERL may not be waived by private agreement.

“In sum, we conclude the PERL’s provision concerning employment by a contracting agency ([Government Code] § 20028, subd. (b)) incorporates a common law test for employment, and that nothing elsewhere in the PERL, in MWD’s administrative code, or in statutes and regulations addressing joint employment in other contexts supports reading into the PERL an exception to mandatory enrollment for employees hired through private labor suppliers.”





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The Court specifically did not decide:

- Whether the plaintiffs were in fact common law employees of MWD;
- If they are found to be employees, whether they are entitled to enrollment in PERS as of the dates they were first employed;
- Whether the plaintiffs would be MWD’s employees for any purpose other than PERS enrollment or whether they would be entitled to any other fringe benefits as employees under other provisions of law.

The case was sent back to the trial court to decide these questions.

HOW SHOULD AGENCIES RESPOND TO CARGILL?

- Review your practices for engaging temporary or leased workers and use the common law control test to analyze the status of these workers.
- Remember that the Cargill decision does not change any membership exclusion that exists in your agency’s contract with PERS. This case does not invalidate the hourly employee exclusion for those few agencies that still have it as a term of their contract with PERS. Also, exclusions in an agency’s contract with PERS that are based on classification, department or membership category remain valid.
- Also remember that this case does not invalidate statutory exclusions, such as the “1,000-hour rule” and other part-time exclusions. [Gov. Code Section 20305.] However, it remains important for supervisors and managers to monitor hours.
- Be especially sensitive to labeling workers as “temporary” if they will work for your agency for anything more than a limited period under special circumstances.

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