



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 17

**MEETING DATE:** April 15, 2020

**SUBJECT:** Sick Leave Conversion Policy – Discussion Draft

**SUBMITTED FOR:** \_\_\_ Consent        X   Deliberation and Action      \_\_\_ Receive and File

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### **RECOMMENDATION**

Staff recommends the Board approve a discussion draft of the Sick Leave Conversion Policy for dissemination to stakeholders. The proposed policy governs how SCERS will calculate the conversion of unused sick leave to service credit pursuant to Government Code section 31641.01.

### **PURPOSE**

This item supports the 2019-20 Strategic Management Plan to maintain transparent communication among stakeholders and promote understanding of roles and responsibilities by updating Board policies by which SCERS administers the retirement plan.

### **BACKGROUND**

In 1970, the Board of Supervisors adopted an ordinance making Government Code section 31641.01 applicable to Sacramento County. Section 31641.01 states that “each member shall be credited, at the rate of one day for each one day earned, with sick leave accumulated as of the date of his retirement and that sick leave credit shall be in addition to service credit.”

Section 31641.01 does not specify what a retirement system must reference in determining “sick leave accumulated as of the date of [the member’s] retirement.” Staff conducted an informal survey of other California county retirement systems, and discovered that SCERS is an outlier in its historical approach.

The majority of other retirement systems determine “sick leave accumulated as of the date of retirement” by relying on and deferring to the final sick leave balance maintained by the employer. In effect, the system defers to each employer’s individual rules and methodology concerning the accumulation, usage, and forfeiture of sick leave.

In contrast, SCERS’ historical approach is to determine “sick leave accumulated as of the date of retirement” independently. Although SCERS relies in part on employer-provided data,

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SCERS arrives at a final sick leave balance using different methods concerning sick leave forfeiture.

SCERS' independent approach is particularly material where the employee does not immediately retire when separating from service. Currently, most (if not all) SCERS employers deem unused sick leave to be forfeited upon an employee's separation from service. Thus, if a member defers retirement after separating for service, his/her sick leave would—by the employer's accounting—have a zero balance at the time of retirement. SCERS, in contrast, would effectively “bank” the unused sick leave at the member's separation and include it in calculating service credit, potentially years later.

The current SCERS approach also creates an inconsistency with employer practices when a member's service is interrupted by a period of separation. For example, if a separated employee were to resume service with a SCERS employer, his/her sick leave would—by the employer's accounting—start with a balance of zero. And when that employee is ready to retire, the final sick leave balance as maintained by the employer would only include the unused leave accrued since the re-employment. SCERS, however, would include the prior sick leave balance that was forfeited and the new sick leave in calculating additional service credit at retirement.

## **DISCUSSION**

In light of the ambiguity in Section 31641.01, Staff has concluded that the approach followed by other retirement systems represents a better practice and is preferable on a going-forward basis.

As an administrative matter, SCERS' historical practice is burdensome for Staff. In order to identify and quantify unused sick leave deemed forfeited long ago, Staff must investigate and recreate a retiring member's employment and separation history.

More important, as a legal matter, there is no compelling reason for SCERS to maintain a set of rules for sick leave accumulation separate and independent from the employers'. Sick leave is a benefit provided by the employer—not SCERS. It is the employer who sets and administers the rules by which sick leave is deemed used or “unaccumulated.” It is the employer who funds sick leave, and it is the employer who is ultimately responsible for the funding of pension benefits. All of these factors compel that it should be the employer and not SCERS that has final say in determining “sick leave accumulated as of the date of his retirement” for the purpose of Section 31641.01.

In an abundance of caution, and for the avoidance of litigation, Staff recommends that SCERS' historical practice be preserved for all members first hired before July 1, 2020. Thus, the recommended policy would apply only to members first hired on or after July 1, 2020.

## **NEXT STEPS**

Staff will distribute the discussion draft of the policy to employers and employee groups for comment. Staff will evaluate any comments received for incorporation in the policy, with the

expectation that the Board will be presented with a final policy for consideration at its regular meeting on June 17, 2020.

Prepared by:

Reviewed by:

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Stephen Lau  
General Counsel

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Eric Stern  
Chief Executive Officer



# SICK LEAVE CONVERSION POLICY DISCUSSION DRAFT

## PURPOSE

The purpose of this policy is to describe how SCERS calculates a member's "sick leave accumulated as of his date of retirement," which is convertible to service credit pursuant to Government Code section 31641.01.

## POLICY

Government Code section 31641.01 states that "each member shall be credited, at the rate of one day for each one day earned, with sick leave accumulated as of the date of his retirement and that sick leave credit shall be in addition to service credit."

For members that are hired by a participating SCERS employer for the first time on or after July 1, 2020, the amount of "sick leave accumulated as of the date of his retirement" shall be the sick leave balance maintained by the member's employer as of the date of his or her retirement.

## APPLICATION

This policy primarily affects the calculation of service credit when a SCERS member does not immediately retire upon separation from service with a SCERS employer.

Currently, most (if not all) SCERS employers deem unused sick leave to be forfeited upon a member's separation from service.

This policy requires SCERS to calculate service credit for individuals who first become SCERS members on and after July 1, 2020, by relying on the final sick leave balance as maintained by the employer "as of the date of retirement" of the member. Thus, as to such members, if an employer treats unused sick leave as forfeited upon separation and excludes it from the member's final sick leave balance, SCERS may not convert that excluded leave to service credit. On the other hand, if an employer chooses to treat unused sick leave as available for use for members who do not immediately retire upon separation, and includes it in the member's final sick leave balance, SCERS must convert that included leave.

In effect, this policy provides that, in applying Government Code section 31641.01 to members hired on or after July 1, 2020, SCERS will defer to each employer's individual rules and methodology concerning the accumulation, usage, and forfeiture of sick leave as of the date of retirement of those members.

## BACKGROUND

This policy represents a change in SCERS' practices in implementing Section 31641.01, as applicable to individuals whom a participating SCERS employer hires on or after July 1, 2020.

Because Section 31641.01 does not specify what SCERS must look to in determining "sick leave accumulated as of the date of [the member's] retirement," SCERS has some administrative discretion in that regard. Historically, SCERS has not determined "sick leave accumulated" by simply deferring to employer practices. Rather, SCERS has included the unused sick leave balance in service credit calculations even if it was deemed forfeited by the employer. This policy does not change that historical practice for members who joined a SCERS employer before July 1, 2020.

SCERS reserves the right to modify and/or extend this policy, subject to the California Supreme Court's review of *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.*, 2 Cal.App.5th 674 (2016) and *Alameda County Deputy Sheriff's Ass'n v. Alameda County Employees' Retirement Assn.*, 19 Cal.App.5th 61 (2018).

## RESPONSIBILITIES

Executive Owner: General Counsel

## POLICY HISTORY

Date	Description
4-15-2020	Staff to recommend Board approve Discussion Draft for comment.