



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 22

**MEETING DATE:** August 20, 2025

**SUBJECT:** Final Compensation Policy

**SUBMITTED FOR:**   X   Action        Information

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### **RECOMMENDATION**

Approve amendments to the Final Compensation Policy and direct Staff to take the following actions:

- Direct Sacramento County to discontinue retirement contributions on compensation for the 81<sup>st</sup>-84<sup>th</sup> hours for Miscellaneous Tier 5 members.
- For active and deferred Miscellaneous Tier 5 members:
  - Refund contributions and interest taken on the 81<sup>st</sup>-84<sup>th</sup> hours, on or after April 28, 2019, that total \$25 or more. SCERS will refund contribution amounts less than \$25 upon written request.
- For retired Miscellaneous Tier 5 members:
  - Refund contributions taken on the 81<sup>st</sup>-84<sup>th</sup> hours on or after April 28, 2019, that total \$25 or more. SCERS will refund contribution amounts less than \$25 upon written request.
  - Recalculate pension allowances to exclude the 81<sup>st</sup>-84<sup>th</sup> hours from Final Compensation. SCERS will not recover overpayments and instead will recognize the overpayments in the employer's actuarial accrued liability.
  - Calculate the actuarial present value of the difference in pension allowances and direct the employer to make a one-time payment of 20% of that amount to the retired members.
- Credit overpaid employer contributions on the disallowed compensation to Sacramento County.
- Notify affected members of the pending corrections.

### **PURPOSE**

This item supports Strategic Management Plan goals regarding transparency, efficiency, and compliance with laws and regulations.

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## **DISCUSSION**

At the May 21, 2025 Board Meeting, SCERS staff presented to the Board draft amendments to the Final Compensation Review Policy that are mostly cosmetic in nature. The amendments concisely summarize the purpose of the policy and streamline the Standards and Procedures for easier consumption by SCERS members now that PEPRAs and *Alameda* are settled law. The substantive changes include:

- Removal of the word “Review” from the title to more accurately reflect the policy’s broad purpose, applications, standards, and procedures regarding calculations of final compensation.
- Additional language incorporating Assembly Bill 3025 provisions allowing for employee groups to seek pensionability determinations of proposed new compensation items and encouraging employers to make similar requests in advance of implementation of new compensation items.
- An express requirement that compensation and pay elements be included in an employer’s publicly available pay schedules, labor agreements, or governing body resolutions.
- Clarification regarding pensionability of compensation for the 81<sup>st</sup>-84<sup>th</sup> hours in a regular “7/12” working schedule, as discussed in more detail below.
- Alignment of appeal procedures with SCERS’ Administrative Appeals Policy amended in 2024.
- Updated and consolidated legal authorities.
- An updated Appendix, combining the two existing Appendices into a single, easier-to-read document, substantively changing only the “7/12” working schedule. Though categories have been combined, no other substantive changes are proposed.

### **7/12 Work Schedule and Recommended Correction**

As discussed at the May Board meeting, during the recently completed *Alameda* correction process, SCERS identified a potential issue for Miscellaneous (non-Safety) PEPRAs members who work the 7/12 schedule that required additional research and analysis into the statutes, federal law, labor agreements, and the impacted population. The 7/12 schedule reflects an 84-hour biweekly work schedule in which employees work seven, 12-hour shifts over a two-week period.

Currently, compensation for the 81<sup>st</sup>-84<sup>th</sup> hours has been treated as retirement applicable for all Safety and Miscellaneous tiers.

Under statute, overtime is excluded from retirement-based compensation, except:

- for Legacy members, “FLSA Overtime” under 29 U.S.C. §201; and
- for PEPRAs members, active law enforcement or fire protection employees under 29 U.S.C. §207(k).

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- To the extent that 81<sup>st</sup>-84<sup>th</sup> hours for both Safety and Miscellaneous members are part of regularly scheduled normal working hours, they remain properly included in the “compensation earnable” for Legacy members.
  - Because the PEPRA exception applies to a more limited group, including only sworn officers in active law enforcement or fire protection, SCERS must discontinue inclusion of the 81<sup>st</sup>-84<sup>th</sup> hours as pensionable compensation for non-sworn PEPRA members (i.e. Miscellaneous Tier 5).

### Revised Correction

In the draft amendments presented to the Board, Staff recommended issuing refunds of retirement contributions reported for the 81<sup>st</sup> – 84<sup>th</sup> hours since January 1, 2013 for Miscellaneous Tier 5 members and adjusting pension allowances for those retired members that include the compensation in their retirement calculations. However, after further consideration of SCERS’ Service Credit Policy, Staff now recommends revising the correction period to compensation earned on or after April 28, 2019, not January 1, 2013.

Under the Service Credit Policy, adopted by the Board in 2019, SCERS limits service credit to one year in a one-year period. The policy was intended to address a dynamic within the 7/12 schedule in which members were receiving additional service credit for 81<sup>st</sup> – 84<sup>th</sup> hours, resulting in service credit that exceeded one year. The policy was applied prospectively to cap service credit at one year for time worked on or after April 28, 2019. SCERS prevailed in subsequent litigation that challenged the policy.

Extending the proposed corrections on compensation earned on the 81<sup>st</sup> – to 84<sup>th</sup> hours to January 1, 2013, would conflict with Service Credit Policy effective date. Staff has determined it would be prudent to apply a consistent effective date for the corrections on compensation related to the 7/12 schedule. Therefore, Staff recommends applying the corrections to compensation earned on or after April 28, 2019.

In accordance with SCERS’ Error Correction Policy, Staff also recommends the Board establish a minimum threshold of \$25 to process a contribution refund due to the administrative costs involved. Staff will provide notice to all affected members about the corrections and will refund contribution amounts less than \$25 upon written request.

The proposed correction also includes a new “penalty” payment under AB 3025 (2024), in which SCERS will calculate the actuarial present value of the difference in pension allowances and direct the employer to make a one-time payment of 20% of that amount to the affected retired members.

Staff have notified labor organizations and have discussed the policy amendments with Sacramento County management.

### Impacted Population

SCERS has identified approximately 500 non-sworn PEPRA members since January 1, 2013, who are currently working or previously worked “7/12” schedules and had retirement contributions taken on the 81<sup>st</sup>-84<sup>th</sup> hours. As of March 2025, there were approximately:

- 400 active employees
- 5 retired employees
- 50 deferred members with contributions remaining at SCERS
- 30 terminated and already refunded contributions (no action needed)

The following Bargaining Units have labor agreements that authorize “7/12” schedules: General Supervisory (001), Law Enforcement Non-Supervisory (003), Office Technical (005), Health Services (007), Nurses (016), and Probation (019).

Further analysis will be needed to review payroll data for the impacted population to determine refund amounts and pension adjustments. SCERS anticipates minor impacts. For example, SCERS sampled three retirees who will require pension adjustments and determined reductions of approximately \$2, \$5, and \$10 per month.

### ATTACHMENTS

- Board Order
- Final Compensation Overview Presentation
- Revised policy with proposed amendments
- Current version of policy
- December 18, 2012 Board Materials, Item 14: Implementation of AB 340 and AB 197

Prepared by:

/S/

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Keith Riddle  
Chief Benefits Officer

/S/

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Jason R. Morrish  
General Counsel

Reviewed by:

/S/

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Eric Stern  
Chief Executive Officer

# **Retirement Board Order**

## **Sacramento County Employees' Retirement System**

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**Before the Board of Retirement  
August 20, 2025**

**AGENDA ITEM:**

### **Final Compensation Policy**

THE BOARD OF RETIREMENT hereby approves the Staff recommendation to approve amendments to the Final Compensation Policy and direct Staff to take the following actions:

- Direct Sacramento County to discontinue retirement contributions on compensation for the 81<sup>st</sup>-84<sup>th</sup> hours for Miscellaneous Tier 5 members.
- For active and deferred Miscellaneous Tier 5 members:
  - Refund contributions and interest taken on the 81<sup>st</sup>-84<sup>th</sup> hours, on or after April 28, 2019, that total \$25 or more. SCERS will refund contribution amounts less than \$25 upon written request.
- For retired Miscellaneous Tier 5 members:
  - Refund contributions taken on the 81<sup>st</sup>-84<sup>th</sup> hours on or after April 28, 2019, that total \$25 or more. SCERS will refund contribution amounts less than \$25 upon written request.
  - Recalculate pension allowances to exclude the 81<sup>st</sup>-84<sup>th</sup> hours from Final Compensation. SCERS will not recover overpayments and instead will recognize the overpayments in the employer's actuarial accrued liability.
  - Calculate the actuarial present value of the difference in pension allowances and direct the employer to make a one-time payment of 20% of that amount to the retired members.



# Retirement Board Order

## Sacramento County Employees' Retirement System

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- Credit overpaid employer contributions on the disallowed compensation to Sacramento County.
- Notify affected members of the pending corrections.

I HEREBY CERTIFY that the above order was passed and adopted on August 20, 2025, by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES:  
(Present but not voting)

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Board President

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Eric Stern  
Chief Executive Officer and  
Board Secretary



# Final Compensation Policy

Overview Presentation

August 20, 2025

# Final Compensation

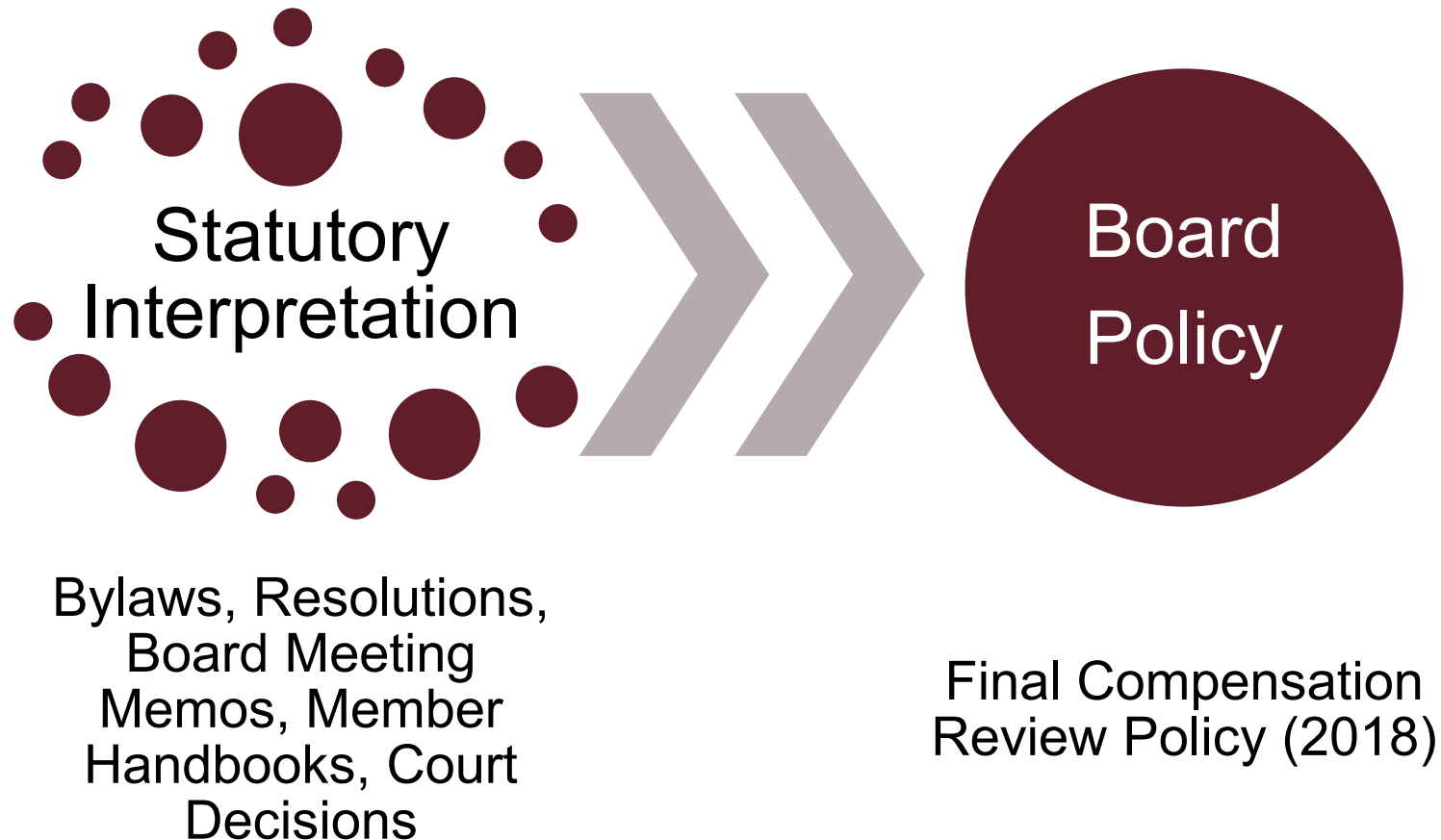
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What pay does SCERS include in pension calculations?

- Pre-PEPRA (before 2013) – Generally base pay and pay differentials, with some limitations
  - Final 12 months (Tier 1) or 36-month annual average (all other Tiers)
- Post-PEPRA (after 2013) – Generally base pay only
  - 36-month annual average
- **Overtime has always been excluded**, with some narrow exceptions



# SCERS' Final Comp Evolution



# Policy History: Expansion and Contraction

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1980s – Bylaws included “all remuneration paid in cash to a member except sums representing payment for overtime and standby pay.”

1990s – *Ventura* decision (1997) and settlement (2003) expanded pay items, including standby pay. SCERS retroactively increases pensions.

2010s – PEPRA (2013) excludes pay elements. Board adopts resolutions to establish review and appeal process, formalizes policy in new format (2018), excludes overtime on pay differentials (2019).

2020s – *Alameda* decision (2020). Board updates policy to exclude pay items (e.g. standby pay, animal allowance, excess leave payouts). SCERS adjusts pensions and refunds contributions.

# PEPRA Changes for Legacy Members

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Legislature closed perceived loopholes in “compensation earnable” (GC 31461):

1. Compensation determined by the Board to have been paid to enhance a benefit
2. Unused vacation, sick leave, CTO that exceeds what may be earned and paid in final compensation period (leave cash-outs)
3. Pay for services rendered outside of normal working hours (standby/on-call pay)
4. Pay made at termination (terminal pay)

→ SCERS did not make changes for legacy members until *Alameda* decision.

# PEPRA Changes for New Members

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Tighter definition of “pensionable compensation” (GC 7522.34):

- Normal monthly rate of pay OR base pay
- Paid uniformly to similarly situated members of the same group or class
- For services rendered during normal working hours
- Pursuant to publicly available pay schedules
- Subject to new limitations: excludes bonuses, ad hoc or one-time payments, vacation/sick leave payouts, severance, and housing, uniform, vehicle allowances, and any other form of compensation the board determines is inconsistent with the statute or should not be pensionable.

# Why Base Pay Only?

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SCERS Board Memo 12/19/2012:

“[U]nder CalPEPRA, **pensionable compensation does not expressly include special compensation**. One of the maxims of statutory interpretation is that the legislature is assumed to be aware of the current meaning of the terms used in legislation, and thus it is presumed they knowingly intended to exclude special compensation from pensionable compensation.

“Staff believes that this interpretation is also **consistent with the overall legislative objective to lower employer cost**, since it limits the pay elements that count for retirement benefit purposes, and on which the employer must make retirement contributions. Further evidence of this legislative intent can be seen in the CalPEPRA provisions that discuss other pay elements that are to be excluded from pensionable compensation.”

# SCDSA v. SCERS

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In 2019, SCDSA sued SCERS in Sacramento Superior Court

- Challenged SCERS Board's limitation on future service credit accruals of members on 7/12 schedule to a year of service for a year of work (which reversed 1999 Board resolution on this topic)
- Challenged Board's limitation of pensionable compensation for PEPRA members to base pay only
- Challenged Board's exclusion from compensation earnable of differentials paid on overtime (later dropped post-*Alameda*)
- Challenged Board's post-*Alameda* exclusion of Canine Pay/animal allowance

# Motion for Summary Judgment ruling – April 2023

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Section 7522.34, subdivision (a) provides that “pensionable compensation” means the “normal monthly rate of pay or base pay of the member.” Thus, **there is no mandatory ministerial duty for SCERS to include anything more than “base pay” in determining “pensionable compensation.”**

...Petitioner’s declaratory relief claim it alleges SCERS is “obligated to include all incentive pays” in pensionable compensation. However, Petitioner has not identified a statute that mandates such an obligation, nor any contractual obligation SCERS made that it would include such pay. **There is no MOU, or documentation provided to Petitioner or its members by SCERS, or any other evidence to establish an express or implied contractual obligation to include incentive pay in pensionable compensation.**

# *ACDSA v ACERA (“Alameda”)*

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- In July 2020, California Supreme Court upheld constitutionality of legislature’s 2013 PEPRA amendments to definition of “compensation earnable” in the County Employees Retirement Law of 1937 (CERL).
- Court held that retirement boards must implement such amendments even if they previously had promised, through Board resolutions, agreements or otherwise, to calculate compensation earnable differently.
- On this point, Court held, retirement boards and systems have no authority to “evade the law.”



# *Alameda: Role of the Board*

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“Of necessity, the task of processing claims for retirement benefits requires the county retirement boards to **interpret and apply the provisions of CERL**, including the sections defining compensation, compensation earnable, and final compensation.

The task of a county retirement board is not to design the county’s pension plan but to **implement** the design enacted by the Legislature through CERL.”

# *Alameda continued*

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“...Although CERL grants to retirement boards the power to make regulations, those regulations must be consistent with the provisions of CERL. ...The boards do not have the authority to “evade the law” that otherwise applies to their system.

...although county retirement boards have the authority to interpret CERL’s provisions as necessary to perform their administrative functions, **they have no authority to adopt or act on an interpretation that is inconsistent with those provisions.** An administrative action that is unauthorized or inconsistent with governing legislation is invalid.”

# Today's Action:

## Final Comp Policy Changes

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- Rename to Final Compensation Policy (removing the word “Review”)
- Streamline language for readability and transparency
- Incorporate AB 3025 provisions re: “disallowed compensation”
- Conform to SCERS' Administrative Appeals Policy
- Consolidate pay element chart in appendix into broader categories – no substantive changes other than 7/12 Work Schedule issue

# Final Comp Policy Changes

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Overtime exceptions cited in state law, per Federal Labor Standards Act (FLSA):

- for Legacy members, “FLSA Overtime” under 29 U.S.C. §201; and
- for PEPRA members, only active law enforcement or fire protection employees under 29 U.S.C. §207(k).

# Final Comp Policy Changes

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- No changes for Legacy Members: To the extent that 81<sup>st</sup>-84<sup>th</sup> hours for both Safety and Miscellaneous members are part of regularly scheduled normal working hours, they can remain included in the “compensation earnable” for Legacy members.
- Minor Change for PEPRA Members: Because the PEPRA exception applies to a more limited group, including only sworn officers in active law enforcement or fire protection, SCERS must discontinue inclusion of the 81<sup>st</sup>-84<sup>th</sup> hours as pensionable compensation for non-sworn PEPRA members (i.e. Miscellaneous Tier 5).

# Correction Plan

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1. Direct Sacramento County to discontinue retirement contributions on compensation for the 81<sup>st</sup>-84<sup>th</sup> hours for Miscellaneous Tier 5 members.
2. Notify effected active, deferred, retired members.
3. For active and deferred Miscellaneous Tier 5 members:
  - Refund contributions and interest taken on the 81st-84th hours, on or after April 28, 2019, that total \$25 or more. SCERS will refund contribution amounts less than \$25 upon written request.
  - **Revision from May 21 draft:** Conform to Service Credit Policy that applied to 7/12 work schedules on or after April 28, 2019.

# Correction Plan, continued

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## 3. For retired Miscellaneous Tier 5 members:

- Refund contributions taken on the 81<sup>st</sup>-84<sup>th</sup> hours on or after April 28, 2019, that total \$25 or more. SCERS will refund contribution amounts less than \$25 upon written request.
- Recalculate pension allowances to exclude the 81<sup>st</sup>-84<sup>th</sup> hours from Final Compensation. SCERS will not recover overpayments and instead will recognize the overpayments in the employer's actuarial accrued liability.
- Calculate the actuarial present value of the difference in pension allowances and direct the employer to make a one-time payment of 20% of that amount to the retired members.

## 4. Credit overpaid employer contributions to Sacramento County.

# Correction Plan Impacts

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From January 1, 2013 – March 2025, SCERS identified 81<sup>st</sup>-84<sup>th</sup> hours included as pensionable compensation for Miscellaneous Tier 5 members:

- 400 active employees
  - 5 retired employees
  - 50 deferred members with contributions remaining at SCERS
  - 30 terminated and already refunded contributions (no action needed)
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- ✓ Population will be reduced with revised effective date of April 28, 2019
  - ✓ Minor impacts anticipated for retirees (\$2-10/monthly reduction)
  - ✓ New “disallowed compensation” penalty paid by employer





# FINAL COMPENSATION POLICY

## PURPOSE

The purpose of this policy is to establish standards and procedures for an assessment of the final compensation of a retiring member that will be used to calculate that member's retirement allowance.

## POLICY

At retirement, members are entitled to a calculation of their final compensation as part of determining their monthly retirement allowance. In making this calculation, SCERS staff is authorized to review the member's payroll activity and associated pay elements during their employment and make a determination regarding retirement-eligible compensation in a manner consistent with applicable law.

## STANDARDS AND PROCEDURES

### 1. Retirement-Eligible Compensation

A summary of compensation or pay elements that are included in and excluded from final compensation is provided in the Appendix to this policy. For consideration under this policy, compensation and pay elements must be included in an employer's publicly available pay schedules, labor agreements, or governing body resolutions.

### 2. Review of Proposed Additional or New Compensation or Pay Elements

Employers or authorized employee representatives are encouraged to submit to SCERS' Chief Executive Officer (CEO) for review any proposed additional or new compensation or pay elements intended to form the basis for retirement-eligible compensation determinations at least thirty (30) days prior to implementation. Upon receipt of all necessary supporting documentation to complete SCERS' review, in accordance with applicable law, the CEO will issue an Administrative Decision pursuant to SCERS' Administrative Appeals Policy.

### 3. Staff Review, Assessment and Determination of Retirement-Eligible Compensation

- a. Upon receipt of a member's application for retirement, SCERS staff will review payroll activity and associated pay elements to identify any items that may have been paid or manipulated to enhance a member's retirement benefit utilizing the following non-exclusive criteria:

- i. whether there was a substantial increase in final average compensation compared to prior years;
- ii. whether there was an increase due to payments unavailable or not provided to similarly situated employees of the member's employer;
- iii. whether there was an increase due to a conversion to a case payment of a benefit previously provided in-kind to the member or paid to a third party on the member's behalf;
- iv. whether there was an inconsistent use of special pay items at or near the end of the member's career;
- v. whether there was use of a special pay item for a job classification or grade that includes only one employee ("class-of-one" pay items);
- vi. whether there was an increase due to any significant change in the member's elements of compensation; or
- vii. any other factor that may be relevant to staff's determination.

SCERS may request additional information from the member, the employer, or both in order to assist its review, assessment and determination.

- b. If SCERS initially determines there is evidence that compensation or pay elements may have been paid or manipulated to enhance a member's retirement benefit, the member and the employer will be notified and given the opportunity to submit additional information to rebut the assessment within fifteen (15) days of the notice. SCERS staff will re-assess the determination within fifteen (15) days of receipt of any such additional information from the member or employer. The CEO may extend these timeframes upon request.
- c. Following any review, assessment or re-assessment, and final SCERS staff determination regarding payroll activity and associated pay elements to identify any items that may have been paid or manipulated to enhance a member's retirement benefit:
  - i. if staff concludes that compensation or pay elements were paid or manipulated to enhance a member's retirement benefit, notice will be provided to the member and the employer, and the member may appeal the determination to SCERS' Chief Benefits Officer as an Administrative Decision pursuant to SCERS' Administrative Appeals Policy; or
  - ii. if staff concludes that compensation or pay elements were not paid or manipulated to enhance a member's retirement benefit, notice will be provided to the member and the employer, and the compensation or pay elements will be included in the member's benefit calculation.
- d. To avoid delay in the payment of the member's retirement benefit, in all cases where review, assessment and determination of retirement-eligible compensation is undertaken pursuant to this policy, SCERS staff will calculate the retirement benefit without the compensation or pay element under scrutiny and place the member on retiree payroll as soon and so long as all other necessary documents are received by SCERS. Upon final resolution of the review, assessment and

determination procedure (including any administrative appeals and/or court actions), if benefit payments are adjusted to include compensation or pay elements that were initially excluded from the member's benefit calculation, the member will be made whole retroactively for any unpaid retirement benefits.

- e. Members retiring from a reciprocal retirement system shall also be subject to this review process. Staff shall review for and exclude impermissible pay elements even if paid by an employer of a reciprocal retirement system and accepted by such reciprocal system.

## APPENDIX

Categories and descriptions of included and excluded compensation and pay elements.

## AUTHORITY

California Government Code Sections 7522.32, 7522.34

California Government Code Sections 31541.2, 31542, 31461, 31462, 31462.1

## RESPONSIBILITIES

Executive Owner: Chief Benefits Officer

## POLICY HISTORY

Date	Description
08/20/2025	Board approved amendments conforming to Board Order of May 21, 2025
05/21/2025	Board reviewed discussion draft
10/21/2020	Board approved amendments conforming to Board Order of September 16, 2020
10/17/2018	Board approved policy in revised format
2017 Calendar Year	<i>Member Handbook for Members Hired Before January 1, 2013, Appendix A: Summary of Pension–Eligible Pay Elements</i>
2017 Calendar Year	<i>Member Handbook for Members Hired Before January 1, 2013, p. 41: Final Compensation Review</i>
2015 Calendar Year	Updated Memo re “CalPEPRA and Final Compensation Review at SCERS”
08/19/2015	Board Materials for Agenda Item 17: Memo re “Proposed Amendment to the Final Compensation Review Process Mandated by CalPEPRA”
02/20/2013	Board Materials for Agenda Item 16: Memo re “Review of Final Compensation Pay Elements”
12/19/2012	Board Materials for Agenda Item 14: Memo re “Implementation of AB 340 and AB 197”



## Final Compensation Policy: Appendix

Categories and descriptions of included and excluded compensation and pay elements

Category	Description	Included?
Base pay	Compensation for services worked within normal working hours.	Yes
Leave usage	Paid leave for authorized absence from work, including vacation, sick, compensating time off (CTO), holiday-in-lieu, management leave, and administrative time off.	Yes
Disability Pay - Leave Balance Integration	Compensation for leave balances that are integrated with state disability.	Yes
Workers' Compensation Benefits	Compensation for workers' compensation benefits that are integrated with existing leave balances. This also includes "4850 Time," which is paid for up to one year in lieu of temporary disability for Safety personnel in accordance with Labor Code Section 4850.	Yes
Overtime	Overtime compensation, allowances for services worked in excess of normal working hours, and the portion of differentials, allowances, or other incentives that include overtime, CTO-expired, and CTO-over-max.	No
7/12 Schedules (81st-84th hours)	Compensation paid for "7/12" work schedules (Seven, 12-hour shifts, or 84 hours, per bi-weekly period).	Yes, for Legacy Tiers and PEPPRA Safety Tiers (for those members in active fire protection or active law enforcement) Only
24-Hour Shift Schedules	Compensation paid for contractual overtime to firefighters who work 24-hour shift schedules.	Yes, for Safety Tiers Only

Differentials, Special Pays, and Other Allowances	Additional compensation applied uniformly across the class or group. This includes compensation for performing work considered to be out of or in addition to the class, shift differentials, possession of educational degrees or professional certifications, assignment differentials paid as a percentage of base pay or flat rate, longevity pay, auto allowances, and clothing and equipment allowances. Note: This does not include animal allowances paid as compensation for services outside of normal working hours.	Yes, for Legacy Tiers Only
Leave payouts - active employment	Leave balances that are paid out as compensation pursuant to labor agreement or employer policy. This includes vacation paid over the maximum accrual, vacation cash-in, holiday-in-lieu cash-in over the maximum accrual, and management leave cash-out. Note: Payouts cannot exceed the maximum permitted in a single calendar year (or fiscal year, as applicable) under labor agreement or employer policy, resulting from a designated final compensation period that straddles two calendar years (or fiscal years, as applicable).	Yes, for Legacy Tiers Only
Leave payouts - terminal pay	Accumulated leave balances converted to compensation and paid to an employee upon separation from employment. This includes vacation, holiday in lieu, CTO, and other leave payouts.	No
Standby Pay/On Call Pay	Compensation paid to employees assigned to remain on call or on "standby" outside of normal working hours if the need arises for emergency work.	No
One-time payments	Additional compensation provided in labor agreements or employer policy, applied uniformly to all members of the class, including bonuses, and recruitment and retention pay.	Yes, for Legacy Tiers Only
Insurance Subsidy/Health Waiver	Cash payment of the amount of the employer contribution towards health insurance over the premium amount. Note: This does not include the "insurance subsidy offset," an amount paid in January of each year to refund overpaid Social Security tax on an employee's health insurance subsidy from the prior year. The "insurance subsidy offset" is excluded.	Yes, for Legacy Tiers Only



# **FINAL COMPENSATION REVIEW POLICY**

## **PURPOSE**

This policy reviews the authorities and standards that Staff relies on to assess the final average salary of a retiring member and exclude any elements of compensation that are paid to enhance a member's retirement, as required by the California Public Employees' Pension Reform Act of 2013 (PEPRA).

## **OBJECTIVE**

This policy affirms the administrative process devised and applied by staff in response to Government Code § 31542, which PEPRA added to the County Employees Retirement Law of 1937. Section 31452 requires the Board to (1) establish procedures to assess the elements of compensation considered in individual retirement calculations and (2) disregard any element that is found to enhance the member's retirement benefit before finalizing the individual payment amount:

The board shall establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit. If the board determines that compensation was paid to enhance a member's benefit, the member or the employer may present evidence that the compensation was not paid for that purpose. Upon receipt of sufficient evidence to the contrary, a board may reverse its determination that compensation was paid to enhance a member's retirement benefits.

[Government Code § 31542(a)]

## **POLICY**

Members whose retirement effective dates occur on and after January 1, 2013 have their payroll activity reviewed when Final Compensation is calculated. Pursuant to Government Code sections 31542(a) and 31461(b), Staff shall review individual pay elements for compensation "paid to enhance a member's retirement benefit." . If Staff determines that any pay elements or elements have been paid to enhance the member's retirement benefit, then Staff recommends exclusion of the element(s) from Final Compensation and submits the matter to the Board of Retirement for final resolution. Members retiring from a reciprocal retirement system shall also be subject to this review process. Staff shall review for and exclude impermissible pay elements even if paid by an employer of a reciprocal retirement system and accepted by such reciprocal system.

## APPLICATION

### Retirement-Eligible Compensation

For those members who enrolled in a California public retirement system prior to January 1, 2013 (also known as legacy members), compensation can include base salary plus other differentials, allowances, incentives and other pay elements, depending on the member's job classification, grade or status, and possibly, the member's participation in a given bargaining unit.

As a general rule, a compensation element paid in cash in the normal course of regular employment is considered in the calculation of the legacy member's pension benefit. This includes payments received, while working, related to the cash-out of accrued vacation leave by members permitted to sell-back leave.

There are exceptions to this general rule, however, and some payments are not considered when calculating a pension, for example: (1) Payments for overtime; and (2) Payments made at and associated with the termination of employment ('terminal pay'). In addition, payments related to the cash-out of accrued leave in any year are limited to the amount of leave the member can accrue in one year.

For those members who enrolled in a California public retirement system on or after January 1, 2013 (also known as PEPRA or CalPEPRA members), compensation is generally limited to base salary.

A summary of the compensation or pay elements that are included in and excluded from Final Compensation is provided as appendices to this policy. The exclusions described in the appendices should be understood to also exclude any other compensation derived from or based on the same underlying activity. For example, the exclusion of standby pay should be understood to also exclude differential pay for standby time.

### Final Compensation Standard of Review

The review process mandated by PEPRA and addressed by this policy focuses on why a pay element is provided – that is, whether it is provided for the purpose of enhancing the member's retirement benefit. If an otherwise eligible pay element meets that criterion, then it is still to be paid to the member, but not considered for pension purposes.

A situation where a pay element may be excluded under the PEPRA standard would be where the compensation was previously provided in-kind or paid to a third party on behalf of the member, but converted to a cash payment to the member in the final average salary period – for example, if a member previously had a car provided by the employer but shifted to a cash car allowance, or if the employer previously paid a health insurance company for health care coverage for the member but the member subsequently opted to receive a cash-back payment instead.

Other examples where the PEPRA standard may result in a pay element being excluded would be: (1) A one-time or ad hoc payment not given to similarly situated members in the same job classification or grade; or (2) Severance or separation pay received by the member



prior to the termination of employment.

### Final Compensation Review Process

The Final Compensation review starts once SCERS receives a retirement application and occurs at the same time as many other tasks that are required to process the application.

All pay elements in the final average salary period undergo the required review. However, the scope of review corresponds to the degree to which compensation in the final average salary period exceeds the compensation prior to that period and/or the nature of the pay element(s) in question. A small increase in compensation in the final average salary period and/or common, widespread pay elements require less review. A larger increase in compensation or an unusual or isolated pay element requires more review.

In some cases, SCERS requires additional information to complete the assessment of a pay element. Depending on the item of concern, SCERS may request information from the employer, the member or both to reach a determination.

If SCERS determines there is evidence that a pay element may have been provided for the purpose of enhancing the applicant's retirement benefit, then the applicant and the employer are notified and given an opportunity to submit additional information to rebut that assessment. At all times, the applicant and the employer bear the burden of proving that a pay element was provided for permissible reasons and not for pension-enhancement, including the burden of providing documentary evidence. Take, for example, an applicant who previously accepted an in-kind benefit from an employer (e.g., a vehicle or health care coverage) and who opted in the final compensation period to accept a cash payment instead. Such an applicant must prove that a new, previously unavailable opportunity or other change in circumstances made the in-kind benefit unnecessary or otherwise inappropriate. As part of such proof, the member must provide comprehensive documentary evidence substantiating the claimed change in circumstances (including but not limited to an affidavit). SCERS reserves the right to consider any failure to provide such comprehensive evidence a failure to meet the burden of proof.

If it is still believed that the pay element is provided to enhance the applicant's retirement benefit, and the applicant chooses not to contest that decision, SCERS will exclude the pay element(s) in question and finalize the retirement benefit calculation. If the applicant chooses to contest the recommendation, then the matter will be presented to the SCERS Board for final determination on whether the pay element should be excluded from the calculation of the retirement benefit.

The SCERS Board will consider the matter in open session at the next scheduled SCERS Board Meeting. The retirement applicant and/or the employer will have an opportunity to submit additional written information, and the SCERS Board will make its determination on the written record.

If the SCERS Board determines that a pay element must be excluded from the Final Compensation used to calculate the retirement benefit, then the employer and the retirement applicant will be so notified, and will have an opportunity to seek review of the decision by a court of law.

### Distribution of Initial Benefit Payment

The final compensation review process need not delay the first benefit payment. However, the amount of the first payment (and, if necessary, subsequent benefit payments) can be limited if the Final Compensation review process is not concluded (without issue) before the first payment is processed by SCERS.

The key factor in whether the amount of the first payment may be impacted by the Final Compensation review is the length of time between when the retirement application is submitted and the date of retirement. The earlier the retirement application is submitted relative to the retirement date, the more time there is to conduct the required Final Compensation review, and the greater the likelihood that the review will be completed by the time all the other necessary steps have been taken to issue the first benefit payment.

If there is insufficient time to complete the Final Compensation review prior to issuance of the first benefit payment, then a 'hold-back' amount based on the pay element(s) under review will be applied to the first benefit check, and if necessary, to subsequent benefit payments until a determination has been made regarding Final Compensation.

While the amount of a potential hold-back will vary, members should consider the possibility that initial (and possibly subsequent) benefit payments could be less than the benefit estimates they have received, and members should assess how the possibility of a reduced benefit could impact their decision to retire and/or the timing of submission of the retirement application relative to the date of retirement. SCERS will not review compensation elements and/or advise members whether particular pay elements might be excluded prior to the submission of a retirement application.

When necessary, benefit payments are adjusted after the review is completed. If all potential pay elements are included in Final Compensation, then subsequent benefit payments will reflect the higher benefit and include any retroactive amounts associated with the initial hold-back. If SCERS determines that a pay element must be excluded from Final Compensation, then the reduced benefit payment and the corresponding 'hold-back' will become permanent and final. If the retirement applicant or the employer elect to contest that decision in court, the benefit payments will continue to include the hold-back unless/until there is a final court ruling that the pay element be included in the retirement calculation.

### **BACKGROUND**

With the enactment of PEPRA, the Legislature effected significant changes and reforms for governmental defined benefit plans in California. Included among these changes was a recognition that retirement boards have both the authority and the obligation to monitor a wider range of employer activities than they have in the past.

The Final Compensation process reviewed in this policy arose from an implementation memo from the former Chief Executive Officer (which the Board of Retirement discussed during their December 19, 2012 meeting) and was effected with the delivery of a subsequent memo regarding "Review of Final Compensation Pay Elements" (which the Board of

Retirement discussed and approved during their February 20, 2013 meeting). Since that time, the guidance available to members and participating employers of SCERS has expanded to include a publication regarding “CalPEPRA and Final Compensation Review at SCERS” (which was last updated during the 2015 calendar year) and a Member Handbook for legacy members (which was released during the 2017 calendar year). This policy affirms and provides a consolidated document of the longstanding practice reflected in those materials.

## APPENDICES

- 1- Legacy Members (Entry Dates Before January 1, 2013)
- 2- PEPRA Members (Entry Dates After December 31, 2012)

## RESPONSIBILITIES

Executive Owner: Chief Benefits Officer

## POLICY HISTORY

Date	Description
10-21-2020	Board approved amendments conforming to Board Order of September 16, 2020
10-17-2018	Board approved policy in revised format
2017 Calendar Year	<i>Member Handbook for Members Hired Before January 1, 2013, Appendix A: Summary of Pension–Eligible Pay Elements</i>
2017 Calendar Year	<i>Member Handbook for Members Hired Before January 1, 2013, p. 41: Final Compensation Review</i>
2015 Calendar Year	Updated Memo re “CalPEPRA and Final Compensation Review at SCERS”
08-19-2015	Board Materials for Agenda Item 17: Memo re “Proposed Amendment to the Final Compensation Review Process Mandated by CalPEPRA”
02-20-2013	Board Materials for Agenda Item 16: Memo re “Review of Final Compensation Pay Elements”
12-19-2012	Board Materials for Agenda Item 14: Memo re “Implementation of AB 340 and AB 197”

APPENDIX 1 -  
Legacy Members (Entry Dates Before January 1, 2013)

Earnings Type	Description	Included*	Excluded
Regular Earnings	Paid for hours worked	X	
One Time Bonus Payment	Payments normally made once a year as a result of bargaining	X	
Overtime - includes CTO Expired and CTO-over-max	Paid for hours worked in excess of normal work schedule; includes the portion of differentials, allowances, or other incentives that include overtime, CTO-expired, and CTO-over-max		X**
7/12 Work Shift	Paid for regular work schedule of 12 hours per day; 84 hours per bi-weekly pay period	X	
Extra-help wages	Paid to employees who are not regular (permanent) county employees		X
Holiday-in-lieu paid after 104.0 hours	Paid for hours over the maximum of 104.0	X	
Workers' Compensation Temporary Disability	Paid Workers' Compensation benefits integrated with existing leave balances for employees who have an accepted industrial injury and are temporarily disabled	X	
State Disability Integration	Paid State Disability benefits integrated with existing leave balances for employees who are temporarily disabled	X	
Shift Differential	Paid to employees working other than the day shift	X	
Standby Pay	Paid to employees assigned to remain on call outside of normal working hours worked by persons in the same grade or class of positions if the need arises for emergency work		X**
Food Allowance	Paid to employees hired or transferred into food service prior to July 1971 represented by Health Services Unit	X	
Terminal Pay – vacation, holiday in lieu, CTO, and leave payout	Accumulated leave balances paid to an employee upon separation from employment.		X
Special Pay Allowances	Additional pay for performing work considered to be out of or in addition to the class	X	
Incentive Pay Allowances	Additional pay for possession of educational degrees or required certificates	X	
Miscellaneous Allowances	Assignment differentials paid as a percentage of base pay	X	
Management Differential	Additional pay to managers in lieu of other benefits, i.e., tuition reimbursement	X	
Transcription Fees for court reporters	Paid to court reporters to transcribe their cases		X
Retirement Offset	Additional pay for certain employees in-lieu of the county paying ½ retirement contributions	X	
Leave Balance Usage (vacation, compensating time off (CTO), holiday in-lieu, sick leave, etc.)	Paid leave for authorized absence from work	X	

APPENDIX 1 -  
Legacy Members (Entry Dates Before January 1, 2013)

Earnings Type	Description	Included*	Excluded
Vacation Cash-In	Vacation cash-in in excess of the maximum permitted in a single calendar year (or fiscal year, as applicable) under the member's labor agreement or employer policy, resulting from a designated final compensation period that straddles two calendar years (or fiscal years, as applicable)		X**
Payoff Beyond Maximum Accrual	Additional pay for vacation or holiday-in-lieu hours over the maximum accrual	X	
Mental Health Retention	Paid to employees who work at the mental health facility	X	
Disability Pay	Additional pay that, when combined with Workers' Compensation Disability Pay, equals 50% of an employee's bi-weekly pay	X	
4850 Time Pay	Paid for up to one year, tax free, in lieu of temporary disability for Safety personnel in accordance with Labor Code Section 4850	X	
Clothing Allowance	Paid to employees for the cost of maintaining a uniform	X	
Equipment Allowance	Paid to reimburse employees who are required to provide their own equipment; i.e., court reporters	X	
Animal Allowance	Paid to employees for the ordinary care and informal training of canines in overtime or outside of regularly scheduled hours		X**
Insurance Subsidy	Cash payment of the amount of the county contribution towards health insurance over the premium, less the cost of social security	X	
Fair Labor Standards Act Adjustment	Differential paid when the value of overtime per FLSA guidelines is greater than that negotiated		X***
Insurance Subsidy Offset	An amount paid in January of each year to refund the social security reduction of the health insurance subsidy to employees who were at social security maximum		X**
Auto Allowance	Payment for use of personal vehicle for county business	X	

\* Compensation can be excluded if: (a) Board of Retirement determines compensation had been paid to enhance retirement benefits, (b) compensation had previously been provided in kind and converted to cash payment in the final compensation period; (c) any one-time or ad-hoc payment made to a member, but not to similarly situated members in the member's grade or class, and (d) any payment for unused leave balances that exceed what may be earned in each 12-month period during the final compensation period.

\*\* Effective for all Legacy members who retired, or will retire, on and after January 1, 2013, pursuant to Government Code section 31461(b)(3) and *Alameda County Deputy Sheriff's Association, et al. v. Alameda County Employees' Retirement Association, et al.*, 9 Cal.5th 1032 (2020)

APPENDIX 1 -  
Legacy Members (Entry Dates Before January 1, 2013)

Earnings Type	Description	Included*	Excluded
*** Per prior, written agreement, one exception has been established to the standard exclusion of the pay element reserved for FLSA adjustments. That exception is the additional "half rate" payable for 12 hours of contractual overtime to members who work 24-hour schedules.			

APPENDIX 2 -  
PEPRA Members (Entry Dates After December 31, 2012)

Earnings Type	Description	Included*	Excluded
Regular Earnings	Paid for hours worked	X	
7/12 Work Shift	Paid for regular work schedule of 12 hours per day; 84 hours per bi-weekly pay period	X	
Workers' Compensation Temporary Disability	Paid Workers' Compensation benefits integrated with existing leave balances for employees who have an accepted industrial injury and are temporarily disabled	X	
State Disability Integration	Paid State Disability benefits integrated with existing leave balances for employees who are temporarily disabled	X	
Leave Balance Usage (vacation, compensating time off (CTO), holiday in-lieu, sick leave, etc.)	Paid leave for authorized absence from work	X	
Disability Pay	Additional pay that, when combined with Workers' Compensation Disability Pay, equals 50% of an employee's bi-weekly pay	X	
4850 Time Pay	Paid for up to one year, tax free, in lieu of temporary disability for Safety personnel in accordance with Labor Code Section 4850	X	
Animal Allowance	Paid to employees for the ordinary care and informal training of canines in overtime or outside of regularly scheduled hours		X**
One Time Bonus Payment	Payments normally made once a year as a result of bargaining		X
Overtime - includes CTO Expired and CTO-over-max	Paid for hours worked in excess of normal work schedule; includes the portion of differentials, allowances, or other incentives that include overtime, CTO-expired, and CTO-over-max		X
Extra-help wages	Paid to employees who are not regular (permanent) county employees		X
Holiday-in-lieu paid after 104.0 hours	Paid for hours over the maximum of 104.0		X
Shift Differential	Paid to employees working other than the day shift		X
Standby Pay	Paid to employees assigned to remain on call outside of normal working hours worked by persons in the same grade or class of positions if the need arises for emergency work		X
Food Allowance	Paid to employees hired or transferred into food service prior to July 1971 represented by Health Services Unit		X
Terminal Pay – vacation, holiday in lieu, CTO, and leave payout	Accumulated leave balances paid to an employee upon separation from employment.		X
Special Pay Allowances	Additional pay for performing work considered to be out of or in addition to the class		X
Incentive Pay Allowances	Additional pay for possession of educational degrees or required certificates		X

APPENDIX 2 -  
PEPRA Members (Entry Dates After December 31, 2012)

Earnings Type	Description	Included*	Excluded
Miscellaneous Allowances	Assignment differentials paid as a percentage of base pay		X
Management Differential	Additional pay to managers in lieu of other benefits, i.e., tuition reimbursement		X
Transcription Fees for court reporters	Paid to court reporters to transcribe their cases		X
Retirement Offset	Additional pay for certain employees in-lieu of the county paying ½ retirement contributions		X
Vacation Cash-In	Vacation cash-in in excess of the maximum permitted in a single calendar year (or fiscal year, as applicable) under the member's labor agreement or employer policy, resulting from a designated final compensation period that straddles two calendar years (or fiscal years, as applicable)		X
Payoff Beyond Maximum Accrual	Additional pay for vacation or holiday-in-lieu hours over the maximum accrual		X
Mental Health Retention	Paid to employees who work at the mental health facility		X
Clothing Allowance	Paid to employees for the cost of maintaining a uniform		X
Equipment Allowance	Paid to reimburse employees who are required to provide their own equipment; i.e., court reporters		X
Insurance Subsidy	Cash payment of the amount of the county contribution towards health insurance over the premium, less the cost of social security		X
Fair Labor Standards Act Adjustment	Differential paid when the value of overtime per FLSA guidelines is greater than that negotiated		X***
Insurance Subsidy Offset	An amount paid in January of each year to refund the social security reduction of the health insurance subsidy to employees who were at social security maximum		X
Auto Allowance	Payment for use of personal vehicle for county business		X

\* Compensation can be excluded if: (a) Board of Retirement determines compensation had been paid to enhance retirement benefits, (b) compensation had previously been provided in kind and converted to cash payment in the final compensation period; (c) any one-time or ad-hoc payment made to a member, but not to similarly situated members in the member's grade or class, and (d) any payment for unused leave balances that exceed what may be earned in each 12-month period during the final compensation period.

\*\* Effective for all PEPRA members who retired, or will retire, on and after January 1, 2013, pursuant to Government Code section 31461(b)(3) and *Alameda County Deputy Sheriff's Association, et al. v. Alameda County Employees' Retirement Association, et al.*, 9 Cal.5th 1032 (2020)

\*\*\* Per prior, written agreement, one exception has been established to the standard exclusion of the pay element reserved for FLSA adjustments. That exception is the additional "half rate" payable for 12 hours of contractual overtime to members who work 24-hour schedules.





## ITEM 14

### Executive Staff

Richard Stensrud  
Chief Executive Officer

Scott Chan  
Chief Investment Officer

Kathryn T. Regalia  
Chief Operations Officer

John W. Gobel, Sr.  
Chief Benefits Officer

**For Agenda of:**  
December 19, 2012

December 14, 2012

**TO:** President and Members  
Board of Retirement

**FROM:** Richard Stensrud  
Chief Executive Officer

**SUBJECT:** Implementation of AB 340 and AB 197

### **Recommendation:**

**That your Board approve the recommended implementation parameters for determining, effective January 1, 2013, what will count as retirement-eligible compensation for current SCERS members ('compensation earnable') and for new members under the new CalPEPRA tiers ('pensionable compensation'), and adopt the proposed resolutions that identify the pay codes for the pay elements that qualify as compensation earnable and pensionable compensation, respectively.**

### **Background:**

As your Board is aware, on September 12, 2012, the Governor signed into law AB 340 and AB 197, collectively known as the California Public Employees' Pension Reform Act of 2013 (CalPEPRA). Among other things, effective January 1, 2013, CalPEPRA requires that SCERS and its participating employers implement new benefit tiers for new Miscellaneous and Safety members hired on or after that date, with those tiers subject to a lower benefit formula, a cap on the annual amount of compensation used to calculate retirement benefits, greater cost sharing by members, and new rules regarding the type of compensation that will be considered retirement benefit-eligible. CalPEPRA also imposes rules regarding the compensation that will be considered retirement-eligible for current members of the retirement system.

You will further recall that although there were a number of hearings and much discussion on the subject matter of the legislation, the bill itself was introduced very late in the legislative session, and interested parties had no opportunity to pursue possible changes and/or clarification in the provisions of the legislation before it was voted on. As a result, since CalPEPRA's passage, there has been extensive analysis and discussion by public retirement systems and their stakeholders regarding the appropriate interpretation of the provisions of the law. There has also been considerable discussion about potential additional legislation to 'correct' and/or 'clarify' elements of CalPEPRA. However, unless and until such legislation is adopted, SCERS and other public retirement systems subject to CalPEPRA must interpret and implement the law as it currently stands.

At the Special Board Meeting on December 5<sup>th</sup>, your Board adopted employer and employee contribution rates and the implementation methodology for the new CalPEPRA tiers for new members hired on or after January 1, 2013. At the Board Meeting on December 19<sup>th</sup> your Board is being asked to approve the recommended implementation parameters for determining the pay elements that will count as retirement-eligible compensation for current SCERS members and for new members under the new CalPEPRA tiers. Under both CalPEPRA and the County Employees Retirement Law of 1937 (1937 Act), this decision is vested with your Board.

For current SCERS members, retirement-eligible compensation is governed by provisions in the 1937 Act and is referred to as 'compensation earnable.' The 1937 Act provisions on compensation earnable and retirement-eligible compensation were somewhat modified by CalPEPRA. For new SCERS members hired on or after January 1, 2013, retirement-eligible compensation is governed by new provisions added by CalPEPRA and is referred to as 'pensionable compensation.'

The discussion that follows will outline the recommended implementation parameters for the two retirement-eligible compensation determinations. Proposed resolutions that identify the pay codes that qualify, respectively, as compensation earnable and pensionable compensation are attached. Please note that the recommended implementation parameters and proposed resolutions mirror the CalPEPRA assessment materials that have been publicly available on the SCERS website for the last few months, as well as the materials and information presented at meetings during that period with bargaining units and participating employers.

Finally, this memorandum will briefly discuss the responsibility placed on retirement systems by CalPEPRA to determine whether an otherwise eligible element of compensation will be excluded from the retirement benefit calculation because it was paid for the purpose of enhancing the retirement benefit (i.e. whether it constitutes 'pension spiking'). Please note that no action is being requested of your Board at this time regarding this responsibility. Rather, it is anticipated that this topic will be addressed in more detail at an upcoming Board Meeting.

## **Discussion:**

As will be seen in the discussion that follows, establishing the appropriate parameters for pensionable compensation (for new members joining SCERS on or after January 1, 2013) is more complex than establishing the appropriate parameters for compensation earnable (for current members). Before addressing the specific parameters, however, it is important to keep in mind the context surrounding the passage and signing into law of CalPEPRA, as this is relevant for interpreting and implementing the statutory provisions.

As your Board is well aware, the subject of and perceived need for ‘pension reform’ received an increasing level of attention over the last few years from virtually all public retirement system stakeholders, including employers, employees and taxpayers. The rationale for making changes to existing public employee retirement plans varied, as did views on the perceived need for change, the appropriate scope of change, and how those changes should be accomplished. While a number of options were considered in the development of CalPEPRA, in the end, the approach actually taken in CalPEPRA reflects certain key objectives identified by the legislature. In turn, these key objectives provide the framework for the ‘legislative intent’ that must be considered when interpreting the meaning of specific CalPEPRA provisions.

### **A. Pensionable Compensation for New Members**

An over-arching objective of CalPEPRA is to constrain and limit the cost paid by employers for the retirement benefits for new retirement system participants. One way this is manifested in CalPEPRA is through the lower benefit formulas for new members. A second way this is manifested is through the requirement that members pay at least 50% of the normal cost of the retirement benefits. A third way this is manifested is through the cap on the annual amount of compensation that will be used in calculating retirement benefits. And a fourth way this is manifested is through rules limiting the types of pay elements that will be considered permissible for retirement benefit calculation purposes. As suggested above, this legislative intent impacts the interpretation of the statutory provisions pertaining to pensionable compensation.

A further consideration in interpreting and implementing the CalPEPRA provisions on pensionable compensation is that the CalPEPRA approach and language is based on the Public Employees Retirement Law (PERL) that governs CalPERS, and not the approach and language used in the 1937 Act. Accordingly, when interpreting the CalPEPRA provisions on pensionable compensation, it is necessary to consider how certain terms are defined under the PERL if they are not separately defined under CalPEPRA, and/or if the term is defined under County/participating employer compensation practices and provisions.

Under CalPEPRA, pensionable compensation is defined as the “normal monthly rate of pay or base pay” paid to “similarly situated members of the same group or class of

employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.”

The terms “normal monthly rate of pay” and “base pay” paid “pursuant to publicly available pay schedules” are not defined in CalPEPRA. The term “normal monthly rate of pay” is not used in County compensation practices or provisions and therefore there is no existing definition for the term. However, the term “base pay” is used in County compensation practices and provisions, and refers to only the base salary for a position and not any of the differentials, allowances or incentive payments typically provided to a person in a given job classification. Base pay in County compensation practice is reported in a publicly available pay schedule.

Under the PERL, pensionable compensation consists of two components – “payrate” and “special compensation.” Payrate means the normal monthly rate of pay or base pay paid to similarly situated members pursuant to publicly available pay schedules – i.e., it is identical to the way pensionable compensation is defined under CalPEPRA. Special compensation is “in addition to payrate” and means payments received for special skills, knowledge, abilities, work assignments, work days or hours. Special compensation is limited to that received pursuant to a bargaining agreement or labor policy.

With respect to payrate, the publicly available pay schedule cannot reference another document in lieu of disclosing the full payrate. Accordingly, the provisions of a separate bargaining agreement or labor policy that provides for payment of special compensation are not considered part of payrate. Instead, special compensation is established exclusively by a separate regulation, and is included with payrate only if pensionable compensation is defined to include special compensation.

As noted, under CalPEPRA pensionable compensation does not expressly include special compensation. One of the maxims of statutory interpretation is that the legislature is assumed to be aware of the current meaning of the terms used in legislation, and thus it is presumed they knowingly intended to exclude special compensation from pensionable compensation.

Staff believes that this interpretation is also consistent with the overall legislative objective to lower employer cost, since it limits the pay elements that count for retirement benefit purposes, and on which the employer must make retirement contributions. Further evidence of this legislative intent can be seen in the CalPEPRA provisions that discuss other pay elements that are to be excluded from pensionable compensation.

Specifically, CalPEPRA declares that pensionable compensation does not include:

(1) Any compensation the SCERS Board determines was paid to increase retirement benefits; (2) Compensation previously paid in kind or to a third party on behalf of the employee which was converted to a cash payment to the employee; (3) Any one time or ad

hoc payments; (4) Severance or separation pay received while the person is employed; (5) Payment for unused vacation, annual leave, personal leave, sick leave, or compensatory time off whether paid in lump sum or otherwise; (6) Payments for additional services rendered outside of normal working hours; (7) Any employer-provided allowance, reimbursement or payment such as, but not limited to, for a vehicle, housing or uniforms; (8) Overtime pay; (9) Employer contributions to deferred compensation or defined contribution plans; (10) Any bonus payments; and (11) Any form of compensation the SCERS Board determines is inconsistent with the statutory provision limiting compensation to normal monthly rate of pay or base pay.

Of particular note is the last provision above, which expressly requires exclusion from pensionable compensation of any form of compensation that is inconsistent with limiting pensionable compensation to base pay.

It is Staff's understanding and belief that the interpretation discussed above is consistent with that of CalPERS, in that they have indicated they believe the language of CalPEPRA limits pensionable compensation to base pay and does not include special compensation pay elements. CalPERS has also indicated that they believe restricting pensionable compensation to base pay would protect the pension trust by reducing compensation volatility.

It is Staff's further understanding and belief that other 1937 Act systems have expressed their intent to implement pensionable compensation in the manner described above although it is not known at this time how many systems have actually done so.

Taken as a whole, therefore, Staff recommends that pensionable compensation for new members under CalPEPRA only include base pay as that term is utilized in County compensation practices. Pensionable compensation under CalPEPRA will not include elements of special compensation, and hence the various differentials, allowances and incentives typically paid to a person in a given job classification will not be counted for retirement benefit purposes.

Please note, however, that the recommended implementation of pensionable compensation can change as necessary to address subsequent developments.

For example, while Staff believes that the analysis above is the correct interpretation of the law as it is currently written, it clearly results in the exclusion of pay elements that have typically been deemed part of the regular, recurring compensation upon which retirement benefits have traditionally been based. It could also be argued that the annual cap on total benefit-eligible compensation is the most effective way to control costs. It is possible, therefore, that legislative proposals may be introduced to expand or clarify the definition of pensionable compensation to include more pay elements.

Similarly, it is possible that through collective bargaining or the approval of new labor policies the County and/or other participating employers could decide to modify the definition of base pay in the relevant publicly available pay schedules to include certain skill-based or service-based pay elements. To-date, the County has not indicated any intention/desire to do so, nor have they have expressed any objection to the interpretation and implementation of pensionable compensation as set forth herein. Nevertheless, it is not unreasonable to expect that employers will face pressure to modify definitions of base pay, particularly from bargaining units whose members receive a material level of special compensation elements.

However, unless/until special compensation elements are expressly included in base pay, or subsequent legislation clearly establishes that they should be included in pensionable compensation, Staff believes the implementation presented herein is the approach that is most consistent with the current statutory language and the overall legislative intent. Staff also believes that if a future change is necessary, it will be easier to add pay elements to pensionable compensation (including possibly retroactively) than to remove pay elements that have been incorrectly included. In addition to the recommended approach being correctible, Staff would further note that a short term failure to include pay elements that are subsequently determined to be includable in pensionable compensation is unlikely to harm members in the new CalPEPRA tiers as, by definition, they are new members and generally not eligible and/or unlikely to retire for several years.

#### B. Compensation Earnable for Current Members

In contrast to the analysis of pensionable compensation presented above, the modifications made by CalPEPRA to the 1937 Act provisions regarding compensation earnable will have minimal impact on current SCERS members. This is because SCERS is and has been addressing compensation earnable consistent with the court rulings in the Ventura decision and its progeny, and except as outlined in the discussion below concerning review of final compensation, CalPEPRA leaves the rulings of those decisions intact.

Specifically, under those court cases, base pay and regular, recurring pay elements paid in cash to members in a given job classification – including differentials, allowances and incentives – has qualified as compensation earnable. Under CalPEPRA, this treatment does not change and these pay elements will continue to count for retirement benefit purposes.

Similarly, under those court cases, if a member is entitled to ‘sell-back’ leave while actively employed, the funds received from the sell-back qualify as compensation earnable, provided the total sell-back in a year does not exceed the amount of leave the member can accrue in a year. The determination regarding the categories of members eligible to make an annual leave sell-back is made by the employer. The determination of how much leave can be sold back in a year (subject to the court decision imposed cap) is also made by the

employer. All SCERS' participating employers limit leave sell-backs to levels well below the court decision cap, thus there is no impact from CalPEPRA.

Finally, pursuant to the court rulings, SCERS does not and has not included elements of terminal pay in compensation earnable. That practice will continue under CalPEPRA.

It is recommended, therefore, that SCERS maintain its current practices with respect to the determination of compensation earnable for current members.

#### C. Review of Final Compensation

SCERS has always reviewed final compensation to confirm that it is comprised of permissible pay elements. CalPEPRA mandates an expanded level of review, requiring that SCERS now review the pay elements in final compensation to assess whether an otherwise permissible pay element was paid for the principal purpose of enhancing the member's retirement benefit. If SCERS determines that this has occurred, the pay element is to be excluded from the calculation of the member's retirement benefit.

CalPEPRA does not provide a definition for what would cause a pay element to be considered as being paid for the principal purpose of enhancing the member's retirement benefit. However, CalPEPRA provides some examples of pay elements that could be found to have been made for the principal purpose of enhancing a member's retirement benefit: (1) Compensation previously paid in-kind or to a third party on behalf of the member but converted to cash payment to the member in the final compensation period; (2) A one-time or ad hoc payment not given to similarly situated members in the same grade or class; and (3) Severance or separation pay received by the member while employed (except for permitted leave sell-backs as described above).

Based on the noted examples, in most cases it would appear that regular, recurring pay elements made to all qualified members in the same job classification would not be excluded from final compensation under the CalPEPRA standard. However, that being said, Staff will return to your Board in the near future with a proposed protocol for analyzing final compensation, including guidelines for evaluating pay elements, and the process for reaching a final determination regarding on the potential disqualification of a pay element.

#### **Conclusion:**

Based on the analysis presented above, Staff requests that your Board approve the recommended parameters for determining what constitutes pensionable compensation for new SCERS members and compensation earnable for current SCERS members and adopt the proposed resolutions that identify the pay codes for the pay elements that qualify as pensionable compensation and compensation earnable, respectively.

Implementation of AB 340 and AB 197  
Retirement-Eligible Compensation  
December 17, 2012  
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Please note that a decision on these matters must be made by your Board in order to implement CalPEPRA effective January 1, 2013.

I will be happy to answer any questions you might have.

Respectfully,

Richard Stensrud  
Chief Executive Officer

Attachment



**RESOLUTION NO. SCERS 2012-20**

**RESOLUTION OF THE BOARD OF RETIREMENT  
OF THE SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM  
APPROVING EMPLOYER PAY CODES OF EMPLOYEE COMPENSATION  
INCLUDED IN COMPENSATION EARNABLE**

**WHEREAS**, the Sacramento County Employees' Retirement System ("SCERS") Board of Retirement ("BOARD") is required by Government Code section 31461 to determine *compensation earnable*;

**WHEREAS** *compensation earnable* is used to determine final compensation and retirement benefits pursuant to Government Code section 31462.1 et al.;

**WHEREAS**, this resolution is intended to comply with the requirements of the Internal Revenue Code of 1986, as amended or replaced from time to time and the regulations issued thereunder (the "Code") as applicable; and

**THEREFORE BE IT RESOLVED**, that effective as of January 1, 2013, the following action is authorized:

The BOARD determines and approves the following employer pay codes of employee compensation, set out by separate attachment for each SCERS employer, as *compensation earnable*. See Exhibit 1.

On motion made by Member \_\_\_\_\_, Seconded by Member \_\_\_\_\_, the foregoing Resolution was passed and adopted by the Board of the Sacramento County Employees' Retirement System this 19th day of December, 2012, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

\_\_\_\_\_  
Secretary of the Board of the  
Sacramento County Employees'  
Retirement System

\_\_\_\_\_  
President of the Board of the  
Sacramento County Employees'  
Retirement System

**RESOLUTION NO. SCERS 2012-21**

**RESOLUTION OF THE BOARD OF RETIREMENT  
OF THE SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM  
APPROVING EMPLOYER PAY CODES OF EMPLOYEE COMPENSATION  
INCLUDED IN PENSIONABLE COMPENSATION**

**WHEREAS**, the Sacramento County Employees' Retirement System ("SCERS") Board of Retirement ("BOARD") is required by Government Code section 7522.34 to determine *pensionable compensation* for those members who became active members for the first time on or after January 1, 2013, and who are subject to the California Public Employees' Pension Reform Act of 2013 ("PEPRA");

**WHEREAS** *pensionable compensation* is used to calculate final compensation and other retirement benefits pursuant to PEPRA;

**WHEREAS** Government Code section 7522.34 defines *pensionable compensation* as:

"...the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules";

**WHEREAS** the Board has analyzed each current pay item and has determined whether or not those items should be included in *pensionable compensation*;

**WHEREAS** the Board may find it necessary from time to time to amend its determinations based on changes made by employers, the Legislature, and the Courts;

**WHEREAS**, this resolution is intended to comply with the requirements of the Internal Revenue Code of 1986, as amended or replaced from time to time and the regulations issued thereunder (the "Code") as applicable; and

**THEREFORE BE IT RESOLVED**, that effective as of January 1, 2013, the following action is authorized:

1. For purposes of calculating the retirement allowance for those members who became active members for the first time on or after January 1, 2013, and who are subject to Government Code sections 7522.32 and 7522.34, *pensionable compensation* shall be the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.
2. For purposes of section 1, the document entitled County of Sacramento Alpha Class Table, as may be amended and updated from time to time, shall be deemed to be the "publicly available pay schedule" for members employed by the County of Sacramento and by other SCERS employer members whose employees are covered by the Sacramento County Salary Resolution. For SCERS employer members whose employees are not included in the Sacramento County Salary Resolution, *pensionable compensation* shall be determined with reference to the publicly available pay schedules or publicly posted salary listing maintained by such employers.

On motion made by Member \_\_\_\_\_, Seconded by Member \_\_\_\_\_,  
the foregoing Resolution was passed and adopted by the Board of the Sacramento County  
Employees' Retirement System this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
President of the Board of the  
Sacramento County Employees'  
Retirement System

ATTEST:

\_\_\_\_\_  
Secretary of the Board of the  
Sacramento County Employees'  
Retirement System

**SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM**  
**SUMMARY OF COMPENSATION ELEMENTS CONSIDERED AS COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION**

		SCERS Resolution No. SCERS 97-12 & Ventura Settlement for Compensation Earnable (Prior to 1/1/13)		Current Members Compensation Earnable (Effective 1/1/13)		New Members Pensionable Compensation (Effective 1/1/13)	
Earnings	Description	Included	Excluded	Included*	Excluded	Included	Excluded
Regular Earnings	Hours of work.	X		X		X	
One Time Bonus Payment	Payments normally made once a year as a result of bargaining	X		X			X
Overtime - includes CTO Expired	Hours worked in excess of normal work schedule		X		X		X
7/12 Work Shift	Regular work schedule of 12 hours per day; 84 hours per bi-weekly pay period	X		X		X	
Extra-help wages	Wages paid to employees who are not regular (permanent) county employees		X		X		X
Holiday-in-lieu paid after 104.0 hours	Hours paid over the maximum of 104.0	X		X			X
Workers' Compensation Temporary Disability	Workers compensation benefits integrated with existing leave balances for employees who have an accepted industrial injury and are temporary disabled.	X		X		X	
State Disability Integration	State Disability Integration benefits integrated with existing leave balances for employee who are temporary disabled.	X		X		X	
Shift Differential	Differentials paid to employees working other than the day shift	X		X			X
Standby Pay	An assignment of an employee to remain on call if the need arises for emergency work.	X		X			X
Food Allowance	An allowance paid to employees hired or transferred into food service prior to July 1971 represented by Health Services Unit	X		X			X
Terminal Pay – vacation, holiday in lieu, CTO, and leave payout	Accumulated leave balances paid to an employee upon separation from employment.		X		X		X
Special Pay Allowances	Additional pay for performing work considered to be out of or in addition to the class	X		X			X
Incentive Pay Allowances	Additional pay for possession of educational degrees or required certificates	X		X			X
Miscellaneous Allowances	Assignment differentials based upon a percentage of base pay.	X		X			X

**SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM**  
**SUMMARY OF COMPENSATION ELEMENTS CONSIDERED AS COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION**

		SCERS Resolution No. SCERS 97-12 & Ventura Settlement for Compensation Earnable (Prior to 1/1/13)		Current Members Compensation Earnable (Effective 1/1/13)		New Members Pensionable Compensation (Effective 1/1/13)	
Earnings	Description	Included	Excluded	Included*	Excluded	Included	Excluded
Management Differential	Additional pay paid to managers in lieu of other benefits, i.e., tuition reimbursement	X		X			X
Transcription Fees for court reporters	Monies paid to court reports to transcribe their cases		X		X		X
Retirement Offset	Additional pay for certain employees in-lieu of the county paying ½ retirement contributions	X		X			X
Leave Balance Usage (vacation, compensating time off (CTO), holiday in-lieu, sick leave, etc.)	Payment received for absence from work due to use of leave balances or authorized paid absences.	X		X		X	
Vacation Cash-In	Additional pay for cashing in accrued vacation that does not exceed what may be earned in each 12-month period during the final average salary period.	X		X			X
Payoff Beyond Maximum Accrual	Additional pay for vacation or holiday-in-lieu hours over the maximum accrual	X		X			X
Mental Health Retention	A recruitment differential paid twice a year to employees who work at the mental health facility	X		X			X
Disability Pay	Used in conjunction with Workers' Compensation Disability Pay so that when combined together it equals 50% of the bi-weekly pay.	X		X		X	
4850 Time Pay	Paid in lieu of temporary disability for Safety personnel in accordance with 4850 of the Labor Code – tax free – max one year.	X		X		X	
Clothing Allowance	An allowance paid in two installment to cover the cost of maintaining a uniform	X		X			X
Equipment Allowance	An allowance paid in two installments to reimburse employees who are required to provide their own equipment, i.e., court reporters	X		X			X
Animal Allowance	Payments made to employees assigned as a canine handler for scheduled work of ten (10) hours per month for ordinary care and informal training.	X		X		X	
Insurance Subsidy	Cash payment of the amount of the county contribution towards health insurance over the premium, less the cost of social security.	X		X			X
Fair Labor Standard Act Adjustment	Differential paid when the value of overtime per FLSA guidelines is greater than that negotiated		X		X		X
Insurance Subsidy Offset	An amount paid in January of each year to refund the social security reduction of the insurance subsidy to employees who were at social security maximum.	X		X			X

**SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM**  
**SUMMARY OF COMPENSATION ELEMENTS CONSIDERED AS COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION**

		SCERS Resolution No. SCERS 97-12 & Ventura Settlement for Compensation Earnable (Prior to 1/1/13)		Current Members Compensation Earnable (Effective 1/1/13)		New Members Pensionable Compensation (Effective 1/1/13)	
Earnings	Description	Included	Excluded	Included*	Excluded	Included	Excluded
Vehicle Taxation Earnings	Taxation for the value of a home retention vehicle		X		X		X
Auto Allowance	Payment for use of personal vehicle for county business	X		X			X
<p>*Compensation can be excluded if: (a) Board of Retirement determines compensation had been paid to enhance retirement benefits, (b) compensation had previously been provided in kind and converted to cash payment in the final average salary period; (c) any one-time or ad-hoc payment made to a member, but not to similarly situated members in the member's grade or class, and (d) any payment for unused leave balances that exceed what may be earned in each 12-month period during the final average salary period.</p>							