

SANTA BARBARA COUNTY EMPLOYEES' RETIREMENT SYSTEM

COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION POLICY

I. PURPOSE

Pursuant to the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), the SBCERS Board of Retirement (the "Board") is required to determine elements of member compensation that either constitute "Compensation Earnable" pursuant to Government Code Section 31461 or "Pensionable Compensation" pursuant to Government Code Section 7522.34 for purposes of member benefit calculation. To guide its determinations, the Board has adopted the following policy.

II. OBJECTIVES

1. To provide staff with guidance with respect to the standards and procedures to be employed in reviewing items of compensation pursuant to Sections 31461 and 7522.34 and in making recommendations to the Board for their inclusion or exclusion from pension contributions and calculations.
2. To provide members and employers with information as to the standards employed by the Board in making such determinations.

III. BACKGROUND

PEPRA made many significant changes to the law affecting pension benefits and in particular the calculation of pension benefits for members of a California public retirement system prior to January 1, 2013 ("Legacy Members") and those first becoming members of a California public retirement system after January 1, 2013 ("New Members" or "PEPRA Members"). PEPRA made changes to Section 31461, the definition of Compensation Earnable, the compensation used to calculate the pension of a Legacy Member. PEPRA also added a new statute, Section 7522.34, defining Pensionable Compensation, used to calculate the pension of a PEPRA member.

In order to implement PEPRA, the Board adopted a resolution in December, 2012 designating the County earnings codes it determined to constitute Compensation Earnable, and those that it determined to be Pensionable Compensation. Since that time, the Board has adopted subsequent resolutions making determinations regarding new or revised earnings codes adopted by the County and/or modifying its determinations in light of judicial authority, in particular the case of *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* 9 Cal.5th 1032 (2020) (the "Alameda Decision"). In addition, since 2012, the Board has adopted resolutions

making similar and consistent determinations with respect to earnings codes utilized by its other participating employers.

The following policy describes the process that is followed by SBCERS in making determinations as to whether earnings codes satisfy the definitions of Compensation Earnable and/or Pensionable Compensation. The policy also briefly summarizes some of the substantive law applicable to the Board of Retirement's determinations in order to provide its members and participating employers with a greater understanding of the standards employed by the Board in making those decisions.

IV. POLICIES AND PROCEDURES

The following policies and procedures shall apply to the assessment and determination of whether an element of compensation (as defined under CERL section 31460) meets the definition of compensation earnable or pensionable compensation:

1. To assist the Board in fulfilling its duty to properly classify items of compensation as either compensation earnable or pensionable compensation, staff, with the assistance of SBCERS counsel, shall monitor changes in the law that may impact past determinations of the Board and promptly recommend actions to ensure ongoing legal compliance.
2. Staff will work with participating employers on an ongoing basis to ensure compliance with Board resolutions and legal requirements pertaining to Compensation Earnable and Pensionable Compensation. As part of this process, staff will promptly review new or revised earnings codes implemented by participating employers and make recommendations for inclusion or exclusion from compensation earnable and pensionable compensation. Staff is authorized to make provisional determinations regarding newly adopted pay codes pending Board review and final approval.
3. No less frequently than every five years, staff shall review schedules pertaining to compensation earnable and pensionable compensation in their entirety to ensure that the schedules accurately reflect employer practice and are consistent with legal requirements.
4. As members retire and compensation earnable and pensionable compensation is used to calculate retirement benefits, staff shall review individual elements of compensation to ensure consistency with this policy and the Pension Enhancement Review policy.

**V. SPECIAL CONSIDERATIONS PERTAINING TO COMPENSATION
EARNABLE FOR LEGACY PLAN MEMBERS**

Compensation earnable is subject to the specific provisions of Section 31461 as interpreted by the courts, including the Alameda Decision. Such legal authorities take precedence over any statement of policy by SBCERS, and the following provisions are intended to clarify and explain the actions of SBCERS to follow and implement certain aspects of the statute and not to vary its terms. In addition, whether or not an element of pay constitutes Compensation Earnable, it remains subject to scrutiny and potential exclusion as a payment made to enhance a member's pension, as set forth in the Board's Pension Enhancement Review Policy.

Hours Based Compensation

Overtime compensation, usually but not always defined as hours worked in excess of 40 hours per week (standard week) or 80 hours within a 14 day period if assigned to an alternative work week schedule, is generally excluded from Compensation Earnable. Time worked in excess of these limitations may be included in Compensation Earnable where it is regularly scheduled as part of a member's normal working hours, required by the employer and not voluntary, and where it is similarly worked by members of the same grade or class of employment at the same rate of pay. In determining a member's "grade or class" of employment, reference will be made to the employer official job classifications and applicable Memoranda of Understanding. To be considered part of a member's normal working hours, regularly scheduled overtime and related scheduling policies shall be reflected in a Memorandum of Understanding or other applicable written employment agreement, applicable and evenly applied to members of the established job classification and consistently documented and reported in an approved earnings code. The same standards apply to compensation designated as "on call" or "stand-by" pay.

*Payment for Allowances and Pay for Special Duty Assignments or for Specific
Employment Qualifications*

To the extent not specifically modified by statutory amendments to Section 31461, SBCERS continues to classify compensation received by members for certain cash allowances, for example uniform pay, as Compensation Earnable, as required by *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483 (the "Ventura Decision"). Similarly, SBCERS continues to classify compensation received by members for special duty assignments and for specific employment qualifications, such as pay for meeting educational requirements, location based pay, professional certifications and/or bilingual pay as Compensation Earnable.

Termination Pay and Leave Cash-Outs

Consistent with the PEPRAs amendments to Section 31461, as interpreted by the Alameda Decision, payments received by members for unused leave and other compensation paid

at termination shall be excluded from Compensation Earnable, to the extent it exceeds the amount that may be earned and payable during each 12 month period of the final average salary period. This is consistent with SBCERS historic practice. To the extent a SBCERS employer allows a member to receive cash in lieu of paid leave time during the course of employment, the limitations of Section 31461 regarding the inclusion of such items of pay in Compensation Earnable will be strictly enforced. This includes limiting compensation earnable to the amount that can be earned and paid for each 12 month period of the member's final average salary period.

Lump Sum Payments

Consistent with the PEPRA amendments to Section 31461, lump sum payments to Legacy Members, such as formula based longevity pay (e.g. all employees of a bargaining unit receive \$500 upon completion of 5 years of service), continue to be allowed as an element of Compensation Earnable, but only to the extent that such payments are made to all similarly situated members. Bonus compensation or other compensation paid only to an individual or to certain specified employees are excluded.

**VI. SPECIAL CONSIDERATIONS PERTAINING TO PENSIONABLE
COMPENSATION FOR PEPRA PLAN MEMBERS**

Pensionable Compensation is subject to the specific provisions of Section 7522.34 as those provisions may be interpreted by the courts. Such legal authorities take precedence over any statement of policy by SBCERS, and the following provisions are intended to clarify and explain the actions of SBCERS to follow and implement certain aspects of the statute and not to vary its terms. In addition, whether or not an element of pay constitutes Compensation Earnable or Pensionable Compensation, it remains subject to scrutiny and potential exclusion as a payment made to enhance a member's pension, as set forth in the Board's Pension Enhancement Review Policy.

Hours Based Compensation

Pursuant to the terms of Section 7522.34, time worked in excess of 40 hours per week (standard week) or 80 hours within a 14 day period if assigned to an alternative work week is excluded from Pensionable Compensation with the sole exception of pay provided to certain safety members who work schedules subject to the provisions of 29 U.S.C. Section 207(k). The same considerations apply to exclude on-call or stand-by pay, even if such pay would have met the standards for inclusion pursuant to the definition of Compensation Earnable.

*Payment for Allowances and Pay for Special Duty Assignments or for Specific
Employment Qualifications.*

Pursuant to the terms of Section 7522.34, payment for allowances, for example a uniform allowance, are excluded from Pensionable Compensation. It is the policy of SBCERS to allow pay for special duty assignments and for specific employment qualifications or certifications to be included in Pensionable Compensation. Such items are included as items of Pensionable Compensation because they are items of pay provided to similarly situated members of a job classification, are provided for in collectively bargained Memoranda of Understanding or otherwise described in publicly available pay schedules and because they are not specifically excluded as items of Pensionable Compensation by the terms of Section 7522.34. Further, no published judicial decisions have interpreted PEPPRA with respect to such items of pay. As such, we interpret the law to mean that they are included in Pensionable Compensation, although our interpretation is subject to further legal clarification.

Termination Pay and Leave Cash-outs

Pursuant to the terms of Section 7522.34, such items of pay are excluded from Pensionable Compensation.

Lump Sum Payments

Pursuant to the terms of Section 7522.34, such items of pay are excluded from Pensionable Compensation.

VII. OVERRIDING CONSIDERATION

The prior sections discussing specific items of Compensation Earnable and Pensionable Compensation are not intended to present a comprehensive list of items of pay that may or may not be considered Compensation Earnable or Pensionable Compensation. Each item of pay shall be independently considered and identified by the Board of Retirement as Compensation Earnable or Pensionable Compensation subject to the overriding consideration of maintaining compliance with Sections 31461 and 7522.34 as amended by the legislature and interpreted by the courts. For that reason, neither this policy, nor resolutions adopted by the Board of Retirement pursuant to this policy, is intended to nor shall create vested rights for any member receiving items of compensation designated therein.

VIII. REVIEW

The Board shall review this Policy at least every three years to ensure that it remains relevant and appropriate.

IX. AMENDMENT HISTORY

This Policy was adopted by the Retirement Board on September 22, 2021.