

## **SANTA BARBARA COUNTY EMPLOYEES' RETIREMENT SYSTEM**

### **FELONY FORFEITURE POLICY**

#### **I. PURPOSE**

The California Public Employees' Pension Reform Act of 2013 ("PEPRA") requires forfeiture of "all accrued rights and benefits in any public retirement system" by any public employee convicted of a felony, as of the earliest date of the crime, "for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits."

Gov. Code §7522.72, establishes a procedure for pension forfeiture for any public employee first employed, elected, or appointed to an office before January 1, 2013. Gov. Code §7522.74 establishes a similar procedure for pension forfeiture for any public employee first employed, elected, or appointed to an office after January 1, 2013.

In keeping with this requirement, the Board of Retirement (the "Board") has adopted the following policy.

#### **II. OBJECTIVES**

1. To provide SBCERS staff with direction with respect to the standards and procedures to be employed in the investigation and processing of a felony forfeiture pursuant to Gov. Codes §7522.72 and §7522.74.
2. To provide members and employers with information regarding the process to be utilized by the Board in adhering to the requirements of Gov. Codes §7522.72 and §7522.74.

#### **III. POLICY**

The following policies and procedures shall apply to the review and processing of the forfeiture of retirement benefits, service credit and interest on employee retirement contributions when the requirements of PEPRA are met,

##### **A. Investigation**

Upon notification of an SBCERS member's felony conviction, SBCERS staff will investigate the matter to determine the extent of any retirement benefit forfeiture required by law, if any. Among the information that SBCERS staff will obtain will be the criminal court record, evidence of the commission of the criminal acts, the judgment of conviction, and any other information SBCERS staff believes is necessary to make the determinations required by Govt. Code sections 7522.72 and

7522.74. SBCERS may exercise its subpoena power (*see* Govt. Code sec. 31535) for this purpose.

**B. Determination**

At the conclusion of staff's investigation, it shall be determined whether there is good cause to conclude that the felony arose out of, or in the performance of the member's official duties, in pursuit of the office or appointment, in connection with obtaining salary, disability retirement, service retirement, or other benefits, or was committed within the scope of the member's official duties against or involving a child who he or she has contact with as part of his or her official duties. If this determination is made, staff shall:

1. Make a finding as to the earliest date of the commission of the felony.
2. Compute the amount of service credit, contributions and interest earned and/or benefits paid from the date of first commission of the subject felony to the date of forfeiture. Staff will follow the legal requirements of the statutes to determine the benefits forfeited.

**C. Written Notice to Member**

Following the investigation and a determination that felony forfeiture provisions apply, SBCERS staff will inform the member of its determination in writing to be provided by certified mail at least 45 calendar days prior to the date the forfeiture will be processed. The notice will include:

1. The felony forfeiture statute that applies to the members benefits.
2. The supporting documentation used in making the determination to apply the felony forfeiture statute.
3. The amount of service credit, contributions, interest and/or benefits forfeited and how the amounts were calculated.
4. The amount of contributions due back to the member in the form of refunds (not including interest).
5. The date the forfeiture will be processed (effective date).
6. An Electronic Funds Transfer payment form for completion and remittance to SBCERS.
7. Language advising the member on how to request Board consideration of staff's determination.

**D. Request for Board of Retirement Consideration**

The member shall have the right to contest staff's determination and request that the matter be heard and determined by the Board subject to the following:

1. The member must make the request in writing to SBCERS at least fourteen (14) calendar days before the Effective Date set forth in the Notice.
2. Upon receipt of the written request, the matter will be placed on the Board's next regular open meeting agenda that is at least 45 days after the member's request is received by SBCERS.

**E. Board of Retirement Consideration**

The member and SBCERS staff may submit to the Board written evidence, sworn testimony and other arguments relevant to the matter under consideration subject to the following:

1. The member and SBCERS staff may present written evidence, sworn testimony and argument and may be represented by counsel. All written submissions shall be delivered to SBCERS and the other party at least fourteen (14) days before the date of the Board meeting.
2. Once the Board has considered the matter, it shall take action which may include the following:
  - a. Adopt the administrative recommendation detailed in the Notification to Member, in its entirety or in part, with or without providing the member or the employee the option of requesting an evidentiary hearing; or
  - b. Reject the administrative recommendation and provide direction to staff regarding the determination of the felony forfeiture; or
  - c. Refer the matter back to staff for further investigation and recommendation; or
  - d. Refer the matter to hearing pursuant to the procedures specified in Section E.

**F. Evidentiary Hearing**

If the Board accepts staff's recommendation of the determination of the felony forfeiture, and where the Board finds that such determination involves a genuine dispute as to an issue of material fact, the member shall be given written notice that

he or she may request an evidentiary hearing before a referee to be appointed by SBCERS pursuant to Government Code Section 31533. A written request for hearing must be submitted by the member within 21 days after mailing of the notice.

When a matter is referred to hearing by the Board, or where a hearing is requested by the member, a referee shall be selected to hear the matter pursuant to the Board's Guidelines for Retention and Assignment of Referees applicable to disability retirement hearings and the hearing shall be conducted pursuant to the Disability Retirement Procedures, Section 521.

#### **G. Final Board Action**

Following submittal of a referee's written report, the Board shall hear and make a final decision regarding the matter consistent with the procedures set forth in Government Code Section 31534 and the Board's Disability Retirement Procedures, Sections 513 and 514 at its next regularly scheduled meeting.

Where a hearing is not conducted, the Board shall consider and adopt findings of fact, conclusions of law and a decision at the next regularly scheduled meeting following its initial action pursuant to Section E.2, which in such cases shall constitute the Board's final decision.

SBCERS will provide the member and the employer written notice of the Board's final decision within 5 days of the hearing adopting it. This notice will inform the member of their right to seek judicial review.

If the Board's final decision finds that the recommended forfeiture is not warranted, or requires modification, the Board will direct SBCERS staff to terminate action to implement the felony forfeiture, or recalculate the felony forfeiture as directed by the Board.

Pending a final determination of forfeiture, SBCERS will not implement any changes, seek to recover any overpayments, refund any contributions or adjust any future monthly benefits of the member.

#### **H. Implementation of Forfeiture**

Once a final determination has been made that a felony forfeiture shall become effective, Staff shall implement the forfeiture in accordance with statutory requirements including, where applicable:

1. Cancellation of service credit and accrued interest,
2. Return of member contributions without interest,

3. Collection of any overpayments made to the member as a result of the payment of forfeited benefits. In the exercise of its discretion, SBCERS may recover amounts due from the member or the member's estate by lump sum payment, installment payment, benefit deduction, any combination thereof, or in any other manner satisfactory to SBCERS.

**I. Notice to Agencies**

SBCERS is required to notify the court and district attorney at least three business days prior to refund of the money to the member.

**J. Benefits not forfeited**

Rights and benefits attributable to service performed before the date of the first commission of the felony for which the member was convicted shall not be forfeited. However, such benefits may be subject to deduction where collection from the member of forfeited benefits is required.

**K. Reversal of Conviction**

If a member's conviction is reversed and that decision is final, the employee may either recover the forfeited rights and benefits as adjusted for the contributions received or redeposit those contributions and interest that would have accrued during the forfeiture period and then recover the full amount of the forfeited rights and benefits.

**L. Returning to an SBCERS Plan Sponsor:**

After forfeiture of benefits, a member is not permitted to accrue further benefits in SBCERS.

**IV. PROCESS REVIEW**

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

**V. POLICY HISTORY**

This policy was adopted by the Board of Retirement on April 24, 2019.