



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 14

MEETING DATE: December 19, 2018

SUBJECT: Compensation Earnable Policy for Overtime,
CTO-Expired, and CTO-Over-Max

SUBMITTED FOR: ___ Consent X **Deliberation and Action** ___ **Receive and File**

RECOMMENDATION

Staff recommends that the Board adopt the proposed policy, which establishes that any portion of an allowance or other pay differential that includes overtime pay or compensatory time off paid in excess of a member's regularly scheduled work hours (including CTO-expired and CTO-over-max) must be excluded from Final Compensation activity after the pay period ending December 22, 2018.

PURPOSE

This item supports the 2018-19 Strategic Management Plan initiative to maintain and improve Stakeholder Relations by reviewing and updating Board policies and to communicate to employers and members the standards by which SCERS administers the retirement plan. This item also supports the Strategic Management Plan's goal to improve fund sustainability.

DISCUSSION

In 1997, the California Supreme Court issued its seminal decision, *Ventura County Deputy Sheriffs' Assoc. v. Board of Retirement, et al.* (1997) 16 Cal.4th 483 ("Ventura") interpreting, for the first time, the definition of "compensation earnable" in section 31461 of the County Employees Retirement Law of 1937 ("CERL") (Gov. Code §31450 et seq.). In *Ventura*, the Court held that, comparing the County Systems operating under CERL to CalPERS, various types of pay should be included in the retirement allowance calculations of CERL members.

Following several years of litigation after the *Ventura* decision, the SCERS Board entered into a class action settlement agreement to resolve its post-*Ventura* litigation (*Ventura* Agreement). The *Ventura* Agreement included a list of 25 "included" and eight "excluded" pay elements with respect to compensation earnable. For reference, compensation earnable consist of wages and remuneration used to determine member contributions, as well as the wages and other remuneration used to compute Final Compensation.

The Board implemented the *Ventura* Agreement without changing the pensionability of any items included in the *Ventura* Agreement. Among the pay items included in the *Ventura* list were: “differentials,” “incentive pays” and “allowances”: (i) shift differential; (ii) management differential; (iii) K-9 differential; (iv) “additional pay for possession of educational degrees or required certificates;” and (v) “assignment differentials based upon a percentage of base pay.”

Among the items excluded from the *Ventura* list were: (i) “overtime-includes CTO-expired;” (ii) “terminal pay;” and (iii) “Fair Labor Standards Act adjustment,” which is described as “Differential paid when the value of overtime per FLSA guidelines is greater than that negotiated.” Accordingly, the *Ventura Agreement* established that compensation associated with overtime and CTO-expired was never intended to be included in compensation earnable.

Historical Practice

Beginning with the adoption of the *Ventura* Agreement and continuing to the present implementation of PEPR, SCERS has relied on the list of “included” items to identify the compensation earnable used to collect contributions and the Final Compensation used to compute retirement benefits for legacy members. In general, base wages and pay differentials earned by legacy members are included in compensation earnable, while overtime pay or compensatory time off paid in excess of a member’s regularly scheduled work hours is not included. However, through its payroll system, Sacramento County has historically collected—and SCERS has accepted—employer and employee retirement contributions on allowances and pay differentials attached to overtime, CTO-expired hours, and CTO-over max hours earned by legacy members. Upon further legal review, SCERS has concluded that the inclusion of such pay items in retirement calculations does not reflect the letter or the spirit of the statutory exclusion of overtime from pension calculations under the County Employees Retirement Law, SCERS’ *Ventura* Agreement, or case law.

Correcting the Practice

The Board has the authority to decide what should be included in compensation earnable within the parameters of the statutory language. Specifically, Government Code Section 31461 provides that retirement boards “determine” compensation earnable. As previously communicated to the Board, however, the scope and limitations on this authority are currently being litigated in two cases that are pending before the California Supreme Court: *ACDSA v. Alameda CERA* (S247095) (“*Alameda*”) and *MAPE v. Marin CERA* (S237460) (“*Marin*”). Regardless, neither case is addressing whether a Board can determine that a pay element associated with overtime and overtime based differentials should not be included in compensation earnable.

Correcting the practice since its inception would require the recalculation of almost every retirement allowance awarded since the 2004 *Ventura* Agreement. As previously communicated to the Board, that would likely expose SCERS to significant litigation risk from impacted retirees and current members, and a court may apply an estoppel argument to prevent SCERS from applying its change in practice retroactively.

To balance fairness to members with the Board's fiduciary obligation to administer the plan prudently in accordance with governing documents and in a manner that is in the overall best interest of all SCERS members and beneficiaries, Staff recommends excluding from Final Compensation calculations any portion of earnings on allowances or differentials influenced by overtime pay or compensatory time off paid in excess of a member's regularly scheduled work hours after the pay period ending December 22, 2018. If the Board accepts this recommendation and the corresponding policy, then SCERS will not accept retirement contributions from the employer or employee for any portion of earnings on allowances or differentials influenced by overtime hours, CTO-expired hours, or CTO-over max hours for pay periods beginning on and after December 23, 2018.

Because SCERS will continue to include earnings on allowances or pay differentials based on overtime pay or compensatory time off paid in excess of a member's regularly scheduled work hours through December 22, 2018, those earnings can continue to be counted toward the highest Final Compensation period—as long as those pay items are received no later than December 22, 2018. Therefore, SCERS will not be refunding member contributions under this policy. In addition, this policy will not affect a member's ability to select an alternate final average salary period, i.e. a period that does not coincide with the final one year or three years of employment. Should a member retire in the future and want to select a final average salary period that pre-dates the implementation of this policy, the member will be able to do so and any allowances and/or pay differentials earned during the chosen period will be included in the member's Final Compensation.

This policy effectively applies only to legacy members who receive retirement allowances calculated under CERL section 31461. In compliance with PEPRA, SCERS members hired on or after January 1, 2013, generally do not receive pensionable compensation or make retirement contributions for earnings outside of base pay as provided in Government Code section 7522.34.

FISCAL AND ADMINISTRATIVE IMPACT

Staff believes the impact of this policy is limited to Sacramento County and its employees. It is difficult to determine a fiscal impact to Sacramento County, but implementation of this policy will likely lead to employer and employee payroll savings due to the exclusion of overtime, CTO-expired, and CTO-over-max from retirement contributions. To the extent overtime is received or CTO-expired and CTO-over-max is paid, Staff believes the savings to Sacramento County are likely to be significant because the Sacramento County payroll system captures retirement contributions on more than 350 pay differentials for legacy members, regardless of whether those differentials are earned on base pay or overtime/CTO-expired/CTO-over-max. SCERS also acknowledges that Sacramento County will need to modify its payroll system to accommodate this policy.

ACTIVITY FOLLOWING SUBMISSION OF DISCUSSION DRAFT

Following the Board's approval of the Discussion Draft on October 17, 2018, Staff distributed the draft and related FAQs to employers and employee groups for comment. Staff also shared the expectation that the Board would receive a final version of the policy for consideration at their

regular meeting on December 19, 2018, and established a timeframe and mechanism for interested parties to submit written comments ahead of the referenced meeting.

In response to the Discussion Draft and the FAQs distributed by Staff, the County of Sacramento and counsel to the Deputy Sheriffs' Association (DSA) have asked the Board to delay implementation of this policy and another policy scheduled for consideration at the same time (which is known as the "Service Credit Policy"). For reference, the written requests received from the County and the DSA are included with the Board materials submitted for this item.

Since the first week of November 2018, senior staff at SCERS have been working with the COMPASS team on the technical requirements to determine how the County's payroll programming will be affected by this policy, as well as another policy regarding "Service Credit." SCERS staff recognizes that the payroll programming will require three or four more months for completion. In the interim, SCERS will need to modify the way staff calculates and processes new retirements. SCERS will also continue working with the County on the payroll adjustments that may be required for individual employees while the system is being modified.

Staff also amended the Discussion Draft version of the policy to recognize that CTO-over-max hours also affect the calculation of differentials, incentive pays, and allowances under the current payroll set-up. These payments affect compensation in the same manner as CTO-expired and are paid in excess of a member's regularly scheduled work hours. No other material changes were made to the Discussion Draft version of the policy.

ATTACHMENTS

- Compensation Earnable Policy for Overtime, CTO-Expired, and CTO-Over-Max.
- Compensation Earnable Policy for Overtime, CTO-Expired, and CTO-Over-Max – redline version of Discussion Draft.
- FAQs regarding "Compensation Earnable Policy for Overtime and Expired CTO – Discussion Draft released by SCERS on October 17, 2018."
- County correspondence dated November 20, 2018, regarding "Service Request for Retirement Changes."
- DSA correspondence dated November 30, 2018, regarding "Position Statement on Proposed Changes to Compensation Earnable and Service Credit Calculation."

Prepared by:

/S/

John Gobel
Chief Benefits Officer

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



COMPENSATION EARNABLE POLICY FOR OVERTIME, CTO-EXPIRED, AND CTO-OVER-MAX

Revision Date: December 19, 2018

Policy Number: 025

PURPOSE

The purpose of this policy is to require the exclusion of overtime pay and compensatory time off (CTO) paid in excess of a member's regularly scheduled work hours (including CTO-expired and CTO-over-max) from compensation earnable when applied to allowances and pay differentials earned by legacy SCERS members.

POLICY

Any portion of allowances or other differentials earned as a result of overtime, CTO-expired or CTO-over-max hours must be excluded from compensation earnable and Final Compensation calculations on a prospective basis, beginning with the pay period commencing December 23, 2018.

EFFECTIVE DATE

Beginning with the pay period commencing December 23, 2018, SCERS will not accept the remittance of retirement contributions from the employer or employee for any portion of allowances or other differentials that are paid as a result of overtime, CTO-expired, or CTO-over-max hours. For all pay periods thereafter, SCERS will exclude from the Final Compensation calculation any portion of allowances or other differentials that include overtime, CTO-expired, or CTO-over-max hours.

APPLICATION

Overtime

Overtime wages are not included in compensation earnable. Allowances or other differentials that are the result of overtime hours are also not included in compensation earnable.

Compensatory Time Off

Compensatory time off used as personal time (for vacation, illness, or other absence) is included in compensation earnable. Allowances or other differentials that include CTO are also included in compensation earnable.

Compensatory Time Off-Expired

Under Sacramento County employment practices, a CTO hour has a shelf life of one year. After the expiration of that year, the CTO hours accrued by eligible employees are paid in

the same manner as overtime hours. These payments are then referred to as “CTO-expired.”

Compensatory Time Off-Over Maximum

Subject to collective bargaining agreements, certain County employees receive remuneration for CTO hours earned in excess of a fixed amount. These payments are then referred to as “CTO-over-max.”

Compensation received for CTO paid in excess of a member’s regularly scheduled work hours is not included in compensation earnable. Allowances or other differentials that are based on CTO paid in excess of a member’s regularly scheduled work hours (including CTO-expired and CTO-over-max) are not included in compensation earnable.

Fair Labor Standards Act (FLSA) Overtime

For most Miscellaneous members, any hours worked over 80 hours a pay period (40 hours a week) is considered “overtime” and cannot be included in compensation earnable. However, Safety members are permitted to work a regularly scheduled workweek that exceeds 40 hours per week as provided under Section 201 and following of Title 29 of the United States Code (FLSA), which is part of compensation earnable under section 31461.6 (“FLSA Overtime”). Regardless, all hours included in the regularly scheduled workweek, including FLSA Overtime, will be included in compensation earnable, along with any applied allowances and pay differentials. Any hours over that amount, as well as allowances or other differentials that include hours in excess of regularly scheduled workweek, are considered “overtime” and will not be included in compensation earnable, including any applied allowances or pay differentials.

BACKGROUND

Many SCERS members have the ability to earn allowances and pay differentials, which act as a flat rate or a percentage of pay increase to the member’s base salary. In most cases, for members hired before January 1, 2013 (legacy members), these allowances and differentials are included as compensation earnable and augment a member’s final average salary. When members work overtime hours or earn CTO hours, by agreement with the employer, the allowances and pay differentials are included as additional compensation. Under statute, compensation earned by working overtime cannot be included in compensation earnable.

Through its payroll system, Sacramento County has historically collected—and SCERS has accepted—employer and employee retirement contributions on allowances and pay differentials, regardless of whether they were attached to the base wages received for regularly scheduled work hours, overtime hours, and CTO hours in excess of regularly scheduled work hours for legacy members. Upon further legal review, SCERS has concluded that the inclusion of such pay items in Final Compensation and retirement calculations does not reflect the letter or the spirit of the statutory exclusion of overtime-type payments from compensation earnable calculations under the County Employees Retirement Law, SCERS’ Post-*Ventura* Settlement Agreements, or case law.

RESPONSIBILITIES

Executive Owner: Chief Executive Officer

POLICY HISTORY

Date	Description
12-19-18	Board reviewed final policy.
10-17-18	Board approved Discussion Draft for comment.



COMPENSATION EARNABLE POLICY FOR OVERTIME, ~~AND CTO-EXPIRED, AND CTO-OVER-~~ MAX ~~DISCUSSION DRAFT~~

Revision Date: October 17 <u>December 19</u> , 2018	Policy Number: 025
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PURPOSE

The purpose of this policy is to require the exclusion of overtime ~~and expired compensatory time off (CTO-expired)~~ and compensatory time off (CTO) paid in excess of a member's regularly scheduled work hours (including CTO-expired and CTO-over-max) ~~expired compensatory time off (CTO-expired)~~ from compensation earnable when applied to allowances and pay differentials earned by legacy SCERS members.

POLICY

Any portion of allowances or other differentials earned as a result of overtime, CTO-expired, or CTO-over-max hour~~overtime or CTO-expired hours~~ must be excluded from compensation earnable and Final Compensation calculations on a prospective basis, beginning with the pay period commencing December 23, 2018.

EFFECTIVE DATE

Beginning with the pay period commencing December 23, 2018, SCERS will not accept the remittance of retirement contributions from the employer or employee for any portion of allowances or other differentials that are paid as a result of overtime, CTO-expired, or CTO-over-max hour~~overtime or expired CTO hours~~. For all pay periods thereafter, SCERS will exclude from the Final Compensation calculation any portion of allowances or other differentials that include overtime, CTO-expired, or CTO-over-max hour~~overtime or expired CTO hours~~.

APPLICATION

Overtime

Overtime wages are not included in compensation earnable. Allowances or other differentials that are the result of overtime hours are also not included in compensation earnable.

Compensatory Time Off

Compensatory time off used as personal time (for vacation, illness, or other absence) is included in compensation earnable. Allowances or other differentials that include CTO are also included in compensation earnable.

Compensatory Time Off-Expired

Under Sacramento County employment practices, a CTO hour has a shelf life of one year. After the expiration of that year, the CTO hours accrued by eligible employees are paid in the same manner as overtime hours. These payments are then referred to as “CTO-expired.”

Compensatory Time Off-Over Maximum

Subject to collective bargaining agreements, certain County employees receive remuneration for CTO hours earned in excess of a fixed amount. These payments are then referred to as “CTO-over-max.”

Compensation received for expired CTO hours is not included in compensation earnable. Allowances or other differentials that are based on CTO paid in excess of a member's regularly scheduled work hours (including CTO-expired and CTO-over-max) ~~CTO-expired~~ are not included in compensation earnable.

Fair Labor Standards Act (FLSA) Overtime ~~FLSA Overtime~~

For most Miscellaneous members, any hours worked over 80 hours a pay period (40 hours a week) is considered “overtime” and cannot be included in compensation earnable. However, Safety members are permitted to work a regularly scheduled workweek that exceeds 40 hours per week as provided under Section 201 and following of Title 29 of the United States Code (FLSA), which is part of compensation earnable under section 31461.6 (“FLSA Overtime”). Regardless, all hours included in the regularly scheduled workweek will be included in compensation earnable, along with any applied allowances and pay differentials. Any hours over that amount, as well as allowances or other differentials that include hours in excess of regularly scheduled workweek, are considered “overtime” and will not be included in compensation earnable, including any applied allowances or pay differentials.

BACKGROUND

Many SCERS members have the ability to earn allowances and pay differentials, which act as a flat rate or a percentage of pay increase to the member’s base salary. In most cases, for members hired before January 1, 2013 (legacy members), these allowances and differentials are included as compensation earnable and augment a member’s final average salary. When members work overtime hours or earn CTO hours, by agreement with the employer, the allowances and pay differentials are included as additional compensation. Under statute, compensation earned by working overtime cannot be included in compensation earnable.

Through its payroll system, Sacramento County has historically collected—and SCERS has accepted—employer and employee retirement contributions on allowances and pay differentials, regardless of whether they were attached to base wages, overtime, and CTO hours in excess of regularly scheduled work hours for ~~CTO-expired hours earned by~~ legacy members. Upon further legal review, SCERS has concluded that the inclusion of such pay items in Final Compensation and retirement calculations does not reflect the letter or the spirit of the statutory exclusion of overtime-type payments from compensation earnable calculations under the County Employees Retirement Law, SCERS’ Post-Ventura Settlement Agreements, or case law.

RESPONSIBILITIES

Executive Owner: Chief Executive Officer

POLICY HISTORY

Date	Description
<u>12-19-18</u>	<u>Board reviewed final policy.</u>
<u>10-17-18</u>	<u>Board approved Discussion Draft for comment.</u>



SCERS POLICY ON OVERTIME and EXPIRED CTO FREQUENTLY ASKED QUESTIONS

Topic: Compensation Earnable Policy for Overtime and Expired CTO – Discussion Draft released by SCERS on October 17, 2018

1.Q. What action did the SCERS Board take?

- A. On October 17, 2018, the SCERS Board approved a draft policy to exclude overtime and expired compensatory time off (CTO-expired) from inclusion in Final Compensation. [See attachment.]

2.Q. Who does this effect?

- A. Primarily legacy members of SCERS. [Persons participating in Miscellaneous Tiers 1, 2, 3, 4 and Safety Tiers 1, 2, 3.]

3.Q. Does overtime or CTO-expired count toward my pension?

- A. No. Under state law and court decisions (including *Ventura*), pension calculations are generally based on compensation earned during regular working hours.

4.Q. Isn't overtime and CTO-expired already excluded from Final Compensation?

- A. Yes and no. Overtime and CTO-expired earnings on base wages are already excluded from Final Compensation, as required by state law and court decisions. However, the differentials, allowances, or other incentives paid on overtime and CTO-expired are being reported by County payroll as compensation earnable.

5.Q. Does the draft policy from SCERS eliminate or repeal the payment of differentials, allowances, or other incentives to County employees?

- A. No. The County will continue to offer and pay certain elements of compensation in addition to an employee's base wages – which are still governed by federal and state labor law, as well as any applicable bargaining agreements.

6.Q. Does the draft policy from SCERS reduce the payment of differentials, allowances, or other incentives to County employees?

- A. No. The draft policy released by SCERS does not require or ask the County to reduce any pay elements or other items of remuneration that are currently earned.

7.Q. Does the draft policy eliminate differentials from being included in compensation earnable?

- A. No. For legacy members, differentials still count. The portion of these earnings that are related to overtime or CTO-expired will no longer count.

8.Q. Does the draft policy revise or change the compensation earnable that has already been reported to SCERS or the member contributions that I have already paid to SCERS?

- A. No. The draft policy does not change any compensation earnable reported to SCERS ahead of the effective date, which coincides with the first day of the bi-weekly pay period beginning December 23, 2018. Accordingly, SCERS will not require or attempt to recalculate any compensation earnable reported by the County or any member contributions accepted by SCERS prior to the anticipated effective date.

9.Q. Does the draft policy anticipate changing the portion of current differentials, allowances, and other incentives that will be accepted by SCERS as compensation earnable and the portion of these elements will be used to calculate member contributions to SCERS?

- A. Yes. Once the draft policy is effected, SCERS will not recognize as compensation earnable any portion of differentials, allowances or other incentives that include overtime or CTO-expired, since neither overtime nor CTO-expired is recognized as compensation earnable. SCERS will also not accept any member contributions that are based on differentials, allowances or other incentives that include overtime or CTO-expired after December 22, 2018.

EXAMPLE: Mike is a full-time County employee who routinely works 45 hours per week, receives a regular wage of \$20 per hour, and gets a 3% differential for special skills. For an average pay period, Mike's bi-weekly earnings include base wages of \$1,600 (80 hours x \$20), overtime wages of \$300 (10 hours x \$30), and a differential of \$57 (3% x \$1,900).

- If Mike receives the customary earnings for any pay period up to December 22, 2018, he pays member contributions on a total of \$1,657 (\$1,600 in base wages plus \$57 in differentials – since differentials that

include overtime are still accepted as compensation earnable). Because Mike pays contributions on the entire differential, the full amount is treated as compensation earnable and can be included in Mike's Final Compensation with SCERS.

- If Mike receives the customary earnings for any pay period on or after December 23, 2018, he pays member contributions on a total of \$1,648 (\$1,600 in base wages and just \$48 in differentials – since differentials that include overtime are no longer accepted as compensation earnable). Because Mike only pays contributions on the portion of the differential that is covered by SCERS' draft policy, only that portion is treated as compensation earnable and included in Mike's Final Compensation with SCERS.

10.Q. What happens to amounts I've already contributed to SCERS up to December 22, 2018?

- A. Member contributions associated with differentials, allowances, or other incentives that include overtime or CTO-expired will be accepted into the SCERS trust up until December 22, 2018, and will remain in the SCERS trust thereafter. In other words, these contributions will not be returned to members or distributed from the SCERS trust – unless the member subsequently terminates employment and requests a full "refund" of contributions and interest with SCERS.

11.Q. What happens to contributions on or after December 23, 2018?

- A. Member contributions associated with differentials, allowances, or other incentives that include overtime or CTO-expired will not be accepted on and after December 23, 2018. After that date, any contributions that do not comply with this draft policy will need to be corrected by staff at SCERS and distributed to affected members. Whether these contributions are corrected upon receipt or at some future date, they will not increase a member's Final Compensation.

12.Q. Why is SCERS interested in how differentials, allowances, or other incentives are calculated for County employees and reported in payroll?

- A. As an IRS-qualified plan, SCERS is required to collect the proper contributions for all periods of service and calculate Final Compensation and retirement benefits using the proper wages. For persons who enrolled in SCERS or a reciprocal retirement system before January 1, 2013, member contributions and Final Compensation must recognize wages and pay elements known as "compensation earnable." For reference, the conditions and criteria for compensation earnable are addressed in the County Employees Retirement Law of 1937, applicable case law (including *Ventura* cases) and, most recently, the California Public Employees' Pension Reform Act of 2013 (PEPRA).

13.Q. When does SCERS plan to finalize the draft policy and implement the changes addressed therein?

- A. After providing a period for public consideration and feedback (which expires on Friday, November 30th at 5:00 p.m.), SCERS will prepare a final version of the Compensation Earnable Policy for Overtime and Expired CTO for consideration by the SCERS Board on December 19, 2018, and SCERS will work to implement it on the stated effective date of December 23, 2018.

14.Q. Where can I review the draft policy?

- A. The draft policy can be reviewed by visiting the SCERS web site (www.scers.org) or clicking [here](#) to review the SCERS Board agenda materials for this policy.

15.Q. How can I provide SCERS with feedback on the draft policy?

- A. You can provide written feedback to SCERS by directing e-mail to the address established for this purpose: Retirement-Policy@SacCounty.net. As a reminder, please provide written feedback before 5:00 p.m. on Friday, November 30.

Administrative Services Agency
Department of Personnel Services
David Devine, Director



Navdeep S. Gill, County Executive
David Villanueva,
Deputy County Executive

County of Sacramento

November 20, 2018

Eric Stern
Chief Executive Officer
Sacramento County Employees' Retirement System
980 9th Street, Suite 1900
Sacramento, CA 95814

Subject: **SERVICE REQUEST FOR RETIREMENT CHANGES**

Dear Mr. Stern:

As you know, in October 2018, the Sacramento County Employees' Retirement System (SCERS) Board approved a draft policy to exclude overtime and expired compensatory time off (CTO expired) from inclusion in Final Compensation. Additionally, in November 2018, the SCERS Board updated a policy that will impact employees on 7-12 schedules and those who receive K9 pay. All of these changes will require modifications to the County's payroll system (COMPASS), and SCERS has requested a COMPASS service request (SR) to make these modifications. Further, SCERS has requested that the SR be completed by December 31, 2018.

The Department of Personnel Services' (DPS) Specialized Human Resources Services Team (Team) has submitted the SR to the County's Department of Technology (DTech) as its top priority, meaning it will be done as quickly as possible. However, it is staff's current estimate that the SR will require a minimum of three months to complete, assuming no additional required modifications are identified. Completion of the SR will require (among other things) modifying the payroll process coding, and thorough testing of payroll, all retirement tiers, retirement contributions, taxes, previous changes to retirement, etc. The Team will provide SCERS with a detailed project timeline once the SR's specific requirements have been identified. We are estimating this SR to be complete in March 2019.

Since there will be a lag between promulgation of the SCERS policy and the County's payroll implementation, the County prefers both the employer and employee revised pre-tax retirement contributions to be effective from the date of our payroll implementation to avoid any administrative and employee impacts. The County will be unable to submit payroll according to the new policy beginning December 23, 2018, and will report payroll under the current practice until the SR is implemented. Should SCERS choose to have a hard implementation date of December 23, 2018, any employer and employee refunds will need to come directly from SCERS for the period between December 23rd and the SR implementation date.

Service Request for Retirement Changes

November 16, 2018

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The Team and its manager, Catherine Mitchell, are committed to working with SCERS and DTech to complete this SR as quickly and accurately as possible. If you or your staff have questions, concerns, or require additional information, please contact Catherine at (916) 874-4459 or MitchellC@SacCounty.net.

Sincerely,

David Devine

Director of Personnel Services

cc: Assistant County Executive
Deputy County Executive, Administrative Services
Director of Finance
Director of Technology

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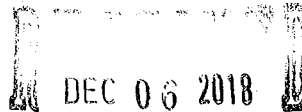


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November 30, 2018

BY: 

Via U.S. Mail & Email

Board of Retirement
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980 9th Street, Suite 1900
Sacramento, CA 95814-2739
Email: retirement-policy@saccounty.net

RE: Position Statement on Proposed Changes to Compensation Earnable and Service Credit Calculation

I write on behalf of the Sacramento County Deputy Sheriffs' Association (SCDSA), to provide the organization's position statement with respect to SCERS' proposed changes to the Compensation Earnable Policy for Overtime and Expired CTO (Incentive Policy), as well as SCERS' proposed changes to the calculation of service credit (Service Credit Policy). As set forth herein, these changes contravene the representations SCERS and the County made to its employees, and reduce those employees' pension benefits - compelling the parties to litigate the legality of the changes.

While the parties may disagree over whether the County Employees' Retirement Law (CERL) mandates the proposed changes, the California Supreme Court is currently reviewing a pension case that deals with whether retirement associations have the authority to provide pension benefits beyond the statutorily mandated minimums in the CERL. If the Court rules that retirement associations have such authority, SCERS could continue calculating compensation earnable and service credits the way it has for years, without having to litigate whether such practices were more generous than those mandated by the CERL. Thus, the SCDSA urges SCERS' Board to reject its proposed changes or, in the alternative, postpone any action on these items until the Supreme Court issues its ruling in the case of *Alameda Co. DSA v. ACERA*, Case No. S247095 ("*Alameda*").

SCERS' draft Incentive Policy would exclude from compensation earnable allowances or differentials earned as a result of overtime or CTO cash outs, despite the fact that SCERS has treated such pay items as compensation earnable for years. Indeed, in SCERS' Member Handbook, SCERS advised members that Special Pay Allowances, Incentive Pay Allowances, and other pay items would:

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be included in their pension benefits.¹ As set forth in the Board's discussion draft on these policy changes, the County has collected - and SCERS has accepted - employer and employee contributions on these pay items regardless of whether they were attached to base wages or overtime hours. Members planned their retirements based on retirement calculations that included these pay items. Obviously, excluding these pay items from employees' pensionable income would significantly reduce the pension benefits employees have counted on receiving in planning their retirements.

Additionally, SCERS' proposed changes to the calculation of service credit contravene SCERS' representations to its members. SCERS has granted additional service credit for the 81st to 84th hours worked by employees working 7/12 schedules. As the SCERS Board noted when it adopted the resolution to treat these hours as additional service time in 1999, this practice allows employees to accumulate the service credit needed to retire faster.² This practice has remained in place for almost twenty years, and SCERS has advised members of it in various ways, including in its handbooks.³ For example, in SCERS' Member Handbooks, SCERS advises members "you are credited with one hour of Service Credit for every hour you work for a Participating Employer and for which retirement contributions have been deducted from your pension-eligible compensation; 2088 service credits equals one year of full-time service." Indeed, the worksheets SCERS provided members to help them estimate their retirement benefits contained this representation.⁴

Members have relied on SCERS' representations regarding service credits, planning their retirements based on the service credit SCERS told them they would receive for their 81st through 84th hours of work. Changing the policy now would require members to work longer to receive the benefits SCERS told them they would receive, impairing SCERS' obligations to those members.

SCERS' proposals to postpone implementing these changes until the pay period starting December 23, 2018 does not solve the issues at hand. With respect to the Incentive Policy, such a delay would only benefit a small handful of employees who likely have already submitted retirement

¹A copy of Appendix A: Summary of Pension-Eligible Pay Elements, from the Member Handbook for employees hired on or before December 31, 2012, is enclosed herewith.

²Staff Recommendations - Additional Elements of Compensation Earnable, dated August 6, 1999 - this document is attached to the Board's discussion draft for the revised policy.

³A copy of a page from SCERS' Member Handbook for pre-PEPRA employees reflecting this representation is enclosed herewith. SCERS' Handbook for post-PEPRA employees contains the same representation.

⁴A copy of Appendix B: Service Retirement Benefit Estimate, from the SCERS Member Handbook for employees hired on or after December 31, 2012, is enclosed herewith.

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paperwork, and are prepared to retire next month. For everyone else, it reduces the pension benefits they relied on SCERS providing, and grants SCERS a windfall in the form of contributions it collected for benefits it will not provide. Likewise, waiting until the pay period starting December 23, 2018 to implement the Service Credit Policy would only provide significant relief to employees planning to retire in the very near future. For everyone else, they will be forced to continue working past when they planned to work, because they will no longer earn the extra service credit SCERS promised them.

If SCERS begins excluding incentive pays from compensation earnable, or changes how it calculates service credits, the SCDSA would be forced to seek judicial intervention on behalf of itself and its members. Because SCERS and the County represented that these pay items would be included in members' pension calculations, and the members relied on these representations to their detriment, they would almost certainly prevail on a promissory estoppel claim.

While the legality of SCERS' treatment of overtime incentives and calculation of service credit are matters the SCDSA is ready to litigate, the California Supreme Court's anticipated decision in the *Alameda* case could render these issues moot. One of the issues in the *Alameda* case is whether the CERL allowed retirement systems to grant members retirement benefits over and above the statutorily required minimums. If the Court rules that retirement systems had such authority, SCERS could continue providing the benefits it promised its members without being forced to litigate their legality in court.

In the interest of avoiding protracted litigation on this issue, the SCDSA proposes that SCERS delay any decision on the implementation of the proposed Incentive Policy and Service Credit Policy until after the Supreme Court decides the *Alameda* case.

Thank you for your attention and courtesy in this matter. If you have any comments or questions, do not hesitate to contact me.

MASTAGNI HOLSTEDT, APC



ISAAC S. STEVENS

Attorney at Law

ISS/prb
Enclosures

As you progress through your career with your Participating Employer, you'll achieve various milestones as a SCERS member, like becoming Vested in plan benefits. Or, you may be eligible to purchase Permissive Service Credit upon your return from an unpaid leave of absence, or for service you performed prior to becoming a member of SCERS.

Earning Service Credit

You are credited with one hour of Service Credit for every hour you work for a Participating Employer and for which retirement contributions have been deducted from your pension-eligible compensation; 2,088 service credits equals one year of full-time service.

In general, the more Service Credit you have as a SCERS member, the higher your retirement benefit will be. SCERS also uses Service Credit to determine when you are eligible to retire and receive a benefit.

Becoming Retirement Eligible (Vested)

You become Vested in SCERS when you have credit for five (5) or more years of full-time service with SCERS or between SCERS and a Reciprocal System. When you are "Vested," you have earned a right to receive a monthly benefit upon retirement.

Vested members are eligible for Service Retirement after:

- 10 years of service, if you are age 50 or older; or
- 20 years of service, regardless of your age, if you are a Safety member; or
- 30 years of service, regardless of your age, if you are a Miscellaneous member; or
- Age 70, regardless of your number of years of service or Membership Category.

When determining your retirement eligibility, certain service purchases and reciprocal service can help meet these requirements; however, military leave, Public Service credit, or Additional Retirement Credit cannot help meet these requirements. *Refer to Section 5 of this handbook for more information on retirement eligibility.*

Service Credit

Earning Service Credit

Becoming Retirement Eligible (Vested)

Purchasing Permissive Service Credit

30-Year Membership—
Member Contributions Cease

Appendix A: Summary of Pension-Eligible Pay Elements

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	Paid for hours worked in excess of normal work schedule		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 hours	Paid for hours over the maximum of 104	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 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	

Appendix A: Summary of Pension-Eligible Pay Elements

Earnings Type	Description	Included*	Excluded
Leave Balance Usage (vacation, compensating time off (CTO), holiday in-lieu, sick leave, etc.)	Paid leave for authorized absence from work	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 compensation period	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 assigned as a canine handler for scheduled work of ten (10) hours per month for ordinary care and informal training	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	
<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 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.</p>			
<p>** 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.</p>			

Appendix B: Service Retirement Benefit Estimate

Worksheet – Unmodified Allowance

Service Retirement Benefit Estimate Worksheet			
Line #	Descriptive Information	Example	Your Information
1	Estimated age at retirement: (to nearest quarter age)	55	
2	Estimated years of Service Credit at retirement: (use estimated number of calendar year of full-time service in SCERS-covered employment; 2,088 hours = 1 year of Service Credit)	25	
3	Retirement Benefit Age Factor: (refer to Appendix C or D to find percentage factor for Estimated age at retirement on Line 1)	1.947%	
4	Benefit Factor: (multiply Line 2 by Line 3 and enter result as a percentage)	48.675%	
5	Estimated monthly Final Compensation: (use Scenarios 1 or 2 on page 52 to estimate monthly Final Compensation)	\$2,022	
6	Estimated* monthly Unmodified Allowance for Service Retirement: (multiply the estimated monthly Final Compensation on Line 5 by the Benefit Factor on Line 4)	\$984.21*	
If you also pay into Social Security (FICA deduction) for your SCERS-covered employment, your SCERS service is "integrated" with Social Security and you should continue with the following steps:			
7	Social Security Reduction Factor: (based on age at retirement, refer to Appendix C or D)	\$ 2.272	
8	Enter years of Service Credit from Line 2:	25	
9	Social Security Reduction Amount: (multiply Line 7 by Line 8)	\$56.80	
10	Apply reduction amount: (enter the amount on Line 6 and subtract the amount on Line 9)	\$984.21 – \$56.80	
11	Estimated* monthly Unmodified Allowance for Service Retirement with the Social Security reduction:	\$ 927.41*	

*This is an estimate only. SCERS will calculate your actual benefit when you apply for retirement.

Appendix C: Retirement Benefit Age Factors Miscellaneous – Tiers 1, 2 and 3

Applies to Retiring Members Hired in SCERS-Covered Employment Prior to January 1, 2012 if employed by Sacramento County or Prior to January 1, 2013 if employed by any other Participating Employer

Age at Retirement	Benefit Factor § 31676.14 (2% @ 55 ½) Percentage	Soc. Sec Dollar Reduction Factor	Age at Retirement	Benefit Factor § 31676.14 (2% @ 55 ½) Percentage	Soc. Sec Dollar Reduction Factor
50	1.474%	\$1.721	56	2.060%	\$2.404
50 ¼	1.497%	\$1.748	56 ¼	2.091%	\$2.440
50 ½	1.520%	\$1.774	56 ½	2.121%	\$2.475
50 ¾	1.543%	\$1.801	56 ¾	2.151%	\$2.510
51	1.566%	\$1.828	57	2.182%	\$2.546
51 ¼	1.591%	\$1.857	57 ¼	2.203%	\$2.571
51 ½	1.616%	\$1.886	57 ½	2.225%	\$2.596
51 ¾	1.641%	\$1.915	57 ¾	2.246%	\$2.621
52	1.666%	\$1.944	58	2.268%	\$2.646
52 ¼	1.685%	\$1.966	58 ¼	2.289%	\$2.671
52 ½	1.703%	\$1.988	58 ½	2.310%	\$2.696
52 ¾	1.722%	\$2.010	58 ¾	2.332%	\$2.721
53	1.741%	\$2.031	59	2.353%	\$2.746
53 ¼	1.766%	\$2.061	59 ¼	2.375%	\$2.770
53 ½	1.791%	\$2.090	59 ½	2.396%	\$2.796
53 ¾	1.816%	\$2.119	59 ¾	2.418%	\$2.821
54	1.841%	\$2.148	60	2.439%	\$2.846
54 ¼	1.867%	\$2.179	60 ¼	2.461%	\$2.871
54 ½	1.894%	\$2.210	60 ½	2.482%	\$2.896
54 ¾	1.921%	\$2.241	60 ¾	2.504%	\$2.921
55	1.947%	\$2.272	61	2.525%	\$2.950
55 ¼	1.975%	\$2.305	61 ¼	2.546%	\$2.965
55 ½	2.004%	\$2.338	61 ½	2.568%	\$3.000
55 ¾	2.032%	\$2.371	61 ¾	2.589%	\$3.022
			62 & over	2.611%	\$3.047

NOTE: Retirement prior to age 50 is also permitted with 30 years of service, but the corresponding factors are subject to actuarial review and approval.