



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 16

**MEETING DATE:** January 19, 2021

**SUBJECT:** Subrogation Claims Policy

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

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### **RECOMMENDATION**

Staff recommends the Board reaffirm SCERS' current Subrogation Claims Policy, which was introduced in 2008 and last reaffirmed in 2017.

### **PURPOSE**

This item contributes to the Board's effective oversight of retirement system assets and ensures consistent application of retirement law.

### **DISCUSSION**

#### **Background**

When a SCERS member suffers death or injury, SCERS may become obligated to pay out certain death or disability benefits. If that member's death or injury was caused by a third party (other than the member's employer), SCERS has the right to recoup some of its costs from that third party through litigation. That right of recovery is called "subrogation."

By statute, SCERS' subrogation rights are junior to those of the member's employer, who may also file a subrogation action to recover worker's compensation costs. Gov. Code § 31822 ("Any amount recovered by any of the parties shall be applied, first, to the amounts which the employer or its insurance carrier have paid or become obligated to pay, and second, to the amounts to which the retirement association is entitled."). In a subrogation action, SCERS' recovery is limited to the lesser of: "(1) An amount which is equal to one-half of the actuarial equivalent of the benefits for which the association is liable because of such injury or death; or (2) An amount which is equal to one-half of the remaining balance of the amount recovered after allowance of that amount which the employer or its insurance carrier have paid or become obligated to pay." Gov. Code § 31820.

### Subrogation Claims Policy

In December 2008, the Board approved a policy concerning the internal process by which SCERS would consider and assert subrogation claims. The Board subsequently reaffirmed the policy in 2017 and renumbered it in 2018. Some key elements of that policy are as follows:

- SCERS' subrogation rights are an asset belonging to the system. As such, SCERS has a fiduciary duty to manage and pursue subrogation claims prudently.
- SCERS may assert its subrogation rights by (without limitation) engaging outside counsel, filing a lawsuit against the third party who injured the member, filing a lien in an existing action against the third party, or a combination thereof.
- SCERS' General Counsel has the authority to determine how to pursue a subrogation claim and what litigation tools to use without obtaining prior Board approval. However, the General Counsel must report on the filing and progress of any subrogation action to the Board.
- SCERS' General Counsel also has authority to enter into reasonable settlements of subrogation claims without prior Board approval, provided: (1) the timing of the proposed settlement precludes presentation to the Board, (2) General Counsel has consulted with the Chief Executive Officer, and (3) the General Counsel reports the terms of the settlement to the Board at its next regularly scheduled meeting.

### Reaffirming the Policy

Staff recommends the Board reaffirm the Subrogation Claims Policy as currently written. The policy remains relevant and applicable, as the underlying statutes (Gov. Code §§ 31820-31823) have not changed and subrogation opportunities, though rare, continue to arise.

Substantively, the policy remains useful and well-adapted to the practical realities of subrogation litigation. In practice, SCERS learns of a subrogation opportunity only after a member files a disability retirement application, with the result that SCERS usually enters the litigation fray much later than either the employer or the member. Thus, it is often necessary for SCERS to act quickly (by filing a lien or complaint-in-intervention) to reserve a seat at the settlement table. Delegating authority to the General Counsel to assert the claim facilitates a timely reaction.

Relatedly, the window of opportunity for favorable settlements tends to be short and fleeting, so delegating settlement authority to the General Counsel is pragmatic as well. Finally, experience has shown that, because of the subordinate nature of their rights, in the typical personal injury scenario, county retirement systems rarely achieve significant recovery in subrogation actions (that is, recovery greater than low- to mid-five figures). Because recovery tends to be relatively small, it is appropriate to delegate authority to the General Counsel to determine the most prudent and cost-effective way to approach subrogation litigation.

**ATTACHMENT**

- Subrogation Claims Policy

Prepared by:

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Stephen Lau  
General Counsel

Reviewed by:

/S/

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Eric Stern  
Chief Executive Officer



# SUBROGATION CLAIMS POLICY

## PURPOSE

The purpose of this Policy is to establish guidelines and procedures for the recovery of a portion of the benefits payable by the Sacramento County Employees' Retirement System ("SCERS") because of an injury to, or the death of, a member of SCERS proximately caused by the act of any person(s) other than the member's employer from such person(s).

## POLICY

The General Counsel shall pursue a subrogation action only if it can be commenced within three years after the liability of SCERS to pay applicable benefits has been fixed.

Liability of SCERS to pay benefits shall be considered fixed at the time the Retirement Board, or staff if authorized by the Board, approves the payment of benefits.

The General Counsel may take any and all action necessary to prosecute any subrogation action consistent with the subrogation provisions of any workers' compensation law, as required by Government Code Section 31820. The action may include, but shall not be limited to, the filing of a claim of lien in pending litigation; the filing of a separate action; or a combination of both.

The General Counsel may engage an outside law firm to provide legal services to evaluate and/or pursue a subrogation claim.

The General Counsel shall report on the filing and progress of any subrogation action to the Board, and shall request authorization from the Board prior to settling a subrogation action for any amount less than the additional costs payable by SCERS for benefits payable because of an injury to, or the death of, a member proximately caused by the act of any person(s) other than the member's employer.

Notwithstanding the foregoing, the General Counsel may authorize a settlement of subrogation claim without further action of the Board, on the following conditions:

1. The General Counsel concludes, in consultation with the Chief Executive Officer, that a proposed settlement is reasonable under the particular circumstances of the case, but must be accepted prior to the next scheduled meeting of the Board; and
2. The General Counsel reports the terms of the settlement to the Board at its next regularly scheduled meeting.

## BACKGROUND

The Board has a fiduciary obligation to prudently manage the assets of SCERS that it holds in trust for the benefit of its participants and beneficiaries, minimizing employer contributions, and defraying reasonable expenses of administration.

Article 14 of the County Employees' Retirement Law of 1937 ("CERL"), consisting of Government Code Sections 31820-31823, authorizes a retirement board to recover from such person(s) an amount which is the lesser of the following:

1. An amount which is equal to one-half of the actuarial equivalent of the benefits for which the retirement system is liable because of such injury or death; or
2. An amount which is equal to one-half of the remaining balance of the amount recovered after allowance of that amount which the employer or its insurance carrier have paid or become obligated to pay (e.g., Workers' Compensation).

The right to prosecute such recovery is referred to as a claim for subrogation or subrogation action ("subrogation"). Subrogation rights are assets belonging to SCERS and as with any other assets the Board has an obligation to reasonably manage and pursue subrogation in order to recover such funds as will benefit its participants and beneficiaries, minimize employer contributions, and defray reasonable expenses of administration.

## RESPONSIBILITIES

Executive Owner: General Counsel

## POLICY HISTORY

Date	Description
01-19-2021	Staff recommended Board affirm policy
08-01-2018	Renumbered from 016
12-20-2017	Board affirmed in revised policy format
12-08-2008	Board approved new policy