



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 23

MEETING DATE: August 17, 2022

SUBJECT: Employer Liability Policies

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

RECOMMENDATION

Staff recommends the Board re-affirm (1) the *Declining Employer Payroll Policy* to ensure an employer will continue to satisfy its obligation to timely pay all unfunded actuarial accrued liability (UAAL) attributable to the prior and future service of active, retired, and deferred members who are or were the employer's employee(s) or qualified beneficiaries; and, (2) the *Terminating Employer Policy* to identify unfunded liabilities and collect contributions from employers that plan to withdraw or have withdrawn membership from SCERS.

PURPOSE

This item complies with the Strategic Management Plan goal to promote responsible oversight to ensure accuracy and protect plan assets.

DISCUSSION

In 2019, the SCERS' Board of Retirement first approved both the Declining Employer Payroll and the Terminating Employer Policies to address the following business processes:

The Declining Employer Payroll Policy establishes a uniform approach to ensuring equitable and adequate funding of liabilities in cases where an employer may have significantly downsized its workforce and payroll, resulting in insufficient contributions to cover remaining liabilities. Because unfunded liabilities are traditionally built into pooled, payroll contribution rates, it becomes necessary to establish a separate contribution-rate schedule for an employer that has a declining payroll. Under the policy, the employer's obligation remains ongoing until the last beneficiary dies and is re-evaluated annually to recognize new actuarial gains and losses. Whereas, the Terminating Employer Policy establishes a uniform approach for ensuring equitable and adequate funding of liabilities in cases where an employer is phasing out of SCERS' membership, most likely due to merging with an agency in which future pension service will be covered under a different retirement system.

The SCERS Board reviews policies generally on a three-year cycle. No changes are recommended to the current policies.

BACKGROUND AND LEGAL CONTEXT

Since 1941, SCERS has expanded its membership to include employers besides that of Sacramento County. While 11 participating employers now constitute the SCERS membership, the number of employers has fluctuated over time, as special districts that participate in SCERS merge with each other, consolidate with an agency covered under the California Public Employees' Retirement System (CalPERS) or other retirement system, or dissolve.

The County Employees' Retirement Law of 1937 (CERL) provides the statutory authority for district employers to both enter and exit a retirement system, while the Retirement Board retains the constitutional authority to maintain an actuarially sound system and ensure that member benefits will be paid out, even if the district employer has withdrawn membership.

SCERS has treated these situations on an ad hoc basis. For example, in 2015, residual pension liabilities for former Sacramento County library and air-quality employees—now special districts under CalPERS-covered agencies—were amortized and incorporated into the Sacramento County annual pension payment. In 2018, SCERS entered into a 20-year funding agreement with the Sacramento Metropolitan Fire District to pay down the remaining liabilities on behalf of the former Florin Fire and North Highlands fire districts, which was consolidated into the larger regional fire district that provides retirement benefits through CalPERS. In 2020, SCERS also executed a funding agreement with the University of California-Davis Medical Center to settle outstanding pension liabilities on behalf of former County hospital workers.

A 2019 appellate court ruling found that retirement boards retain significant authority to enforce payment of contributions from employers that have deferred or retired employees currently receiving benefits from the County retirement system, even if the employer no longer has active employees in the retirement system (*Mijares v. Orange County Employees Retirement System*, 32 Cal.App. 5th 316). The *Mijares* court also found that the unfunded liability payment is not required to be deducted from active employee payroll and recognized the system's right to recommend changes in county and district contributions as necessary.

In 2020, the Legislature affirmed the *Mijares* ruling by adding Government Code section 31454.7 to the County Employees' Retirement Law, which reads in part: "Under all circumstances, the county and districts shall each remain liable to the retirement system for their respective share of any unfunded actuarial liability of the system, as determined by the board."

ATTACHMENTS

- Board Order
- Declining Employer Payroll Policy
- Terminating Employer Policy

Prepared by:

/S/

Margo Allen
Chief Operations Officer

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



Retirement Board Order

Sacramento County Employees' Retirement System

Before the Board of Retirement
August 17, 2022

AGENDA ITEM:

Employer Liability Policies

THE BOARD OF RETIREMENT hereby accepts the recommendation of staff to re-affirm (1) the *Declining Employer Payroll Policy* to ensure an employer will continue to satisfy its obligation to timely pay all unfunded actuarial accrued liability (UAAL) attributable to the prior and future service of active, retired, and deferred members who are or were the employer's employee(s) or qualified beneficiaries; and, (2) the *Terminating Employer Policy* to identify unfunded liabilities and collect contributions from employers that plan to withdraw or have withdrawn membership from SCERS.

I HEREBY CERTIFY that the above order was passed and adopted on August 17, 2022 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES (Present but not voting):

Board President

Eric Stern
Chief Executive Officer and
Board Secretary



DECLINING EMPLOYER PAYROLL POLICY

PURPOSE

A participating employer of SCERS may experience an actual or anticipated material decline in the payroll attributable to its SCERS active members (SCERS-covered payroll). The Declining Employer Payroll Policy is intended to establish guidelines by which SCERS ensures that such employer will continue to satisfy its obligation to timely pay all unfunded actuarial accrued liability (UAAL) attributable to the prior and future service of active, retired, and deferred SCERS members who are or were the participating employer's employees, and their beneficiaries.

POLICY

A participating employer remains liable, and must make the required appropriations and transfers to SCERS for the participating employer's share of liabilities attributable to its members who are and may be entitled to receive retirement, disability, and related benefits from SCERS. It is the Board of Retirement's intent to allow an employer covered by this Policy to satisfy its funding obligation in a manner which provides the employer reasonable flexibility; however, primary consideration will be given to ensuring the adequacy of the assets attributable to the employer to satisfy the employer's funding obligations.

APPLICATION

Absent exigent circumstances or unless otherwise expressly approved by the Board of Retirement (the Board) at a duly-noticed public meeting, the procedures and guidelines for implementing this Policy are set forth below.

Commencement of Coverage – Triggering Events

This Policy covers only those employers for whom the Board determines, based on a recommendation from SCERS' Chief Executive Officer (CEO), that a triggering event as described in this section has occurred and who are not excluded from coverage under this Policy as described in the "Exclusions from Coverage; Terminations of Coverage" section below. The fact that a triggering event may have occurred in the past does not prevent SCERS from applying this policy to that employer. The Board hereby directs the CEO to work with SCERS' staff and SCERS' actuary to obtain the information (e.g., SCERS-covered payroll history) needed for the Board to make determinations regarding triggering events.

Triggering event resulting from ceasing to enroll new hires: Some SCERS participating employers cease to enroll new hires with SCERS but, for a period of time, continue to have at least some previously-enrolled employees maintaining their status as active SCERS members. These employers' SCERS-covered payroll will eventually diminish to zero as their active employees retire or otherwise terminate employment. Examples of employers in this category may include an employer that is acquired by another entity that is not a SCERS participating employer, or a SCERS employer that covers some of its employees through another pension system such as CalPERS or a 401(k) plan. There may be other examples as well.

Triggering event resulting from a material and permanent reduction in SCERS-covered payroll: Some employers may experience a material reduction in their SCERS-covered payroll, but nevertheless continue to enroll their new hires with SCERS. The reduction may be sudden (e.g., due to a discrete event such as a partial loss of funding, or partial outsourcing), or it may be more gradual, over a period of years, and might not be tied to a discrete event. Generally, the Board would determine that this type of triggering event has occurred only if the Board expects that the reduction in an employer's SCERS-covered payroll is expected to be permanent or for an indefinite period of time with no reasonably foreseeable end. Generally, by its nature, the determination whether this type of triggering event has occurred is more subjective than that described in the paragraph immediately above.

Exclusions from Coverage; Terminations of Coverage

This Policy also covers only those employers which are a) financially-viable entities when a triggering event occurs, and b) which SCERS expects to continue indefinitely thereafter to be financially-viable entities. This Policy does not cover any other situation, including, without limitation, an employer going out of business by reason of dissolution, loss of funding, consolidation or merger (unless there is a surviving financially-viable entity that is acceptable to the Board that will make the ongoing payments under the Policy). This Policy also does not cover a "terminating employer" that ceases to provide SCERS membership for all of the employer's active SCERS members (i.e., as of a date certain, withdraws both new hires and existing actives from membership with SCERS).

The Board of Retirement also recognizes that participating employers covered by this Policy will have UAAL funding obligations for several years. Therefore, if concerns arise during that period of time regarding the employer's ongoing existence as a financially-viable entity, the Board may remove the employer from coverage under this Policy and/or take any other measures that may be available to ensure the actuarial soundness of the Plan including, without limitation, assessing the entire amount of the employer's projected UAAL (as recommended by the fund's actuary and approved by the Board) using a risk-free interest rate assumption and payable in a single sum immediately due.

Procedures

1. The CEO will (i) work with SCERS' staff and actuary, and SCERS' participating employers to obtain the information (e.g., SCERS-covered payroll history, financial reports) needed for the Board to make determinations regarding triggering events

and exclusions from, or terminations of, coverage and (ii) report to the Board, as necessary, regarding these activities.

2. Upon a recommendation from the CEO and notice to the affected participating employer, the Board will make a determination at a duly-noticed public meeting regarding (i) whether a triggering event has occurred for the employer, (ii) whether the employer should be excluded from coverage under this Policy, and (iii) for those employers that the Board has previously determined to be covered under the Policy, whether their coverage should be terminated under the “Exclusions from Coverage; Terminations of Coverage” section above. Employers may be required to provide SCERS with updated employee census and payroll data and financial reports. (See Government Code 31543.)
3. If the Board determines that a triggering event has occurred and the employer is not excluded from coverage under the Policy, then, solely for purposes of determining the covered employer’s UAAL contribution obligation, SCERS will segregate all assets and liabilities attributable to the employer based upon the recommendation of SCERS’ actuary, and shall maintain such separate accounting for the employer until all of the participating employer’s obligations to SCERS have been fully satisfied.
4. SCERS’ actuary will determine, and certify to the Board of Retirement, the covered employer’s funding obligation for its initial UAAL, which obligation shall not be pro-rata based on payroll, but rather based on the employer’s actuarial accrued liability (AAL) including inactive members, when determinable. Otherwise, the Board may use other methodologies to determine the liability as recommended by SCERS’ actuary, including but not limited to the pro-rata share based on payroll. The Board may determine to require the employer’s contributions to be paid in level, fixed-dollar amounts over a period not to exceed twenty (20) years, beginning on July 1 of the plan year immediately after the plan year in which the triggering event occurs. The Board of Retirement has the sole authority to modify the installment period if:
 - The employer demonstrates to the Board of Retirement’s satisfaction that the payment schedule causes undue hardship; or
 - The Board of Retirement determines, at any time before the end of the installment period, that the installment period is insufficient to ensure adequate funding of the employer’s obligation.
5. The actuary will use the actuarial valuation performed for SCERS as of the end of the plan year immediately prior to the plan year in which the triggering event occurs (and based on all of SCERS’ then current actuarial assumptions and methodologies) to determine the initial valuation value of assets (VVA), a smoothed value, allocated to the covered employer. That initial VVA will be a pro-rata allocation based on the employer’s AAL (i.e., based on the employer’s initial UAAL allocation as described in 4. above). Later values of the VVA (i.e., those used in the future valuations described below) shall be determined by rolling forward the initial VVA, adding contributions, deducting benefit payments, and crediting earnings at the actual smoothed (VVA) earnings rate on total SCERS assets.

6. Annually, after the determination of the covered employer's initial funding obligation, as part of the regular annual actuarial valuation of the plan, SCERS' actuary will measure any change in the UAAL of the participating employer due to actuarial experience or changes in actuarial assumptions. In addition to the amortized payments for the covered employer's initial UAAL determined as of the initial valuation, the employer will be liable for, and must contribute to SCERS, any such new UAAL determined as of subsequent valuations, based upon an amortization schedule recommended by the actuary and adopted by the Board of Retirement. If a negative UAAL (Surplus) exists, SCERS will hold the Surplus to be applied against any future UAAL of the covered employer.
7. If any Surplus remains after the covered employer has satisfied all of its UAAL obligations (Final Surplus), SCERS will distribute the Final Surplus in accordance with the terms of applicable law.

Notwithstanding anything to the contrary herein, the SCERS Board of Retirement hereby reserves the right to pursue any other remedies under applicable law that, depending on the circumstances, may be available to "ensure the actuarial soundness of the retirement system" (See Government Code 31564.2(d)).

BACKGROUND

Pursuant to Gov. Code 7522.52, 31453.5, 31581, 31582, 31584, 31585, 31586, 31611, and other applicable provisions of law, a participating employer remains liable, and must make the required appropriations and transfers to SCERS for the participating employer's share of liabilities attributable to its officers and employees who are and may be entitled to receive retirement, disability, and related benefits from SCERS.

SCERS retains significant authority to enforce payment of contributions from employers that have deferred or retired employees currently receiving benefits from the County retirement system, even if the employer no longer has active employees in the retirement system (*Mijares v. Orange County Employees Retirement System*, 32 Cal.App. 5th 316).

The *Mijares* court also found that the unfunded liability payment is not required to be deducted from active employee payroll and recognized the system's right to recommend changes in county and district contributions as necessary.

RESPONSIBILITIES

Executive Owner: Chief Executive Officer

POLICY HISTORY

Date	Description
06-19-2019	Staff to recommend the Board approve new policy



TERMINATING EMPLOYER POLICY

PURPOSE

The purpose of this policy is to establish the funding obligations of employers that terminate their participation in SCERS. This policy is made pursuant to California Government Code Sections 31453, 31454, 31564, and 31564.2 of the County Employees' Retirement Law of 1937.

POLICY

The Board of Retirement's primary consideration is to ensure that the funding obligation of the terminating employer is properly determined and settled.

The liabilities attributable to the terminating employer will be determined in a manner that is consistent with the fact that, because there will be no reassessment of the terminating employer's funding obligation after the termination date, all risks are being retained by SCERS and no risks are retained by the terminating employer. To accomplish this intent, the *present value of future benefits* will be determined using a risk-free interest rate assumption as determined by SCERS.

The assets attributable to the terminating employer will be determined by SCERS in a manner that is consistent with the contribution obligations of the remaining employers. To accomplish this intent, assets will be allocated to the terminating employer so that the contribution rate towards the Unfunded Actuarial Accrued Liability (UAAL) will be left substantially unchanged for all of SCERS' remaining employers.

The terminating employer's funding obligation will be the excess, if any, of the present value of future benefits over the employer's accumulated assets, as determined under this policy by SCERS using a risk-free interest rate assumption. Settlement of the funding obligation will be made in either a lump sum or, if allowed by the Board, level annual installment payments by the employer up to 5 years following termination unless the Board of Retirement determines, at any time before the end of the installment period, that the payments determined based on that installment period are insufficient to ensure adequate funding of the terminating employer's obligation.

Terminating employers shall pay for the actuarial studies completed by SCERS' actuary necessary to determine these components.

The Board of Retirement has the sole authority to determine the installment period, the valuation of assets, the determination of liabilities, and the funding obligation. As such, third party actuarial studies by a terminating employer if different than the SCERS' actuary study will not be accepted in the determination of these components.

APPLICATION

Present Value of Future Benefits

The benefits payable by SCERS to current and former employees of the terminating employer will be determined as follows:

- All active members on the termination date will receive SCERS benefits for their credited service up to the termination date. As a result, they will take on the same status as terminated members.
- All vested terminated and retired members (and beneficiaries) will continue to receive future benefits from SCERS.
- The future benefits to be paid to SCERS members of the terminating employer will include those payable to:
 - Current retirees and/or beneficiaries of retirees with service while employed at the employer prior to the termination date;
 - Employees of the employer as of the termination date; and
 - Former employees of the employer entitled to either deferred vested benefits or a refund of their accumulated contributions plus credited interest.

The present value of future benefits will be determined based on:

- The service retirement and other benefits associated with years of service in SCERS as of the employer's termination date, for which members are entitled to SCERS benefits;
- Expected future cost-of-living adjustments on those benefits;
- For deferred vested members, expected final average earnings (including the effect of any reciprocity agreements);
- For deferred vested members, their expected age at retirement; and,
- For retired members and beneficiaries of retirees, the SCERS benefits earned for service with the terminating employer.

Actuarial Assumptions

The present value of future benefits will be calculated using the same actuarial assumptions as adopted by the Board of Retirement in the most recent actuarial valuation except that future benefit payments will be discounted to the termination date using risk-free interest rate assumptions, as determined by SCERS. Unless modified by SCERS, the risk-free interest assumptions selected for this purpose are the discount rates used by the Pension Benefit Guaranty Corporation (PBGC) to measure the sufficiency of assets for a corporate employer that is terminating its single-employer defined benefit pension plan. These PBGC rates are generally lower than the expected earnings based discount rate used in SCERS' actuarial valuation.

There will be no reassessment of the terminating employer's funding obligation after the termination date under this approach.

Determination of Terminating Employer's Assets

SCERS is a cost-sharing multiple-employer plan. As a result, there is no ongoing separate accounting of SCERS' assets by employer except in instances when, in the Board of Retirement's opinion, separate accounting is necessary to maintain equity among employers. The SCERS assets attributable to contributions of the terminating employer and its employees as of the termination date will be determined by SCERS and will be based on:

- The Actuarial Accrued Liability of the terminating employer as of SCERS' most recent actuarial valuation irrespective of the employer's anticipated termination.
- The UAAL of the terminating employer as of the most recent actuarial valuation.
- The non-investment change in assets from the most recent actuarial valuation date to the actual termination date.
- The accumulated assets at the termination date.
- The portion of any of SCERS' reserves or designations from which the terminating employer will not benefit as a result of the termination. An adjustment will be made as appropriate to include these reserves/designations in the terminating employer's assets.

Alternative Approach To Determine Present Value of Future Benefits (Including Ongoing Reassessment of Benefit Liability)

This extension to the Board's termination policy will only be used if the Board of Retirement approves a terminating employer's request for the alternative approach under the terms of the Declining Employer Payroll Policy. The terminating employer shall demonstrate to the Board of Retirement's satisfaction that the terminating employer can support the ongoing obligation under the alternative approach.

If approved by the Board of Retirement, the terminating employer's initial settlement of the funding obligation can be determined under the terms of the Declining Employer Payroll Policy, by measuring the present value of future benefits using the expected earnings based on the discount rate in SCERS' actuarial valuation—instead of a risk-free interest rate assumption—and comparing that with the terminating employer's assets as calculated above.

Annually, after the determination of the covered employer's initial funding obligation, as part of the regular annual actuarial valuation of the plan, SCERS' actuary will measure any change in the UAAL of the terminating employer due to actuarial experience or changes in actuarial assumptions. In addition to the amortized payments for the covered employer's initial UAAL determined as of the initial valuation, the employer will be liable for, and must contribute to SCERS, any such new UAAL determined as of subsequent valuations, based upon an amortization schedule recommended by the actuary and adopted by the Board of Retirement. If a negative UAAL (Surplus) exists, SCERS will hold the Surplus to be applied against any future UAAL of the covered employer.

If any Surplus remains after the covered employer has satisfied all of its UAAL obligations (Final Surplus), SCERS will distribute the Final Surplus in accordance with the terms of applicable law.

BACKGROUND

Government Code sections 31564 and 31564.2 provide authority for participating employers to withdraw their employees and terminate their participation in SCERS. These sections give general direction as to how to value assets, liabilities, and final settlement funding, but they also give the retirement systems discretion on the specific details of determining these matters.

RESPONSIBILITIES

Executive Owner: Chief Executive Officer

POLICY HISTORY

Date	Description
06-19-2019	Staff to recommend the Board approve new policy