



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 13

**MEETING DATE:** November 5, 2018

**SUBJECT:** Service Credit Policy – DISCUSSION DRAFT

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

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### **RECOMMENDATION**

Staff recommends the Board approve a discussion draft of the proposed policy for distribution to stakeholders. The policy establishes that beginning with the pay period commencing on December 23, 2018, SCERS will limit service credit to one (1) year in a 365-day period.

### **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 policy also supports the initiative to maintain prudent funding practices that support low contribution rate volatility and plan 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.4<sup>th</sup> 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 to CalPERS, various types of pay should be included in the retirement allowance calculations of CERL members.

### **History of practice**

In the course of implementing the *Ventura* decision, the SCERS Board considered the issue of service credit accruals as well as “compensation earnable” for members on a 7/12 work schedule, who work 7, 12-hour shifts during a biweekly pay period for a total of 84 hours. On August 6, 1999, SCERS staff presented an item to the Board recommending that the “extra hours” worked on a 7/12 schedule be treated as compensation earnable because they were part

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of the regular work schedule and not considered or paid as overtime. The Staff also recommended providing additional service credits for the “extra hours.” In other words, hours scheduled and worked under a 7/12 arrangement would confer additional service credit relative to the more common work schedule of five days per week and eight hours per day (80-hour schedule for a biweekly pay period). Thus, a member working under a 7/12 schedule could earn as much as 2,192.4 hours of service credit per year, instead of the usual 2,088 hours that SCERS benchmarks for full-time employment on a more traditional 80-hour biweekly schedule. Staff also explained that, upon Board approval, SCERS would begin to collect member contributions on the “extra hours” ascribed to a 7/12 arrangement and recognize those hours as service credit (See attached Exhibit A – SCERS Board of Retirement Agenda Item 8 (August 6, 1999), and Resolution No. 99-08).

The Board accepted Staff’s recommendations at the August 19, 1999 meeting and adopted Resolution No. 99-08, stating that it was a means to further implement *Ventura*. Resolution No. 99-08 expressly addresses the “compensation earnable” topic that the *Ventura* decision considered, providing that 7/12 work schedule hours are included in “compensation earnable.” (See Exhibit A – Resolution 99-08). Although Resolution 99-08 is silent on the service credit issue, the Board approved the Staff recommendation to grant additional service credit for the 81<sup>st</sup>-84<sup>th</sup> hours worked on a 7/12 work schedule. This decision allows members on this schedule to earn more than one year of service credit with SCERS for one year of work with the County. While *Ventura* may reasonably be interpreted as providing the Board with authority to include the 81<sup>st</sup>-84<sup>th</sup> hours in compensation earnable, *Ventura* did not address the additional service credit issue. The Board made the determination to provide additional service credit independent of the court ruling. It is this practice of awarding more than a year of service during a 365-day period that staff is now recommending the Board discontinue.

### CERL and related authorities

Though not explicitly expressed in the CERL, a review of various CERL sections and by analogy with the Public Employees’ Retirement Law (PERL) and the Teachers’ Retirement Law (TRL), lead to the conclusion that the most reasonable application of service credit is to award a member with no more than one year for every 365-day period.

As explained in *Ventura*, the retirement allowance provided under the CERL is a “combination of a retirement annuity based on the employee’s accumulated contributions supplemented by a pension ... sufficient to equal a specified fraction of the employee’s ‘final compensation.’” (*Ventura*, 16 Cal.4<sup>th</sup> at 490.) The fraction applied to final compensation is based on the factors set forth in the applicable retirement formula (and based on age at retirement), multiplied by “the number of years of current and prior service with which the member is entitled to be credited at retirement ....” (See, e.g., § 31664 (safety members) (emphasis added).) Thus, service credited at retirement, or service credit, is measured in years of service.

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Section 31640.5 establishes the means of calculating service credit for members who do not work full-time or full year schedules. In these situations, Service credit is calculated and accrued as follows:

[T]he member shall receive credit as continuous service for that *proportion* of the time he or she held the position as the time he or she actually was engaged in the performance of the duties of the position *bears to the time required to perform the same duties in a full time position*. [¶] A ‘year of service’ in the position shall be construed to mean the time during which the member has *one full year of credit*, calculated as provided in this section. (Emphasis added.)

Under this statute, less than full-time service credit is calculated as a *percentage* of one full year of credit and not by simply adding up the number of hours actually worked.

Thus, a “year” in service means what it says: full-time employment for that period of time. The plain meaning of the term “year,” combined with case law interpreting the PERL and TRL, strongly support limiting service credit accruals in this manner.

#### Decoupling of Compensation Earnable and Service Credit

So long as the member is considered a full-time employee, this measure of service credit should not be affected by the number of actual hours that he or she may work, whether through overtime, a 7/12 workweek, or other work schedule that is more or less than the traditional 40-hour workweek. In reviewing Exhibit A, it appeared that staff incorrectly equated the additional compensation earnable available to a member working a 7/12 schedule with additional service credit—specifically, the 81<sup>st</sup> through 84<sup>th</sup> hour of shift work.

On page 3 of Exhibit A, staff’s recommendation stated that if the 81<sup>st</sup> through 84<sup>th</sup> hours were determined to be compensation earnable, then they should also apply towards service credit. It is this concept that each hour worked carries with it a compensation earnable component and a service credit component that seems to have influenced the 1999 decision to award additional service credit. In actuality, the CERL provides a long precedent of decoupling compensation earnable from service credit, especially for hours worked in excess of a standard 40-hour workweek schedule. While regular hours worked typically go hand-in-hand with service credit, there are instances where an hour utilized in a retirement calculation increases compensation earnable or service credit, but not necessarily both. For example, when a member takes advantage of a vacation sell back, the compensation received by the member as a result of the sale is attributed towards compensation earnable; however, there is no corresponding award of service credit for the vacation hours purchased. Conversely, when a member of SCERS retires, the member can convert his or her unused sick leave to service credit; however, those same hours are not converted into a dollar value and included in compensation earnable (nor were contributions directly paid on those sick-leave hours).

### Correcting the Practice

Correcting the practice since its inception would require the recalculation of almost every retirement allowance awarded since October 1997, the effective date of SCERS' practice per Resolution 99-08. That would likely expose SCERS to significant litigation risk from impacted retirees and current members, and a court could 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 in accordance with governing documents, Staff recommends discontinuing the practice of awarding service credit to the 81<sup>st</sup> through 84<sup>th</sup> hours of members that work a 7/12 alternate work schedule after the pay period ending December 22, 2018. Effective with the pay period beginning December 23, 2018, SCERS will no longer award service credit for hours worked in excess of a standard 80-hour biweekly work schedule. Under the proposed policy, one year of service credit will reflect the regular, full-time hours worked under a particular work schedule for that year, not to exceed one year.

Because SCERS will continue to honor Resolution 99-08 and award extra service credit to members who work a 7/12 work schedule through December 22, 2018, that service credit will continue to be included in retirement calculations, as long as the service credit was earned no later than December 22, 2018.

**Please note that no changes are being proposed—retroactively or prospectively—regarding the treatment of compensation earned on the 7/12 work schedule. Because those additional hours are part of the regular schedule, SCERS will continue to collect retirement contributions and include those earnings as pensionable for all retirement tiers.**

### FISCAL AND ADMINISTRATIVE IMPACT

Staff anticipates minor financial savings as a result of this policy change. Both employers and members will continue to pay contributions on hours 81-84 of a 7/12 schedule and those hours will continue to be included in compensation earnable or pensionable compensation. For payroll periods that coincide with and follow the effective date of this policy, employers will not experience the liability associated with allowing members to receive more than a year of service for just a single year of plan participation. Staff is continuing to work with Sacramento County to determine if modifications to the county's payroll system are needed.

### NEXT STEPS

Upon approval by the Board, Staff will distribute the Discussion Draft to employers and employee groups for comment. Staff will evaluate any comments received for incorporation in the policy, with the expectation that the Board will be presented with a final policy for consideration at its regular meeting on December 19, 2018.

**ATTACHMENTS**

Exhibit A – SCERS Board of Retirement Agenda Item 8 (August 6, 1999), and Resolution No. 99-08.

Exhibit B – Discussion Draft policy

Prepared by:

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Robert L. Gaumer  
General Counsel

/S/

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John W. Gobel, Sr.  
Chief Benefits Officer

Reviewed by:

/S/

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Eric Stern  
Chief Executive Officer

# ITEM 8

## SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM Departmental Correspondence

For Agenda of August 19, 1999

August 6, 1999

TO: President and Members  
Board of Retirement

FROM: Linda Seher  
Chief Benefits Officer

SUBJECT: STAFF RECOMMENDATIONS - ADDITIONAL ELEMENTS OF  
COMPENSATION EARNABLE

### **RECOMMENDATION:**

Adopt the attached Resolution No 99-08 which:

- a. establishes two new elements of compensation i.e., "equipment allowance" and "7/12 work schedule hours" as compensation earnable,
- b. considers the 81st-84th hour of a 7/12 work schedule as retirement service credits and compensation for those hours as compensation earnable to be included in a representative "year",
- c. establishes an operative date of October 1, 1997,
- d. directs staff to implement these changes.

### **PREVIOUS ACTIONS CONCERNING ELEMENTS OF COMPENSATION:**

This action arose as a result of the California Supreme Court Decision in Re: Ventura County Deputy Sheriffs' Association et al v: Board of Retirement of Ventura County Employees' Retirement Association.

On December 12, 1997, your Board adopted Resolution No 97-12 which, in addition to elements already treated as compensation earnable, established ten new elements of compensation as compensation earnable and established an operative date of October 1, 1997.

The ten new elements of compensation earnable were identified to the Department of Systems and Data Processing staff to implement the necessary changes in the payroll system and make the necessary changes to collect contributions from employees on these elements retroactive to October 1, 1997. In February 1998 contributions were withheld from the ten new elements of compensation earnable and in April 1998 the retroactive contributions were collected.

### **CURRENT DISCUSSION:**

Both County Counsel and the County Office of Labor Relations were contacted concerning the additional elements of compensation earnable (equipment allowance and 7/12 work schedule hours) and agree with staff recommendations.

The following is being presented for consideration concerning the two additional elements of compensation earnable being recommended:

#### **EQUIPMENT ALLOWANCE**

The County of Sacramento has contract language which reimburses employees for maintenance costs when they are required to provide their own equipment, e.g., court reporters who provide their own transcribing machines. Staff believes that this equipment allowance should be included as compensation earnable under the Ventura decision. It was not specifically included previously because in the legacy system it was paid in the same manner and at the same time as the clothing and uniform allowance payments. However, with the new payroll system it became apparent that equipment allowance was not being included within the clothing and uniform allowance payment and was not being included as compensation earnable.

#### **7/12 SHIFT**

#### **Compensation Earnable:**

Your Boards' Bylaws Section 17 provides that regular employees who receive compensation based on rates per hour as provided in the salary ordinance shall be members and their retirement contributions shall be based on an eight (8) hour day, and eighty (80) hours per two-week period. However, the County of Sacramento has contract agreements with at least four unions (Non-Supervisors Law Enforcement Unit, Office Technical Unit, Health Service Unit, and Nurses) to allow employees to work a 7/12 workweek. The 7/12 workweek consists of three 12 hour shifts in one week and four 12 hour shifts in the next week for a total of eighty-four hours in a bi-weekly pay period. Some union contracts provide for the 81st-84th hours to be treated as straight time overtime and others provide for time and one-half overtime. When SCERS staff evaluated the various types of pay in relation to the Ventura decision, the 7/12 shift did not appear to be an issue because every indication was that it was overtime and overtime is excluded.

During the County's 1998 negotiations with the Sacramento County Deputy Sheriff's Association ("DSA"), Richard Chiurazzi, Attorney-at-law, raised questions regarding the validity of the contract language and specifically the impact of the Ventura decision on the contract language, particularly as it relates to 7/12 shifts. After reviewing the Ventura decision and seeking advice from County Counsel and consultation from the County Office of Labor Relations, SCERS staff concludes that earnings for eighty four hours on a 7/12 work schedule should be considered compensation earnable.

**Additional Service Credits:**

Mr. Chiurazzi also has requested that the Board of Retirement consider crediting the 81st-84th hour as retirement service credits if the Board determines that the earnings are indeed compensation earnable. Simply stated, a member on the 7/12 work schedule would accrue 84 hours bi-weekly (2,192.4 hours of service credits in a full year) whereas a member working a 10/8 work schedule would accrue 80 hours bi-weekly (2,088 hours of service credits in a full year).

As the Board is aware, service credits accrued in a given year are important because:

1. The thirty year cut-off (cessation of member contributions) occurs when a member has credit for 30 years' service providing the member was a member on March 7, 1973. Therefore, if the 81st-84th hours are counted as service credits a member would accumulate the equivalent of thirty years of service credits faster.
2. Final compensation is based upon the average annual compensation earnable by a member during any year (or if applicable any three year period) prior to the effective date of benefit payment. Service retirement and disability retirement allowances and death benefits are calculated on the basis of final compensation. Thus a 7/12 work schedule would enhance the compensation earnable and, therefore, the "final compensation" in a given year, resulting in higher benefits than other work schedules.
3. Under the existing non-vested Retiree Health Care Benefits Program, the amount of medical subsidy offset that a member receives at the time of retirement is based upon years of service credits with total credited service credits divided by 2088 to determine "years" of qualifying service credits. Again, the member on the 7/12 work shift would earn more service credits than other members and therefore be eligible for a higher medical premium offset.

After researching the matter of the service credits it appears that those "extra" hours should be treated as service credits. Again, the Board needs to be aware that when counting those hours as service credits an employee could earn more than 2088 hours of service credits within a representative year of compensation.

**IMPLEMENTATION:**

If the Board adopts the recommendation, staff will notify employees and responsible membership employer staff to 1) begin withholding contributions from the 81st-84th hours earnings, i.e. either straight time or time and one-half earnings, 2) report the 81st-84th hours as retirement service credits (only the four hours and not the rate of payment equivalency), 3) begin withholding contributions from the equipment allowance, 4) calculate the amount of contributions due retroactive to October 1, 1997, 5) establish the length of the repayment schedule, and 6) begin collection of the retroactive contributions.

SCERS staff will identify any employee who retired since October 1, 1997 who worked the 7/12 shift or who received an equipment allowance differential, collect retroactive contributions, adjust the service credits if applicable, and adjust the monthly retirement allowance.

RESPECTFULLY SUBMITTED:

CONCUR:



LINDA SEHER  
Chief Benefits Officer



JOHN R. DESCAMP  
Chief Executive Officer

cc: Terry Schutten, County Executive  
Robert A. Ryan, Jr., County Counsel  
J. Steven Burris, Deputy County Counsel  
Mike DeBord, Administrator, Human Resource Agency  
Steve Lakich, Director of Labor Relations

**COMPENSATION EARNABLE AS OF 8/19/99**

<b>EARNINGS</b>	<b>DESCRIPTION</b>	<b>PRE-VENTURA</b>	<b>VENTURA (10/1/97)</b>	<b>RECOMMENDED (8/19/99)</b>	<b>EXCLUDED</b>
Regular Earnings	Hours of work	X			
One Time Bonus Payment	Payments normally made once a year as a result of bargaining		X		
Overtime-includes CTO expired	Hours worked in excess of normal work schedule				X
7/12 work shift	Regular work schedule of 12 hours per day; 84 hours per bi-weekly pay period			X	
Extra-help wages	Wages paid to employees who are not regular (permanent) county employees				X
Holiday-in-lieu paid after 104.0 hours	Hours paid over the maximum of 104.0		X		
Workers' Compensation Temporary disability	Workers compensation benefits integrated with existing leave balances for employees who have an accepted industrial injury and are temporary disabled.	X			
Shift differential	Differentials paid to employees working other than the day shift	X			
Standby pay	An assignment of an employee to remain on call if the need arises for emergency work.		X		
Food allowance	An 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 based upon a percentage of base pay.	X			
Management differential	Additional pay paid to managers in lieu of other benefits, i.e. tuition reimbursement	X			
Transcription fees for court reporters	Monies paid to court reports to transcribe their cases				X
Retirement offset	Additional pay for certain employees in-lieu of the county paying 1/2 retirement contributions	X			
Leave balance usage (vacation, compensating time off (CTO), holiday in-lieu, sick leave, etc.)	Payment received for absence from work due to use of leave balances or authorized paid absences.	X			

Vacation cash-in	Additional pay, twice a year, for cashing in accrued vacation.			X	
Payoff beyond maximum accrual	Additional pay for vacation hours over the maximum accrual			X	
Mental Health Retention	A recruitment differential paid twice a year to employees who work at the mental health facility			X	
Disability Pay	Used in conjunction with Workers' Compensation Disability Pay so that when combined together it equals 50% of the bi-weekly pay.	X			
4850 Time pay	Paid in lieu of temporary disability for Safety personnel in accordance with 4850 of the Labor Code – tax free – max one year.	X			
Clothing allowance	An allowance paid in two installments to cover the cost of maintaining a uniform			X	
Equipment allowance	An allowance paid in two installments to reimburse employees who are required to provide their own equipment, i.e., court reporters			X	
Animal allowance	Payments made to employees assigned to the K-9 and Mounted Patrol to maintain their animals				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 Standard 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 insurance subsidy to employees who were at social security maximum.			X	
Vehicle taxation earnings	Taxation for the value of a home retention vehicle				X
Auto allowance	Payment for use of personal vehicle for county business			X	

On a motion by Member KELLY, seconded by Member COX, the foregoing resolution was passed and adopted by the Board of Retirement of the Sacramento County Employees' Retirement System this 19<sup>th</sup> day of August 1999, by the following vote, to wit:

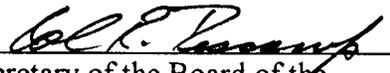
AYES: Members, Suter, Irish, Hoganson, Woods, Cox, Kelly, DeVore.

NOES: Members, None.

ABSENT: Members, Dipenbrock, Hickox.

ADOPTED: August 19, 1999

  
\_\_\_\_\_  
President of the Board of the  
Sacramento County Employees'  
Retirement System

ATTEST:   
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Secretary of the Board of the  
Sacramento County Employees'  
Retirement System

**RESOLUTION NO. 99-08**

**RESOLUTION AMENDING THE BYLAWS OF THE  
SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM**

WHEREAS, the Board of Retirement on November 19, 1980, adopted bylaws regulating the administration and operation of the Sacramento County Employees' Retirement System and the Board of Retirement; and

WHEREAS, the bylaws at Section 20 provide the definition of the term "compensation earnable" in accordance with Government Code section 31461; and

WHEREAS, on December 12, 1997, the Board of Retirement revised the definition of "compensation earnable" due to a decision by the Supreme Court; and

WHEREAS, it has come to the attention of the Board that an additional amendment is needed due to the Supreme Court decision;

NOW THEREFORE, BE IT RESOLVED by the Board of Retirement of the Sacramento County Employees' Retirement System, a retirement system formed under the Retirement Act of 1937, as follows:

**Section 1.** Section 20 of the Sacramento County Employees' Retirement System bylaws is hereby amended to read as follows:

Section 20. Compensation Earnable.

For purposes of determining the amount of contributions by a member, "compensation earnable" includes all remuneration paid in cash through the payroll warrant including: regular earnings, workers compensation temporary disability, shift differential, special pay allowances, incentive pay allowances, miscellaneous allowances, management differential, retirement offset, sick leave, disability pay, 4850 time pay, bonus pay, holiday-in-lieu paid after 104.0 hours, standby pay, food allowance, vacation cash-in and payoff beyond maximum accrual, mental health retention, clothing allowance, insurance subsidy, insurance subsidy offset, auto allowance, equipment allowance and 7/12 work schedule hours. All other elements of compensation not expressly included in "compensation earnable" are excluded.

**Section 2.** Section 1 of this Resolution shall be operative prospectively as of October 1, 1997. Staff is directed to implement the required changes.

On a motion by Member KELLY, seconded by Member COX, the foregoing resolution was passed and adopted by the Board of Retirement of the Sacramento County Employees' Retirement System this 19<sup>th</sup> day of August 1999, by the following vote, to wit:

AYES: Members, Suter, Irish, Hoganson, Woods, Cox, Kelly, DeVore.

NOES: Members, None.

ABSENT: Members, Diepenbrock, Hickox.

ADOPTED: August 19, 1999

  
\_\_\_\_\_  
President of the Board of the  
Sacramento County Employees'  
Retirement System

ATTEST:

  
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Secretary of the Board of the  
Sacramento County Employees'  
Retirement System



# **SERVICE CREDIT POLICY** **DISCUSSION DRAFT**

**Revision Date: November 5, 2018**

**Policy Number: 026**

## **PURPOSE**

The purpose of this policy is to establish that service credit cannot exceed one (1) year in a 365-day period.

## **POLICY**

The number of hours worked by SCERS members during a normal/scheduled workweek varies by different job classification, bargaining unit, and/or worksite. Regardless, the service credit accrued or available for a normal, scheduled workweek is referred to as "regular service" and excludes overtime. Members accrue service credit for each hour of regular service. One (1) year of service credit shall reflect the regular, full-time hours worked under a particular work schedule for that year. Service credit cannot exceed one (1) year in a single calendar year or other 365-day period.

## **EFFECTIVE DATE**

Beginning with the pay period commencing on or after December 23, 2018, SCERS will limit service credit to one (1) year in a 365-day period.

## **APPLICATION**

Regular service at SCERS is benchmarked to a standard schedule of 40 hours per week, or 80 hours per biweekly pay period. Accordingly, those members who work a standard schedule can expect to accrue one year of service credit by working 40 hours per week for 52 weeks (and making all the contributions required of full-time employees).

Members who work any full-time, alternate schedule that is more or less than 40 hours per week can also expect to accrue one year of service credit by working that alternate schedule for 52 weeks (and making all the contributions required of full-time employees).

For example, members who work a 7/12 schedule (the equivalent of 84 hours per biweekly pay period) can accrue one year of service credit by working that schedule for 52 weeks. Service credit under the 7/12 schedule cannot exceed one (1) year.

If a member works a full-time, standard schedule for part of a year and also works a full-time, alternate schedule for the other part of year, the member will receive one (1) year of service credit.

After this policy is adopted by the Board of Retirement and goes into effect on December 23, 2018, SCERS will not allow or recognize service accruals in excess of one (1) year for any calendar year or other 365-day period.

## **BACKGROUND**

In accordance with Board policy adopted in August 1999, SCERS has been crediting additional service to members who work under a 7/12 schedule. Under the policy, these members have been able to earn more than one year of service credit for each year of service. The SCERS Board has concluded that this administrative practice should be discontinued prospectively. This policy supersedes the Board action on August 19, 1999, that authorized additional service credit for 7/12 schedules, and applies to any alternate schedule, for service accrued on or after December 23, 2018.

## **RESPONSIBILITIES**

Executive Owner: Chief Benefits Officer

## **POLICY HISTORY**

<b>Date</b>	<b>Description</b>
11/5/2018	Board reviewed draft policy 026
8/19/1999	Item 8, Board agenda materials