Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 13

MEETING DATE: **April 17, 2019**

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 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 for compensation earnable periods occurring after the pay period ending April 27, 2019.

PURPOSE

This item supports the 2018-19 Strategic Management Plan initiative to review and update 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 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 twenty-five "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 PEPRA, 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. It appears that computer programming decisions, when the County developed the COMPASS payroll system in 1998, led to the inclusion of these overtime elements. Upon further administrative and 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 CERL, SCERS' *Ventura* Agreement, or case law.

Furthermore, inclusion of overtime-pay elements can lead to artificial inflation and manipulation of retirement benefits, to the extent employees are able to seek out and secure additional overtime work during their Final Compensation period.

Changing 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. 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*"). In particular, the Supreme Court is expected to determine the extent to which, under Government Code section 31461(b)(1) of the CERL, a retirement board may exclude from compensation earnable any compensation it determines has been paid to enhance a member's retirement benefit. Regardless, neither case addresses whether a Board can determine that a pay element associated with overtime and overtime based differentials should not be included in compensation earnable, and SCERS' *Ventura* Agreement and case law appear to support the prospective exclusion of these amounts from future Final Compensation periods.

Changing SCERS' practice since its inception, on the other hand, would require the recalculation of almost every retirement allowance awarded since the 2004 *Ventura* Agreement, or potentially 1998 when the County implemented its payroll system. A retrospective approach would likely expose SCERS to significant litigation risk from impacted retirees and current members, and a court may apply estoppel 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, including the prevention of artificial enhancement of retirement benefits that can result from the current practice, 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 April 27, 2019. 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 April 28, 2019.

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 April 27, 2019, those earnings can continue to be counted toward the highest Final Compensation period—as long as those pay items are received no later than April 27, 2019. Therefore, SCERS will not be refunding member or employer contributions under this policy. In a pooled-risk pension plan, members often make contributions on pensionable pay items at certain points of their careers that ultimately are not used toward Final Compensation. For example, an employee working a night shift early in his or her County career would make pension contributions on a night-shift differential that he or she earned as an incentive to work that shift. Assume the employee later switches to a regular day shift and loses the night-shift pay; after 25 years of promotions, step increases, and cost-of-living adjustments, the employee's end of career salary would likely be higher than the employee's early-career earnings that included the night-shift differential. The employee would not get a refund of contributions paid on the night-shift differential. Under this policy, pension contributions made on overtime-related earnings earlier in an employee's career will be treated similarly.

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 earnable compensation.

This policy effectively applies only to legacy members. In compliance with the Public Employees' Pension Reform Act (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.

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. Sacramento County is also modifying its payroll system to accommodate this policy. Similarly, the County's employees who work overtime and receive differentials will receive more take-home pay as fewer contributions will be taken on those differentials. Their future retirement allowances also will not include any differential payments that are attributable to overtime/CTO-expired/CTO-over-max that they may receive after the adoption of the proposed 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").

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."

Staff also modified the October 2018 Discussion Draft 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.

At the December 19, 2018, Board meeting, the Board President removed this policy from the agenda and requested it be added to the April 17, 2019, Board meeting agenda. Staff has continued to assist the COMPASS team on the technical changes to the payroll system, which will be completed by April 27, 2019, to accommodate this policy. No material changes have been made to the policy since the December 2018 version.

ATTACHMENTS

- Compensation Earnable Policy for Overtime, CTO-Expired, and CTO-Over-Max
- FAQs regarding “Compensation Earnable Policy for Overtime, CTO-Expired, and CTO-Over-Max,” April 2019 Update.
- DSA correspondence dated November 30, 2018, regarding “Position Statement on Proposed Changes to Compensation Earnable and Service Credit Calculation.”

Prepared by:

/S/

Mario Sierras
Chief Benefits Officer

Reviewed by:

/S/

Eric Stern
Chief Executive Officer

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

SCERS
SACRAMENTO COUNTY
EMPLOYEES' RETIREMENT SYSTEM

Revision Date:	April 17, 2019	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 April 28, 2019.

EFFECTIVE DATE

Beginning with the pay period commencing April 28, 2019, 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 compensation earned during 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

<u>Overtime</u>
Overtime wages are <u>not</u> included in compensation earnable. Allowances or other differentials that are the result of overtime hours will also <u>not</u> be included in compensation earnable for periods occurring on or after April 28, 2019.

<u>Compensatory Time Off</u>
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.

<u>Compensatory Time Off-Expired</u>
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 will not be included in compensation earnable for periods occurring on or after April 28, 2019. 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) also will not be included in compensation earnable for periods occurring on or after April 28, 2019.

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 a regularly scheduled workweek, are considered "overtime" and will not be included in compensation earnable, including any applied allowances or pay differentials earned during periods on or after April 28, 2019.

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 Compensation when they are earned to that one or three year period. 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 administrative and 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, and a better interpretation of those authorities is to exclude them from Final Compensation.

In accordance with California law including equitable principles that may be invoked by fiduciaries, this exclusion will be implemented prospectively only.

RESPONSIBILITIES

Executive Owner: Chief Executive Officer

POLICY HISTORY

Date	Description
04-17-2019	Board reviewed final policy.
10-17-2018	Board approved Discussion Draft for comment.

SCERS POLICY ON OVERTIME, CTO-EXPIRED, and CTO-OVER-MAX
FREQUENTLY ASKED QUESTIONS
Updated April 2019

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

On October 17, 2018, the SCERS Board approved a draft policy to exclude from future Final Compensation determinations any payments that are attributable to differentials or incentives that are paid based on overtime hours or expired compensatory time off (CTO-expired). The Board is considering the policy for final adoption on April 17, 2019.

2.Q. Who does this effect?

Current and future 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/CTO-over-max count toward my pension?

No. Under applicable state law, pension calculations are not to include overtime or CTO-expired/CTO-over-max.

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

Yes and no. Overtime and CTO-expired/CTO-over-max earnings on base wages are already excluded from Final Compensation, as required by state law. However, the differentials, allowances, or other incentives paid on overtime and CTO-expired/CTO-over-max have nevertheless been reported by County payroll as compensation earnable.

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

No. SCERS' Board policies address only the pensionability of the County's payments, not whether the County may pay them. Therefore, the County may continue to offer and pay compensation in addition to an employee's base wages in accordance with federal and state labor law, as well as any applicable bargaining agreements regardless of the SCERS Board's actions.

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

No, to the extent those payments are not based on overtime or CTO-expired/CTO-over-max time. For legacy members, differentials paid on regular salary still are included in compensation earnable. Any portion of these earnings attributable to overtime or CTO-expired/CTO-over-max, however, will no longer be included in compensation earnable for periods after the Board's adoption of a final policy so providing.

7.Q. Does the 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?

No. The policy does not change any compensation earnable reported to SCERS ahead of its effective date, which coincides with the first day of the bi-weekly pay period beginning April 28, 2019. 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 of the policy.

8.Q. Does the 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 that will be used to calculate member contributions to SCERS?

Yes. Once the policy is in effect, SCERS will not recognize as compensation earnable any portion of differentials, allowances or other incentives that include overtime or CTO-expired/CTO-over-max, since neither overtime nor CTO-expired/CTO-over-max 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/CTO-over-max after April 27, 2019.

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 April 27, 2019, 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).

- If Mike receives the customary earnings for any pay period on or after April 28, 2019, he pays member contributions on a total of $1,648 ($1,600 in base wages and just $48 (3% x $1,600) – since the portion of differentials that include overtime are no longer accepted as compensation earnable). When Mike retires, if he elects a final compensation period that occurs entirely after April 27, 2019, the differentials he received attributable to overtime will not be included in his final compensation. However, Mike would presumably choose that post-April 27, 2019 final compensation period only if his compensation earnable during that period exceeded the compensation earnable calculated for earlier periods.

9.Q. What happens to amounts I've already contributed to SCERS up to April 27, 2019?

Member contributions associated with differentials, allowances, or other incentives that include overtime or CTO-expired/CTO-over-max will be accepted into the SCERS trust up until April 27, 2019, 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 except in the form of the annuity that pays for the member's retirement allowance– unless the member subsequently terminates employment and requests a full "refund" of contributions and interest from SCERS.

In a pooled-risk pension plan, members often make contributions on pensionable pay items at certain points of their careers that ultimately are not used toward Final Compensation. For example, an employee working a night shift early in his or her County career would make pension contributions on a night-shift differential that he or she earned as an incentive to work that shift. Assume the employee later switches to a regular day shift and loses the night-shift pay; after 25 years of promotions, step increases, and cost-of-living adjustments, the employee's later career salary would likely be substantially higher than the employee's early-career earnings that included the night-shift differential. The employee would not get a refund of contributions paid on the night-shift differential. However, all contributions that members make are included in the annuity portion of their retirement allowance that is paid to them upon retirement. Under this policy, member contributions made on overtime-related earnings earlier in an employee's career will be treated similarly.

10.Q. What happens to contributions on or after April 28, 2019?

Member contributions associated with differentials, allowances, or other incentives that include overtime or CTO-expired/CTO-over-max will not be accepted on or after April 28, 2019. Sacramento County has modified its payroll system to exclude those pay items on or after April 28, 2019. Any contributions that do not comply with this policy will need to returned to affected members, in a manner that will be coordinated between the County and SCERS Staff. Whether these contributions are corrected upon receipt or at some future date, they will not increase a member's Final Compensation.

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

A. For persons who enrolled in SCERS or a reciprocal retirement system before January 1, 2013, Final Compensation includes only those pay elements that qualify as "compensation earnable." Under the County Employees Retirement Law of 1937 (Gov. Code sec. 31461), the SCERS Board is required to "determine" compensation earnable, and that determination must comply with the Board's fiduciary duties of care and loyalty in the administration of the retirement system. SCERS staff has recommended that the Board revisit its determination of compensation earnable and exclude from compensation earnable attributable to future Final Compensation periods those pay elements that are attributable to nonpensionable earnings because that determination better reflects the letter and spirit of the applicable law.

DAVID P. MASTAGNI
JOHN R. HOLSTEDT
MICHAEL D. AMICK
CRAIG E. JOHNSEN
BRIAN A. DIXON
STEVEN W. WELTY
STUART C. WOO
DAVID E. MASTAGNI
RICHARD J. ROMANSKI
PHILLIP R.A. MASTAGNI
KATHLEEN N. MASTAGNI STORM
SEAN D. HOWELL
WILLIAM P. CREGER
SEAN D. CURRIN
ISAAC S. STEVENS
PAUL T. DOLBERG
DANIEL L. OSIER
JUDITH A. ODBERT
ERIN M. DERVIN
KENNETH E. BACON
KEVIN A. FLAUTT
ACE T. TATE
JOHN H. BAKHIT
GRANT A. WINTER

Sacramento Office
1912 I Street
Sacramento, CA
95811-3151
(916) 446-4692
Fax (916) 447-4614

Tax ID #94-2678460

MASTAGNI HOLSTEDT
A Professional Corporation

All Correspondence to Sacramento Office
www.mastagni.com

Rancho Cucamonga Office
9327 Fairway View Place, Ste. 304
Rancho Cucamonga, CA
91730-0970
(909) 477-8920

Chico: (530) 895-3836
San Jose: (408) 292-4802
Stockton: (209) 948-6158
Los Angeles: (213) 640-3529

IAN B. SANGSTER
JOSHUA A. OLANDER
DUSTIN C. INGRAHAM
TASHAYLA D. BILLINGTON
HOWARD A. LIBERMAN
CEZAR J. TORREZ
DANIEL L. RAINSBURY
JOHN J. BOSTANZOGLOU
GREGORY J. THOMING
MITCHELL A. DE ANDA
BRENDAN B. ROCHFORD
ZEBULON. J. DAVIS
KEVIN R. WIEMER
ANDREW S. DORIOTT
EMILY J. GUERRA
DOUGLAS T. GREEN
SETH A. NUNLEY
MARK E. WILSON
MELISSA M. THOM
JASON M. EWERT
JONATHAN D. CHAR
PETER D. LEWICKI
ELI MORENO-SANCHEZ
BRETT D. BEYLER

DEC 06 2018

BY:

November 30, 2018

Via U.S. Mail & Email

Board of Retirement
Sacramento County Employees' Retirement System
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 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

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[1]A 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.

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

[3]A 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.

[4]A 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.

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.

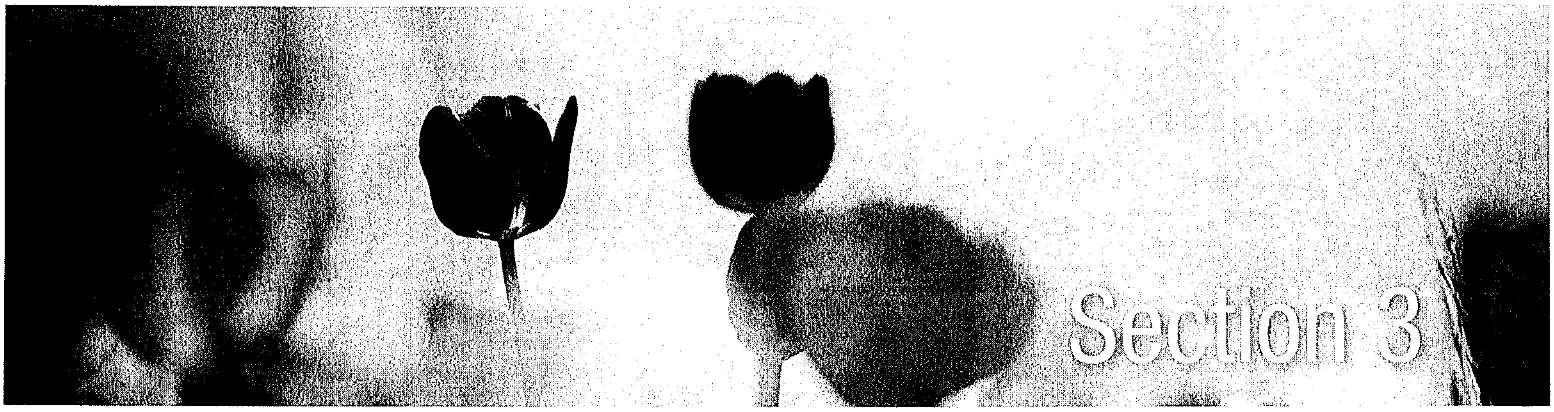
In the interest of avoiding protracted litigation on this issue, the SCDSA proposes that SCERS delay any decision on the implementation of the proposed Incentive Policy and Service Credit Policy until after the Supreme Court decides the *Alameda* case.

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



Service Credit

Earning Service Credit

Becoming Retirement Eligible (Vested)

Purchasing Permissive Service Credit

30-Year Membership—Member Contributions Cease

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.*

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 emplyees 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	

* 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.

** 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.

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.