



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 26

MEETING DATE: August 19, 2020

SUBJECT: Sick Leave Conversion Policy – Second Discussion Draft

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

RECOMMENDATION

Staff recommends the Board approve a second discussion draft of the Sick Leave Conversion Policy for dissemination to stakeholders. The proposed policy governs how SCERS will calculate the conversion of unused sick leave to service credit pursuant to Government Code section 31641.01.

PURPOSE

This item supports the Strategic Management Plan to maintain transparent communication among stakeholders and promote understanding of roles and responsibilities by updating Board policies by which SCERS administers the retirement plan.

BACKGROUND

A. Applicable Law

Government Code section 31641.01 states that “each member shall be credited, at the rate of one day for each one day earned, with sick leave accumulated as of the date of his retirement and that sick leave credit shall be in addition to service credit.” The Legislature enacted section 31641.01 as a part of Assembly Bill 1617 in 1970. That same year, the Board of Supervisors made section 31641.01 applicable to Sacramento County by adopting Sacramento County Code section 2.84.010.

B. SCERS' Historical Practice

Neither Government Code section 31641.01 nor Sacramento County Code section 2.84.010 addresses a key question: what should SCERS look to in determining “sick leave accumulated as of the date of [the member’s] retirement?” Should SCERS simply defer to the employer’s accounting of a member’s unused sick leave balance, or should SCERS undertake an independent determination?

Historically, SCERS has taken a hybrid approach. Generally, SCERS would rely on the employer's reporting of how much unused sick leave the member has remaining as of the date of his/her retirement. However, SCERS would not recognize any reductions the employer made to a member's sick leave balance due to his/her separation from service.

That latter practice requires some context. Currently, most (if not all) SCERS employers deem unused sick leave to be forfeited upon an employee's separation from service. Take, for example, a member who separates from County service (never to return) but who does not immediately retire. By the employer's accounting, such a member would have a final sick leave balance of zero at the date of his/her retirement. Similarly, if a member separates from and then resumes service with the County, his/her sick leave balance would—by the employer's accounting—begin at zero upon re-employment. And when that member is ready to retire, the final sick leave balance as maintained by the employer would only include the unused sick leave accrued since re-employment.

SCERS' accounting, for the purpose of section 31641.01, would be different. In the case of the separated member who deferred retirement, SCERS would look to what the member's unused sick leave balance was at the time of separation. In the case of the member who separates and then returns to County employment, SCERS would include the prior unused sick leave balance in addition to the unused sick leave earned since re-employment.

In effect, SCERS' historical interpretation of section 31641.01 gives rise to two types of sick leave – one a balance of “usable” sick leave maintained by the employer, the other a balance of “convertible” sick leave calculated by SCERS. The two balances are usually identical, but diverge where the employee separates from service without immediately retiring.

C. SCERS' Draft Policy of April 2020

In April 2020, with the Board's approval, SCERS disseminated a discussion draft of a Sick Leave Conversion Policy (“April Draft Policy,” attached hereto as Attachment A). Under that proposed policy, SCERS would administer section 31641.01 by deferring entirely to the sick leave balance reported by the employer. In effect, that proposed policy requires SCERS to defer to each employer's individual policies and practices concerning the accumulation and forfeiture of sick leave, whatever those policies and practices might be. That approach (a common one among CERL systems) has the advantage of conferring more control to the employers who ultimately fund the benefit. As stated in the earlier memo to the Board: “Sick leave is a benefit provided by the employer—not SCERS. . . . It is the employer who funds sick leave, and it is the employer who is ultimately responsible for the funding of pension benefits.”

Since disseminating that draft policy for comment, staff has received feedback from the County and from employee groups. That feedback, both formal and informal, prompted staff to prepare a second draft policy for discussion (Attachment B).

DISCUSSION

As described above, SCERS' historical practice has been to administer section 31641.01 by including any unused sick leave the employer deemed forfeited due to the member's separation from service. With the benefit of feedback from stakeholders, staff now believes that it would be appropriate for SCERS to continue that practice, and to formalize it in a Board policy. The reasons are as follows:

- The concerns that gave rise to the April Draft Policy remain valid: sick leave and sick leave-based pension benefits are employer-funded, so SCERS should obtain employer input on what constitutes a member's "sick leave accumulated as of the date of his retirement." However, employers have now conveyed their comfort with SCERS' historical approach in both tacit and explicit terms. SCERS' practice is decades-old and well-known to employers, who have always borne its costs without objection. The dissemination of this draft policy will provide another opportunity for employers and members to express their support or non-objection to SCERS' historical practice.
- Although SCERS' historical approach imposes some burdens on staff, that approach is practicable and workable for all involved (i.e., SCERS, employers, and members). This is evidenced by the sheer longevity of the practice. The April Draft Policy, in contrast, may require new processes and procedures on the part of employers.
- SCERS' historical approach appears compatible with the Legislature's general intent in enacting section 31641.01. To be clear, when the Legislature was deliberating AB 1617 in 1970, the public employment environment was very different. In particular, county employees who separated from service generally forfeited all retirement rights. As one bill analysis noted: "A very large percentage of public employees never actually retires. They resign and withdraw their contributions; thus forfeiting not only sick leave, but all other retirement rights too. In effect, the procedure of this bill would benefit only the career-type employee who serves long enough to retire." See Bill Analysis of Assembly Bill 1617 by Assembly Committee on Public Employment and Retirement, dated May 11, 1970. Thus, in enacting section 31641.01, the Legislature likely had in mind the sick leave balances of "career-type" county employees, and not employees who separate and defer retirement. Nevertheless, the legislative record shows that the Legislature well understood section 31641.01 would make unused sick leave a convertible benefit rather than a "use it or lose it" benefit (at least for "career" county employees). *Id.* SCERS' historical approach is consistent, in that it merely extended that "convertibility" to a larger population once it became more common for separating members to defer retirement.
- The Board of Supervisors also appears comfortable with SCERS' historical approach. The legislative history shows that section 31641.01 (1) was the first sick leave conversion statute in California, (2) originally affected only Sacramento County, and (3) was the byproduct of a salary agreement between the Board of Supervisors and labor organizations. See, e.g., Letter from Office of the County Counsel to Senator Rodda re: AB 1617, dated June 30, 1970. Thus, the 1970 Board of Supervisors was familiar with section 31641.01 and understood it would make unused sick leave a convertible benefit

rather than a “use it or lose it” benefit. In subsequent decades, when SCERS regularly administered section 31641.01 to permit conversion for separated employees who deferred retirement, the Board of Supervisors took no action to change SCERS’ approach (e.g., by amending Sacramento County Code section 2.84.010). Indeed, the Board of Supervisors later enacted an ordinance that seems to treat SCERS’ practice of “banking” convertible sick leave as the default for separating employees who defer retirement (Sacramento County Code section 2.100.100(c).) In short, the Board of Supervisor appears to have long accepted SCERS’ historical approach.

Nothing in the foregoing suggests that SCERS is without discretion to, or is surrendering the discretion to, depart from its historical approach in the future. There is no evidence that either the Legislature or the Board of Supervisors intended to withhold from SCERS the discretion to evolve its administration of section 31641.01. Based on staff’s research, 15 of the 20 systems governed by the CERL convert sick leave to retirement service credit; more than half of those systems limit sick leave conversion for members who do not retire immediately or shortly after terminating service. Those systems’ limitations on sick leave conversion are delineated in county ordinances, Board of Retirement policy, or agreements with labor groups. Likewise, SCERS reserves the right to modify this (proposed) policy as appropriate to meet developments in the law and/or the successful operation of a public retirement system.

NEXT STEPS

Staff will distribute the discussion draft of the policy 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 October 21, 2020.

ATTACHMENTS

- Attachment A: Discussion Draft 1 (April 15, 2020 version)
- Attachment B: Discussion Draft 2 (August 19, 2020 version)

Prepared by:

/S/

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General Counsel

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



SICK LEAVE CONVERSION POLICY FIRST DISCUSSION DRAFT

PURPOSE

The purpose of this policy is to describe how SCERS calculates a member's "sick leave accumulated as of his date of retirement," which is convertible to service credit pursuant to Government Code section 31641.01.

POLICY

Government Code section 31641.01 states that "each member shall be credited, at the rate of one day for each one day earned, with sick leave accumulated as of the date of his retirement and that sick leave credit shall be in addition to service credit."

For members that are hired by a participating SCERS employer for the first time on or after July 1, 2020, the amount of "sick leave accumulated as of the date of his retirement" shall be the sick leave balance maintained by the member's employer as of the date of his or her retirement.

APPLICATION

This policy primarily affects the calculation of service credit when a SCERS member does not immediately retire upon separation from service with a SCERS employer.

Currently, most (if not all) SCERS employers deem unused sick leave to be forfeited upon a member's separation from service.

This policy requires SCERS to calculate service credit for individuals who first become SCERS members on and after July 1, 2020, by relying on the final sick leave balance as maintained by the employer "as of the date of retirement" of the member. Thus, as to such members, if an employer treats unused sick leave as forfeited upon separation and excludes it from the member's final sick leave balance, SCERS may not convert that excluded leave to service credit. On the other hand, if an employer chooses to treat unused sick leave as available for use for members who do not immediately retire upon separation, and includes it in the member's final sick leave balance, SCERS must convert that included leave.

In effect, this policy provides that, in applying Government Code section 31641.01 to members hired on or after July 1, 2020, SCERS will defer to each employer's individual rules and methodology concerning the accumulation, usage, and forfeiture of sick leave as of the date of retirement of those members.

BACKGROUND

This policy represents a change in SCERS' practices in implementing Section 31641.01, as applicable to individuals whom a participating SCERS employer hires on or after July 1, 2020.

Because Section 31641.01 does not specify what SCERS must look to in determining "sick leave accumulated as of the date of [the member's] retirement," SCERS has some administrative discretion in that regard. Historically, SCERS has not determined "sick leave accumulated" by simply deferring to employer practices. Rather, SCERS has included the unused sick leave balance in service credit calculations even if it was deemed forfeited by the employer. This policy does not change that historical practice for members who joined a SCERS employer before July 1, 2020.

SCERS reserves the right to modify and/or extend this policy, subject to the California Supreme Court's review of *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.*, 2 Cal.App.5th 674 (2016) and *Alameda County Deputy Sheriff's Ass'n v. Alameda County Employees' Retirement Assn.*, 19 Cal.App.5th 61 (2018).

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

Date	Description
4-15-2020	Staff to recommend Board approve Discussion Draft for comment.



SICK LEAVE CONVERSION POLICY SECOND DISCUSSION DRAFT

PURPOSE

The purpose of this policy is to describe how SCERS calculates a member's "sick leave accumulated as of his date of retirement," which is convertible to service credit pursuant to Government Code section 31641.01.

POLICY

Government Code section 31641.01 states that "each member shall be credited, at the rate of one day for each one day earned, with sick leave accumulated as of the date of his retirement and that sick leave credit shall be in addition to service credit."

In implementing section 31641.01, SCERS shall interpret the phrase "sick leave accumulated as of the date of [the member's] retirement" as follows:

- "Sick leave accumulated as of the date of [the member's] retirement" shall mean the amount of the sick leave the member has earned as of the date of his/her retirement, deemed unused by the employer, as reported by the employer to SCERS.
- However, "sick leave accumulated as of the date of [the member's] retirement" shall not be reduced due solely to the fact that the member separated from service prior to retirement.
- This policy shall be subordinate to and subject to any statute or ordinance that addresses the conversion of sick leave to service credit for specific persons or under specific circumstances (e.g., Sacramento County Code section 2.100.100).

SCERS reserves the right to modify this policy in accordance with developments in the law (including statute, ordinance, or case law) and/or as appropriate to the successful operation of a public retirement system.

APPLICATION

Under this policy, a member's "sick leave accumulated as of the date of his retirement" for the purpose of Section 31641.01 is usually the same as the member's final unused sick leave balance as calculated by the employer. However, the two may diverge in situations where a member separated from service without immediately retiring.

One example is a member who separated from a SCERS employer (never to return) and who deferred retirement. Currently, most (if not all) SCERS employers would deem that member's unused sick leave to be forfeited upon separation. When that member is ready

to retire, he/she would have, by the employer's accounting, a final sick leave balance of zero. In contrast, SCERS would not necessarily consider the member's "sick leave accumulated as of the date of his retirement" to be zero. Rather, SCERS would look to the member's unused sick leave balance at the time of his/her separation.

Another example is a member who separated from a SCERS employer but who was later reinstated. Upon re-employment, the member's sick leave balance would, by the employer's accounting, begin at zero. And when that member is ready to retire, the final sick leave balance maintained by the employer would include only the unused sick leave accrued since re-employment. In contrast, SCERS would include the prior unused sick leave balance in addition to the unused sick leave earned since re-employment.

BACKGROUND

The California Legislature enacted Government Code section 31641.01 in 1970. The same year, the Board of Supervisors adopted an ordinance making section 31641.01 applicable to Sacramento County. However, neither the Legislature nor the Board of Supervisors defined the key phrase "sick leave accumulated as of the date of [the member's] retirement." This policy clarifies and memorializes SCERS' interpretation of that phrase.

The interpretation contained in this policy is identical to, and derived from, SCERS' longstanding practices in administering section 31641.01. As such, this interpretation has three advantages. First, it is indisputably practicable and workable, as evidenced by the longevity of SCERS' historical approach. Second, this interpretation has the support of participating employers, who have long known about SCERS' practice and who have borne its costs without objection for decades. Third, this interpretation appears compatible with the general intent of the Legislature and the Board of Supervisors.

Notwithstanding the foregoing, there is no evidence that either the Legislature or the Board of Supervisors intended to withhold from SCERS the discretion to evolve its administrative interpretation of section 31641.01 to meet changing circumstances. Therefore, SCERS reserves the right to modify this policy as appropriate to meet developments in the law and/or the successful operation of a public retirement system.

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

Date	Description
8-19-2020	Staff to recommend Board approve Discussion Draft 2 for comment.
4-15-2020	Board approved Discussion Draft for comment.