



August 3, 2020

NOTICE TO SCERS MEMBERS AND EMPLOYERS

SUPREME COURT OPINION

The California Supreme Court issued an opinion on Thursday, July 30, 2020 in the case known as *Alameda County Deputy Sheriffs' Association et al. v. Alameda County Employees' Retirement Association and Board of Retirement of ACERA* (S247095, also known as "the Alameda case").

SCERS is reviewing the opinion, and we will provide updates to employers and members as soon as possible.

Background on the Alameda Case

SCERS is one of 20 California counties governed by the County Employees' Retirement Law of 1937 (CERL). The *Alameda* case involves several pay items for legacy members of CERL retirement systems. Some of the pay items at issue are similar to pay items under SCERS Final Compensation Review Policy.

Legacy members generally are those who have entry dates into SCERS membership prior to January 1, 2013, which was the effective date of the California Public Employees' Pension Reform Act (PEPRA). This lawsuit relates only to legacy members who retired on or after January 1, 2013.

In the *Alameda* decision, the California Supreme Court affirmed the constitutionality of Government Code section 31461(b) as applied to legacy members. Accordingly, SCERS will be reviewing its Final Compensation policy to ensure that pay items are treated in conformity with the following:

(b) "Compensation earnable" does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.



(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(C) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

What does this mean for SCERS participating employers and members?

The SCERS Board has not taken any action regarding the treatment of pay items in light of the *Alameda* opinion.

However, SCERS is considering what impact the *Alameda* opinion may have on Final Compensation calculations prospectively and retroactively (i.e., to January 1, 2013, when PEPRA was enacted).

SCERS is in the process of reviewing the opinion, and the SCERS Board of Retirement will be discussing the matter on Wednesday, August 19, 2020 via a videoconference meeting. Meeting information will be provided at a later date, and the meeting will accommodate public participation.

SCERS participating employers should continue to report to SCERS pay items as specified in the Final Compensation policy until further notice.