



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

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

Overtime

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

Compensatory Time Off

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.

Compensatory Time Off-Expired

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 approved final policy.
10-17-2018	Board approved Discussion Draft for comment.