

**RESOLUTION OF THE BOARD OF RETIREMENT OF VENTURA COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION (VCERA)
REGARDING PENSIONABLE COMPENSATION DETERMINATIONS**

WHEREAS, the Ventura County Employees' Retirement Association ("VCERA") and the VCERA Board of Retirement ("Board") are governed by the County Employees Retirement Law of 1937 (Gov. Code sections 31450, et seq.) ("CERL") and the Public Employees' Pension Reform Act of 2013 (Gov. Code sections 7522., et seq.), enacted by Assembly Bill 340 (regular session 2011-2012), effective January 1, 2013 ("PEPRA").

WHEREAS, this Resolution implements PEPRA's provisions regarding the determination of "pensionable compensation" in Government Code section 7522.34 ("Pensionable Compensation"), which applies to VCERA members for their service rendered on or after January 1, 2013 as "new members" under Government Code 7522.04(f) of PEPRA ("New Members").

WHEREAS, this Resolution identifies items of compensation that the Board presently believes are permitted, or required, to be included in, or excluded from, Pensionable Compensation for purposes of the effective administration of retirement system benefits and collection of contributions. **If, however, the Board later concludes that it has identified an item herein as either includable or excludable in a manner that is inconsistent with Board policy as determined by that later Board, or with a determination by the legislature, a court of competent jurisdiction, or other persuasive administrative legal authority such as the California Attorney General, the Board reserves the right to change its prior determination and to make appropriate adjustments both prospectively and/or retroactively, as this Resolution is not intended to, and does not, create any vested rights in members to the past, present, or future determinations set forth herein. Where this Resolution conflicts with any subsequent Board amendment to it, that subsequent Board-amended Resolution shall prevail.**

WHEREAS, Government Code section 7522.34, subdivision (a), defines Pensionable Compensation as "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules."

WHEREAS, the Board interprets the above-quoted subdivision (a) as permitting pay items to be included in Pensionable Compensation if they are within either the normal monthly rate of pay or the base pay of the member. Such pay items must also comply with the other requirements of subdivision (a) that they be paid:

1. In cash,
2. Not only to the member but also to similarly situated members of the same group or class of employment,
3. For services rendered on a full-time basis,
4. For services rendered during normal working hours,

5. Pursuant to publicly available pay schedules, and
6. Not paid to enhance a member's retirement benefit.

WHEREAS, Government Code section 7522.34, subdivision (c), also identifies categories of payments that are not included in Pensionable Compensation under any circumstances, which are enumerated as follows:

1. Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.
2. 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.
3. Any one-time or ad hoc payments made to a member.
4. Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.
5. Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.
6. Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
7. Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.
8. Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.
9. Employer contributions to deferred compensation or defined contribution plans.
10. Any bonus paid in addition to the compensation described in subdivision (a).
11. Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).
12. Any other form of compensation a public retirement board determines should not be pensionable compensation.

NOW, THEREFORE, BE IT RESOLVED that the VCERA Board of Retirement declares the following:

1. The foregoing Recitals are incorporated herein by this reference.
2. The following pay types shall be included in Pensionable Compensation under section 7522.34, subdivision (a), and retirement contributions will be taken on all such payments, as follows:
 - a) Regular salary, including scheduled step increases;
 - b) FLSA premium pay for law enforcement and fire protection as defined in Section 207(k) of Title 29 of the United States Code.
 - c) Additional pay types will be included in Pensionable Compensation if the following criteria are met:

Special assignment payments or differentials, and payments for possessing specified certificates, certifications or licenses will be included only if the assignment, certification or license is part of a member's regularly assigned responsibilities on a matter that is a normal or essential function of the job and is not performed or received solely during the final average compensation period, and is part of the regular assignment of other members in the same group or class. The amounts must also be (i) paid in cash to similarly situated members of the same group or class of employment; (ii) paid for services rendered on a full-time basis; (iii) paid only for services rendered during normal working hours; (iv) paid pursuant to publicly available pay schedules; and (v) affirmatively and specifically approved by the Board as consistent with the Board policy set forth in this Resolution.
3. The following pay types shall be excluded from Pensionable Compensation under the referenced numerical subdivisions of Government Code section 7522.34, subdivision (c), and retirement contributions will not be collected on those payments for New Members:
 - a) Allowances (e.g., clothing, uniform, automobile, housing) (subdiv. (7)).
 - b) In-kind benefits converted to cash (subdiv. (2)).
 - c) All leave cash outs, regardless of when paid (e.g., annual, sick, floating holiday, personal, comp time) (subdiv. (5)).
 - d) Reimbursements and allowances (including, but not limited to, automobile, housing, moving, relocation, tool, meal, boot, cell phone, or license) (subdiv. (7)).

- e) Overtime, unless it is FLSA premium pay for certain safety members as defined by statute (subdiv. (8)).
- f) Severance pay, regardless of when or how paid (subdiv. (4)).
- g) Lump sum payment of comp time at promotion (subdiv. (5)).
- h) Bonuses that are not part of normal monthly rate of pay of the member and similarly situated members for full-time service during normal working hours pursuant to publicly available pay schedules (including, but not limited to, special non-essential skills bonus; temporary promotion bonus; productivity bonuses; discretionary or temporary special assignment bonuses (subdiv. (10)).
- i) Employer contributions to deferred compensation or defined contribution plans (subdiv. (9)).
- j) Payments for additional services rendered outside of normal working hours (including, but not limited to, call-back, standby pay, off-duty canine care, or extra-shift work) (subdiv. (6)).
- k) Payments made to enhance a retirement benefit as determined by the Board of Retirement (subdivs. (11) and (12)).

4. The “publicly available pay schedule” requirement in Government Code section 7522.34 means each employer plan sponsor of VCERA (“Employer”) must publish publically the amount of the pay item that is to be included in its employees’ Pensionable Compensation by meeting all of the following criteria:

- a) Has been duly approved and adopted by the Employer's governing body in accordance with requirements of applicable public meetings laws;
- b) Identifies the position title for every employee position used by the Employer;
- c) Specifies the Pensionable Compensation amount of each identified position, which may be stated as a single amount or as multiple amounts within a range;
- d) Indicates the conditions for payment of the item of Pensionable Compensation, including, but not limited to, eligibility for, and amount of each component of pay;

- e) Is posted at the office of the Employer or immediately accessible and available for public review from the Employer during normal business hours or posted on the Employer's internet website;
 - f) Indicates an effective date and date of any revisions;
 - g) Is retained by the Employer and available for public inspection for not fewer than five years; and
 - h) Does not reference another document in lieu of disclosing the item of Pensionable Compensation other than those outlined in a "labor policy or agreement," as described and limited below:
 - (i) A labor policy or agreement means any of the following: a Memorandum of Agreement; a Management, Confidential Clerical and Other Unrepresented Employees Resolution, or other similar document used by the Employer to specify the Pensionable Compensation of represented and unrepresented employees, as specifically approved by the VCERA Board of Retirement.
 - (ii) Identifying a percentage increase in salary, in lieu of a dollar amount, in a labor policy or agreement does comply with this interpretation of a "pay schedule".
5. The Retirement Administrator, with assistance of VCERA's legal counsel, is responsible for implementing the Board's determinations and policy decisions related to Pensionable Compensation. The VCERA Retirement Administrator will analyze pay codes to determine whether they constitute Pensionable Compensation or not under this Resolution, and will bring such determinations to the VCERA Board for action. The Chair of the Board may, but is not obligated to, appoint an ad hoc committee of the Board to address or recommend responses to any Pensionable Compensation implementation challenges, as appropriate.
6. Employers are responsible for coding of pay code categories consistent with this VCERA Resolution and subsequent VCERA determinations made consistent with this Resolution, and subject to the VCERA Retirement Administrator's review. Employers are responsible for notifying VCERA's Retirement Administrator regarding the facts and circumstances of any pay items they consider may be an exception to the Resolution and policy set forth herein, for review by the VCERA Retirement Administrator. Employers are also responsible for notifying the VCERA Retirement Administrator of new pay codes for Pensionable Compensation review by VCERA no later than the time of implementation of the codes.

7. The VCERA Retirement Administrator will review Employer pay code listings for compliance with this Resolution and policy established hereby as part of staff administrative procedures. When reviewing items of compensation, VCERA will audit pay items to identify those that may have a primary purpose to enhance retirement benefits, involve the manipulation of compensation by members or Employers to enhance benefits, and receipt of ad hoc payments or any other compensation considered to be inconsistent with the pension reform legislation provisions.
8. VCERA members or Employers may appeal a determination regarding pensionability of a particular pay item by the Retirement Administrator to the Retirement Board, through a VCERA administrative appeal process, as appropriate. The administrative appeal process, if implemented, may, but is not required, to follow the hearing process provides in Government Code sections 31533 and 31534.

ADOPTED AND APPROVED by the Board of Retirement of the Ventura County Employees' Retirement Association on the 7th day of NOVEMBER 2014.



Tracy Towner, Chair of the Board