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**DATE:** February 7, 2018

**TO:** Board of Retirement

**FROM:** Donald C. Kendig, CPA,  
Retirement Administrator

**Staff Contact:** Patti Montoya  
Retirement Benefits Manager

**SUBJECT:** **Approval of Pensionable Earn Code - ILP – APPROVE**

#### **Recommended Action**

1. Approve the additional earn code as pensionable or non-pensionable per table below

#### **Alternative Action**

1. If your Board were to not approve the recommended action, the earn code would not be pensionable

#### **Fiscal and Financial Impacts**

There is no direct cost to the plan. Pension contributions associated with the new earn code will be paid by the employer and employees. Any resulting change in the final average compensation would affect future pension benefits, and could affect actuarial costs. Future actuarial cost would be included in the employer contribution requirements.

#### **Background and Discussion**

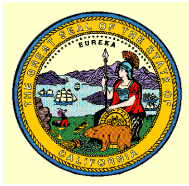
The Superior Court approved an additional pay element for Court Interpreters. This pay element would pay a premium to Court Interpreters who are assigned on any day to perform services in more than one language pair for which they are registered or certified.

FCERA's Earn Code Resolution Policy provides a guideline to determine earn codes that should be included in compensation earnable and pensionable compensation. The recommendation to approve as pensionable/non-pensionable is consistent with FCERA's Earn Code Resolution Policy and earn codes currently being used by the County and Courts.

<b>Earn Code</b>	<b>Effective date</b>	<b>Description</b>	<b>Bargaining Unit Impacted</b>	<b>Pensionable Tiers I – IV</b>	<b>Pensionable Tier V (PEPRA)</b>
ILP	2/12/2018	Language pay differential	Region 3 Court Interpreters	Yes	No

**Attachments**

- 1 . Letter from Superior Court of California County of Fresno
- 2 . Resolution Determination of Compensation Earnable
- 3 . Resolution Determination of Pensionable Compensation under CalPEPRA



**Superior Court of California  
County of Fresno**

Sheran Morton  
Executive Officer / Clerk / Jury Commissioner  
Patricia Wallace-Rixman  
Assistant Executive Officer

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January 18, 2018

Fresno County Employees' Retirement Association (FCERA)  
Donald Kendig, CPA, Retirement Administrator  
7772 N. Palm Ave.  
Fresno, CA 93711

Dear Mr. Kendig,

The Fresno Superior Court must institute a new earn code for Court Interpreters due to the recent implementation of a provision for special compensation.

Background

During negotiations between the Superior Courts of California, Region 3 and the California Federation of Interpreters (CFI), the parties arrived at impasse. Therefore, effective October 1, 2017, Region 3, which includes Fresno Superior Court, proceeded to unilaterally implement the terms in Region 3's modified last, best and final offer dated August 9, 2017.

The terms adopted by the Region 3 Court Interpreter Employment Relations Committee include a provision for special compensation for Court Interpreters who are assigned on any day to perform services in more than one language pair for which they are registered or certified. The earnings are calculated as a percentage of the Court Interpreter's regular daily earnings. The Court is proposing earn code "ILP," detailed in the table below, for payment of this special compensation.

Recommendation

It is the Court's recommendation that earnings under earn code "ILP" be considered pensionable compensation for FCERA Tier I members and non-pensionable compensation for FCERA Tier V members, with the understanding that final determination will be made by the FCERA Board of

Retirement as the authorized entity for determining what is considered pensionable compensation for its members.

<b>Earn Code</b>	<b>Report Code</b>	<b>Payroll System Description</b>	<b>Long Description</b>
ILP	INT LPD	INTP LANGUAGE PAY DIFF %	Special compensation for Interpreters assigned to provide services in more than one language pair on the same day.

Thank you for your assistance in establishing earn code "ILP" for Fresno Superior Court.

Sincerely,



Sheran Morton  
Court Executive Officer  
Superior Court of California, County of Fresno

Attachment: Notification of Unilateral Implementation: Superior Courts of California Region 3 and California Federation of Interpreters

BOARD OF RETIREMENT  
FRESNO COUNTY EMPLOYERS' RETIREMENT ASSOCIATION

**RESOLUTION**

**Subject:** Action of the Board of Retirement With Regard to Determination of Compensation Earnable

**WHEREAS,** The Board of Retirement has the sole and exclusive responsibility for determining "compensation earnable" for the purpose of calculating the final compensation of retiring members, pursuant to Sections 31461, 31462 and 31462.1 of the County Employees Retirement Law of 1937 ("CERL") and the California Constitution, Article XVI, Section 17.

**WHEREAS,** On October 1, 1997, the decision of the California Supreme Court in the case *Ventura County Deputy Sheriffs' Association v. Board of Retirement of Ventura County Employees' Retirement Association* (1997) 16 Cal.4th 483 (the "*Ventura Decision*") became final.

**WHEREAS,** The Supreme Court in the *Ventura Decision* mandated a change in the method for calculating pension benefits for members and their beneficiaries by retirement systems governed by CERL.

**WHEREAS,** Following the *Ventura Decision*, the practice of the Fresno County Employees' Retirement Association ("FCERA") has been to follow lists of pensionable and non-pensionable earn codes regarding pay items paid by the County of Fresno ("County") and the County Superior Court, which were developed in early 1998 and supplemented from time to time thereafter. The pensionable earn code list is attached to this Resolution as Exhibit A. All items not appearing on Exhibit A are excluded from "compensation earnable."

**WHEREAS,** In early 1998, FCERA, the Board of Retirement, and the County were sued in three separate, and later consolidated, actions (the "*Fresno Ventura 2 Cases*") by a class of members consisting of all retirees, deferred retirees, beneficiaries and employees who were at that time members of FCERA ("FCERA Class Members").

**WHEREAS,** On December 15, 2000, the San Francisco Superior Court issued a Judgment in the Fresno *Ventura 2 Cases* approving a Revised Settlement Agreement that sought to resolve all outstanding issues relating to the determination of "compensation earnable," pursuant to Section 31461 of CERL, as between the County, FCERA Class Members, FCERA and the Board of Retirement ("*Settlement Agreement*").

**WHEREAS,** Since the Court's approval of the Settlement Agreement, additional earn codes reflecting bilingual pay and differential pay were added as non-pensionable earn

codes. The *Ventura* Decision held, however, that such earn codes must be included in compensation earnable.

WHEREAS, Effective January 1, 2013, the Legislature amended CERL section 31461, and one of the amendments to CERL section 31461 was to exclude “[p]ayments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise” from “compensation earnable,” and the Board of Retirement has found that this amendment requires the exclusion of “standby” and “on call” earn codes for all FCERA members, whether or not such earn codes were already excluded for any particular members under the Settlement Agreement.

WHEREAS, The Board of Retirement finds that the proper exercise of its statutory duties under CERL requires it to take action both (1) to ratify prior calculations of compensation earnable made by FCERA staff that were consistent with applicable law; and (2) to determine compensation earnable pursuant to Section 31461 of CERL and other applicable law on a prospective basis.

WHEREAS, This Earn Code Resolution is not intended to limit the Board’s statutory authority and responsibility to exclude from “compensation earnable” “any compensation determined by the board to have been paid to enhance a member’s retirement benefit under that system,” as set forth in Government Code section 31461(b)(1).

WHEREAS, After considering all of the information available to the Board, and exercising its judgment in the matter,

RESOLVED, (A) That the Board of Retirement hereby ratifies FCERA’s past practices, limited specifically to the inclusion in, and exclusion from, compensation earnable of items of compensation, with the earn codes that shall be included in “compensation earnable” set forth in the list attached hereto as Exhibit A (and all other earn codes being excluded from “compensation earnable”), *except the Board of Retirement does not ratify the following:*

(1) FCERA’s prior exclusion from “compensation earnable” of bilingual pay first provided to eligible employees effective October 2, 2001, consistent with the *Ventura* Decision; and

(2) FCERA’s prior exclusion from “compensation earnable” of certain earn code for “differential” pay first provided to eligible employees effective January 21, 2002, consistent with the *Ventura* Decision.

RESOLVED, (B) That the Board of Retirement hereby adopts the following Policies and Guidelines, which shall be separate from the Board's Bylaws and the Board's Regulations:

1. Elements to be Included in "Compensation Earnable".

Remuneration earned and received in cash by the employee during the "final compensation period" as defined in Sections 31462 and 31462.1 of CERL for working the ordinary time required of other employees in the same grade/class during normal working hours shall be included in "compensation earnable," including but not limited to the following items of compensation, and others substantially similar to them:

Base Salary

"Differential" Pay Provided to Nurses Working on Weekends (and other additional compensation paid to employees for special skills or services they provide or special circumstances of their employment)

Bilingual Premium Pay

Uniform Allowance (paid in cash, not in-kind)

Educational Incentive ("POST") Pay

Longevity Incentive

Payoffs of Vacation and Sick Leave and Holiday  
to the extent earned (1) not taken as time off, (2) permitted to be cashed-out (pro-rated on a monthly basis) under the applicable MOU, (3) cashed-out prior to separation, and (4) not "true overtime" (see definition below)

Employee Contributions to Deferred Compensation Plan

"Overtime" required to be worked that is ordinarily worked by others in same grade/class/rate of pay

Compensatory Time (if not excluded as "true overtime" (see definition below) and to the extent in excess of minimum required reserve)

Court Transcript Fees and per diems paid to Court Reporters  
To the extent earned (pro rated on a daily basis over the period of time between the date of the order and date of filing of the completed transcript) and received prior to separation

Flexible Benefits to the extent paid in cash to FCERA members

Such additional elements as the Board may determine in the future.

2. Elements to be Excluded From "Compensation Earnable".

Remuneration or other value received by the employee that is not earned and paid in cash to the employee during the final compensation period for working the ordinary time required of other employees in the same grade/class during normal working hours shall be excluded from "compensation earnable", including but not limited to the following items, and others substantially similar to them:

True Overtime (amounts paid for working in excess of the time required and ordinarily worked by others in the same grade/class)

Employer Contributions to Deferred Compensation Plan

Employer Contributions to Retirement System

Employer "Pick-up" of Employee Contributions to Retirement System

Flexible Benefits provided in-kind (payments to 3d-party providers or otherwise)

Terminal Pay

Expense Reimbursements

In-kind Advantages (e.g., food, lodging, laundry, fuel)

Fees, Licenses, Memberships provided to FCERA members by their employers

Standby and On Call

Such additional elements as the Board may determine in the future.

3. Application of Policies and Guidelines.

The Board of Retirement shall apply these Policies and Guidelines to the compensation earnable calculations of FCERA members and their beneficiaries who retire on and after the date of this Resolution.

In addition, these Policies and Guidelines shall be applied as follows:

(a) Any retired FCERA member who received bilingual pay on or after October 2, 2001 and during his or her final compensation period,



which amount was not included in the member's compensation earnable, may file a claim with FCERA no later than July 1, 2006, to have such compensation earnable and final compensation recalculated. Any additional amount owing to such member shall be paid with interest, with additional contributions owed by the member to be deducted, with interest, from the additional amounts to be paid.

(b) Any retired FCERA member who received differential pay on or after January 21, 2003 and during his or her final compensation period, which amount was not included in the member's compensation earnable, may file a claim with FCERA no later than July 1, 2006, to have such compensation earnable and final compensation recalculated. Any additional amount owing to such member shall be paid with interest, with additional contributions owed to the member to be deducted, with interest, from the additional amounts to be paid.

4. The Board of Retirement hereby directs the Administrator to establish a claims procedure to implement the portion of these Policies and Guidelines set forth in items 3(a)- 3(b) above.
5. Future Earn Codes and Procedures. The Board of Retirement hereby directs the Administrator to establish (a) procedures for including or excluding from "compensation earnable" future earn codes established by the County and districts participating in FCERA and (b) procedures for implementing recalculations of final compensation of members, and the necessary collection or refund of employer and employee contributions, plus interest, consistent with these Policies and Guidelines.
6. This Earn Code Resolution does not, in any way, limit the Board's statutory authority and responsibility to exclude from "compensation earnable" "any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system," as set forth in Government Code section 31461(b)(1). Thus, amounts reported to the Board pursuant to this Earn Code Resolution are subject to exclusion from a member's "compensation earnable," pursuant to Government Code section 31461(b)(1).

RESOLVED, (C) That this Resolution shall be effective immediately upon adoption.



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Chair, Board of Retirement

I hereby certify that on the 6th day of December, 2006, the Board of Retirement of the Fresno County Employees' Retirement Association made and adopted this Resolution and that on the 20<sup>th</sup> day of March 2013, the Board of Retirement of the Fresno County Employees' Retirement Association amended this Resolution.



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Phil Kapler, Retirement Administrator and Secretary to the Board of Retirement

**Exhibit A** ( Members before 1/1/2013 )

<b>Earn Code</b>	<b>Payroll System Description</b>
01	Regular Hours
02	Vacation - Old Annual Leave
03	Vacation - New Ann Lv/Ann Lv 2
04	Vacation 99
05	Sick - Old Annual Leave
06	Vacation 2002
07	Annual Leave-FDSA Association
08	Job Injury - Old Annual Leave
09	Sick-New Ann Lv/Ann Lv 2
11	Voluntary Furlough NO PAY
12	Job Inj - New Ann Lv/Ann Lv 2
13	Sick Leave 99
14	Mandatory Furlough
15	Date of on the Job Injury
16	Job Injury-Vacation 99
17	Sick - Prior Sick Leave
18	Briefing @ 1 1/2
19	Briefing-Straight Time
20	Job Injury - Prior Sick Leave
21	Job Injury - Labor Code 4850
22	Holiday Credit - Paid
26	Holiday Taken
27	Hours Over Schedule
33	Administrative Time Off

Earn Code	Payroll System Description
34	Court Appearances (Jury Duty)
35	Military Pay
36	Bereavement Leave
37	Dock Time
48	Briefing Accrued @ 1 1/2
51	Administrative Leave With Pay
52	Educational Leave
53	Vacation - Annual Leave 2004
55	Holiday Wrk @ 1.5 subj to RET
56	Job Injury-Sick Leave 99
57	Sick-From Vacation 99 Balance
58	Hol Wrk Accr 1.5 subj to RET
59	Sick - Annual Leave 2004
62	Voluntary Furlough Paid
63	Job Injury - Annual Leave 2004
70	Sick from Vacation 2002 Balanc
71	Vacation - Time Off Bank
73	Sick - Time Off Bank
74	Hol Cr Pd (On Normal Day Off)
76	Sick 2002
94	Job Injury - Vacation 2002
95	Special Mil Pay
96	Job Injury - Sick Leave 2002
100	Annual Leave-Association Bank
210	OJI Therapy BU1&14

Earn Code	Payroll System Description
553	Vacation - Annual Leave V
559	Sick - Annual Leave V
563	Job Injury - Annual Leave V
A	A-Shift 3:4% (U07 & JCN 9818)
AC	Car Allowance
ADJ	Payroll Adj Subject to RET
AE	Uniform Allowance
AS	Shirt Allowance (\$40)
AV	Shirt Allowance (\$60)
B	B - Basic Night 8% Shift
BLS	Bilingual Skill Pay-\$23.08/PP
BP	Bilingual Pay
BT	Training Officer hrly rate \$23.08
C02	Cell Phone Voice, reg volume
HPS	Chief Helicopter Pilot Dif.
CIA	Comm Inspector Cert (1.25%)
CIB	Comm Inspector Cert (2.5%)
CIC	Comm Inspector Cert (3.75%)
CID	Comm Inspector Cert (5%)
CS	Child Protective Service - 2.5%
CSS	5% Additional Pay (Select JCNs
D	D-Shft 3:14% Per Diem Nrs:9816
DA	Dictation Allowance
DAC	5% Admin Duty Differential-Ag
DD	Detention Facility Allow (Min)

Earn Code	Payroll System Description
DF	Acute Psych Facility Allowance
DH	Facilities over 4hr \$50
DHA	Detention Facility over 4hrs \$40
DK	Resident Phys Clinic Pay-Nghts
DM	Facilities less than 4hrs \$50
DMA	Lead Workers-max 23.08 per PP
DMB	Facilities less than 4 hrs \$40
DMM	Lead Workers
DN	Charge Nurse ( \$0.9375 / unit, max \$75 / pay period
DO	Psych Additional Compensation
DP	Psych Addtl Comp (Criminal)
DR	Resident Phys Clinic Pay-Day
DS	Supervisor Duties (\$75/unit)
DT	DA Supervisor Duty (\$242/unit)
DU	Detention Fac Allow (Ov Min)
DV	Acute Psych In-Patient Allow
DZ	Commun Dsptrchr Training Allow
E	Basic Night 4% Shift (7pm to 5am)
EE	Emergency Room Dif (Over Min)
EF	Emergency Room Dif ( Min)
EN	On-Call (Weeknights)
EW	On-Call (Weekends)
F	F-5pm to 7am @ Certain Loc 12%
90	FLSA Overtime
HPS	Helicopter Pilots Differential

Earn Code	Payroll System Description
LA	Professional Lic Incentive(5%)
LAA	Professional Lic Incent (2.5%)
LAB	Professional Lic Incentive(4%) (MGT)
LB	Low Bed Driver Assignment
LL	Crim & Fam Law Spec (5%)
LLB	Criminal & Family Law Specialists Incentive (3.5%)
LP	Professional Certif (\$50)
LR	Repiratory Therapist Lic (5%)
ON	Orthopedic Surgeons - Wknight
OT	Out-Of-Town Expenses
OW	Orthopedic Surgeons - Wknd
P	P-Shft 2:4% (U07, 9818, 9816)
PA	Post Certificaties (5%)
PAN	POST Certificate 5% Non-Tax
PB	Post Certificaties (2 1/2%)
PBN	POST Certif (2 1/2%) Non-Tax
PC	Critical Care Cert (F/T)
PD	Management Post 5%
PDN	Management Post 5% Non-Taxable
PF	Post Advanced Certif (Flat)
PG	Post Intermediate Certificate
PH	Critical Care Cert (PT)
PJ	Correction Off Ed Incent (5%)
PJA	Correction Off Ed Incent (2.5%)
PJB	Corr Off Ed Incen(2.5%)Non-Tax

Eam Code	Payroll System Description
PJN	Corr Off Ed Incen(5%)Non-Tax
PK	Corrcrn Off Ed Incent (2 1/2%)
PKA	Corrcrn Off Ed Incent (1.25%)
PKB	Corr Off Ed In (1.25%)Non-Tax
PKN	Corr Off Ed In (2 1/2%)Non-Tax
RS	Special Guard Pay
S	S-Shft 2:12% Stf Nrs Trn 9815
SB	Shift B - 8% (TEMP)
T	T-Shft 3:14% Stf Nrs Trn 9815
TFO	Tactical Flight Officer
TO	Training Officer
TOA	Training Officer (2.5%)
WC	Watch Commander



**BEFORE THE BOARD OF RETIREMENT  
OF THE FRESNO COUNTY EMPLOYEES' RETIRMENT ASSOCIATION  
FRESNO COUNTY, CALIFORNIA**

*In the Matter of* )  
Determining "Pensionable Compensation" Under )  
the California Public Employees' Pension Reform )  
Act of 2013 for "New Members" Employed by the )  
County of Fresno )  
\_\_\_\_\_ )  
 )  
 )

**RESOLUTION**

**WHEREAS**, the Fresno County Employees' Retirement Association (FCERA) Board of Retirement (Board) is authorized and required by Government Code § 7522.34 to determine "pensionable compensation" for all "new members," as that term is defined in Government Code § 7522.04(f); and

**WHEREAS**, the County of Fresno's payroll systems utilize a system of "earn codes" to designate the purposes for which County employees are compensated; and

**WHEREAS**, in order to ensure that FCERA receives the correct amount of employer and employee contributions to fund the benefits promised to the County's employees who qualify as "new members" on an actuarially sound basis, it is necessary for the Board to pass a resolution defining which earn codes the County must report to FCERA as "pensionable compensation" and which earn codes the County may not report to FCERA as "pensionable compensation"; and

**WHEREAS**, the Board has engaged in deliberative processes on this subject in its open and public meetings at which it received input from the members of FCERA staff, County representatives, the Board's counsel and members of public in attendance at the meetings who desired to be heard; and

**WHEREAS**, based on the information the Board has considered in its deliberative processes, the Board has determined that the County shall calculate member and employer retirement contributions on, and shall report to FCERA, only those County earn codes appearing on Exhibit A; and

WHEREAS, the Board reserves the right to amend this Resolution and the contents of Exhibit A from time to time as the Board may deem appropriate based on the addition of new earn codes in the County of Fresno's payroll systems, further legal developments, or upon receipt of any other new information that the Board deems relevant to its determination of "pensionable compensation" for "new members."

NOW THEREFORE BE IT RESOLVED that, effective January 1, 2013, for "new members," as that term is defined in Government Code § 7522.04(f), the County must report all earn codes appearing on Exhibit A to FCERA as "pensionable compensation" and the County may not report any other earn codes to FCERA as "pensionable compensation"; and further, that the County shall calculate member and employer retirement contributions only on the earn codes appearing on Exhibit A, as amended and restated from time to time.

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Adopted at a meeting of the Board of Retirement of the Fresno County Employees' Retirement Association, held on this 17th day of April, 2013 by the following vote, to wit:

Ayes: Austin, Basua, Cade, Jolly, Wheeler, Coburn

Nays: Case, Gomez

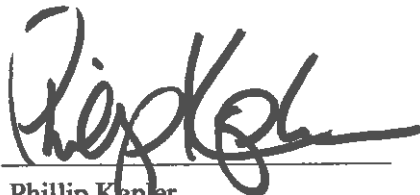
Absent: Crow

BOARD OF RETIREMENT

By: 

Rod Coburn, Chairman

Attest:



Phillip Kapler,  
Retirement Administrator

**Exhibit A ( New Members after 12/31/2012 )**

<b>Eam Code</b>	<b>Payroll System Description</b>
01	Regular Hours
06	Vacation 2002
07	Annual Leave-FDSA Association
11	Voluntary Furlough NO PAY
14	Mandatory Furlough
15	Date of on the Job Injury
18	Briefing @ 1 1/2
19	Briefing-Straight Time
21	Job Injury - Labor Code 4850
22	Holiday Credit - Paid
26	Holiday Taken
27	Hours Over Schedule
33	Administrative Time Off
34	Court Appearances (Jury Duty)
35	Military Pay
36	Bereavement Leave
37	Dock Time
48	Briefing Accrued @ 1 1/2
51	Administrative Leave With Pay
52	Educational Leave
53	Vacation - Annual Leave 2004
59	Sick - Annual Leave 2004
62	Voluntary Furlough Paid
63	Job Injury - Annual Leave 2004
70	Sick from Vacation 2002 Balanc
71	Vacation - Time Off Bank
73	Sick - Time Off Bank
76	Sick 2002
90	FLSA Overtime

<b>Eam Code</b>	<b>Payroll System Description</b>
94	Job Injury - Vacation 2002
95	Special Mil Pay
96	Job Injury - Sick Leave 2002
100	Annual Leave-Association Bank
210	OJI Therapy BU1&14
553	Vacation - Annual Leave V
559	Sick - Annual Leave V
563	Job Injury - Annual Leave V
A	A-Shift 3:4% (U07 & JCN 9818)
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DMB	Facilities less than 4 hrs \$40
DU	Detention Fac Allow (Ov Min)
DV	Acute Psych In-Patient Allow
E	Basic Night 4% Shift (7pm to 5am)
EE	Emergency Room Dif (Over Min)
EF	Emergency Room Dif ( Min)
S	S-Shift 2:12% Stf Nrs Trn 9815
SB	Shift B - 8% (TEMP)
T	T-Shift 3:14% Stf Nrs Trn 9815