

**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)  
PENSIONABLE PAY POLICY**

**I. Purpose**

This policy consolidates past Board of Retirement ("Board") resolutions concerning pensionable pay into one policy statement; and, sets forth procedures for use by FCERA and Employers to implement this policy.

Specifically, this policy amends, consolidates, and supersedes the following FCERA resolutions, and any attachments thereto:

- FCERA's December 6, 2006, Resolution regarding *Compensation Earnable*, as amended from time-to-time, including on: August 3, 2011; December 21, 2011; March 20, 2013; May 7, 2017; March 7, 2018; and March 6, 2019.
- FCERA's April 17, 2013, Resolution regarding *Pensionable Compensation*, as amended from time-to-time, including on: May 7, 2017; March 7, 2018; and March 6, 2019.

For purposes of this policy, these Board resolutions, and any amendments, attachments, or documents related thereto, are referred to herein as the "Board's earlier resolutions."

This policy is not intended to limit the Board's statutory authority and responsibility to exclude from "compensation earnable" or "pensionable compensation" any compensation determined by the Board to have been paid to enhance a member's retirement benefit under the system, as set forth in the Government Code.

**II. Authority**

The Board of Retirement has the sole and exclusive responsibility for determining earnings 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 Sections 7522 through 7522.74 of the Public Employees' Pension Reform Act of 2013 ("PEPRA").

**III. Background**

On October 1, 1997, the California Supreme Court's decision in the case of *Ventura County Deputy Sheriffs' Association v. Board of Retirement Ventura County Employees Retirement Association* (1997) 16 Cal. 4th 483 ("*Ventura Decision*") changed the method by which retirement systems governed by CERL calculate pension benefits for members and their beneficiaries.

Following the *Ventura Decision*, FCERA's practice 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 ("Court"), which were developed in early 1998 and supplemented from time-to-time thereafter. 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”).

On December 15, 2000, the San Francisco Superior Court issued a judgement 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 (“Settlement Agreement”).

Subsequent to the Court’s approval of the Settlement Agreement, the Board adopted the Board’s earlier resolutions, which both ratified certain prior calculations of compensation earnable made by FCERA and determined compensation earnable pursuant to Section 31461 of CERL and other applicable laws on a prospective basis.

In 2012, the California Legislature adopted PEPRA, which among other things amended Section 31641 to add a list of compensation items that are expressly excluded from “Compensation Earnable” and added the new term “Pensionable Compensation” to define items of compensation included in the calculation of retirement allowances of new members enrolled in the system on or after January 1, 2013.

#### IV. Policy

##### A. COMPENSATION EARNABLE.

Compensation Earnable applies to “Legacy Members.” A Legacy Member is a member who was an existing member of FCERA as of January 1, 2013, or who is a member who qualifies for legacy status due to reciprocity with another California retirement system with membership prior to January 1, 2013.

Compensation Earnable, as defined in CERL sections 31461, 31462, and 31462.1, means pay items that are subject to pension contributions and included in the final average compensation used to compute a member’s benefit allowance. Compensation Earnable for Legacy Members shall be calculated by FCERA in accordance with the following guidelines.

##### 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 the CERL for working the ordinary time required of other employees in the same grade/class shall be included in “compensation earnable,” including but not limited to the following items of compensation, and others substantially similar to them:

- Base Salary and Wages;

- Differential Pay and other additional compensation items paid to employees for special skills or services they provide or special circumstances of their employment;
- Bilingual Premium Pay;
- Allowances (paid in cash, not in-kind) that are so closely related to services performed by employees that the allowances must be considered remuneration for services, including uniform, auto, and cell phone allowances;
- Educational Incentive (“POST”) Pay;
- Longevity Incentive;
- Payoffs of Vacation and Sick Leave and Holiday to the extent earned and (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, (4) not “true overtime,” (5) not due to termination, and (6) limited to the amount which may be earned and payable in each 12-month period during the final average salary period;
- Employee Contributions to Deferred Compensation Plan;
- “Overtime” required to be worked that is part of the employee’s regular schedule that is ordinarily worked by others in the same grade/class/rate of pay;
- Certain accruals of Compensatory Time, if not excluded as “true overtime” (see definition below), such as accrued briefing comp time and accrued holiday work comp time;
- Paid leave time used, including vacation, sick, annual or compensatory time, to the extent the leave replaces regular hours/wages;
- Court Transcript Fees and per diems paid to Court Reporters to the extent earned and received prior to separation; and
- Such additional elements as the Board may determine in its discretion in the future.

2. Elements to be excluded in “Compensation Earnable”

In accordance with CERL section 31461 and the Board’s earlier resolutions, remuneration or other value received by the employee neither 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, shall be excluded from “compensation earnable,” including but not limited to the following items, and others substantially similar to them:

- Any compensation determined by the Board to have been paid to enhance a member’s retirement benefit under the system, which may include compensation that had previously been paid in kind to the member by the employer or paid directly by the employer to a third party, and which was converted to and received by the member in the form of cash payment;

- Any one-time or ad hoc payment made to the member, but not to all similarly situated members in the member's grade or class;
- Any payment made solely due to termination of the member's employment but is received 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;
- Payments for unused vacation, annual leave, personal leave, sick leave or compensatory time off, however denominated, whether 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;
- Payments for additional services rendered outside of normal working hours;
- 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;
- 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 3<sup>rd</sup>-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;
- Stand-by and On-Call; and
- Such additional elements as the Board may determine in its discretion in the future.

**B. PENSIONABLE COMPENSATION.**

Pensionable Compensation applies to "PEPRA Members." A PEPRA Member is an individual who became a member of FCERA for the first time on or after January 1, 2013, and who was not a member of any other public retirement system prior to that date; or a member of another public retirement system prior to that date, but who was not subject to reciprocity under Government Code section 7522.02(c).

Pensionable compensation, as defined in PEPRA section 7522.34, means pay items that are subject to pension contributions and included in the final average compensation used to compute a member's benefit allowance.

1. Elements to be included in "Pensionable Compensation"

- 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 and subject to the limitations in PEPRA section 7522.34(c).
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2. Elements to be excluded from "Pensionable Compensation"

- Any compensation determined by the Board to have been paid to increase a member's retirement benefit.
- Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party, which was converted to and received by the member in the form of a cash payment.
- Any one-time or ad hoc payment.
- Severance or any other payment granted or awarded to a member in connection with or in anticipation of separation from employment but received while employed.
- Payments for unused vacation, annual leave, personal leave, sick leave or compensatory time off, however denominated, whether lump sum or otherwise, regardless of when reported or paid.
- Payments for additional services rendered outside of normal working hours.
- Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.
- Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.
- Employer contributions to deferred compensation or defined contribution plans.
- Any bonus paid in addition to the compensation described in Section III(B)(1) above or PEPRA section 7522.34(a).
- Any other form of compensation the Board determines is inconsistent with the requirements of PEPRA section 7522.34(a).
- Any other form of compensation the Board determines should not be pensionable compensation.
- Any form of compensation identified that has been agreed to be nonpensionable pursuant to a memorandum of understanding for state employees bound by the memorandum.

## **V. Implementation of Policy**

This policy shall be implemented in accordance with the following procedures:

1. The Retirement Administrator, with advice of legal counsel, is responsible for implementing the Board's policy decisions related to Compensation Earnable and Pensionable Compensation. The Retirement Administrator will keep the Board informed of significant ongoing Compensation Earnable or Pensionable Compensation implementation challenges, as appropriate.
2. Employer plan sponsors ("Employers") are responsible for coding their pay code categories as set forth in the Board's policy determinations attached hereto as **Appendix A**, incorporated herein by reference. Employers must notify FCERA in writing as soon as they become aware of any earn codes that do not conform with **Appendix A** so that FCERA can determine whether or not the underlying pay in question is pensionable pursuant to Board policy.
3. Employers are responsible for notifying FCERA of any proposed new pay items so that FCERA may determine whether or not the pay should be classified as either Compensation Earnable or Pensionable Compensation. To do this, Employers must complete a "Pay Item Request Form," for all new pay items to be considered by the Board. A current copy of that form is included in **Exhibit A**, attached hereto.
4. FCERA will review the proposed new pay item using the guidelines in this policy using the "Pay Item Determination Form, **Exhibit B**, and will present a written recommendation regarding whether the pay should be included or excluded from Compensation Earnable or Pensionable Compensation to the Board at a regularly scheduled Board meeting.
5. FCERA will review employer pay code listings for compliance with established policy as part of staff administrative procedures. FCERA will continue its current practice that includes a detailed pay item review prior to establishing retirement benefits for retiring FCERA members.
6. When reviewing items of compensation, FCERA staff 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, receipt of ad hoc payments or any other compensation considered to be inconsistent with pension reform legislation provisions or this policy.

## **VI. Policy Review**

This policy identifies items of compensation the Board presently believes are permitted, or required, to be included in, or excluded from, Compensation Earnable and Pensionable Compensation.

The Board reserves the right to revise this policy at any time and to change any of its prior determinations in its own discretion. This policy is not intended to, and does not, create any

vested rights in FCERA members related to the past, present, or future determinations set forth herein.

Where this policy conflicts with any prior Board policy directly related to the subject matter hereof, this policy shall prevail unless it is contradicted by then current statute.

The Board shall review this policy at least once every 3 years to ensure that it remains relevant and appropriate. This policy may be amended at any time by a majority of the Board.

## **VII. Policy History**

1. This policy was adopted by the Board on December 18, 2019.
2. The Board of Retirement reviewed and modified this policy on December 18, 2019.

## **VIII. Secretary's Certificate**

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

December 18, 2019

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***Date of Action:***

Donald C. Kendig

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***By: Retirement Administrator***