

OCERS Administrative Procedure (OAP) **Reciprocity**

I. Purpose

The purpose of this OCERS administrative procedure (OAP) is to describe how OCERS' Board of Retirement (Board) applies the rules governing reciprocity.

II. Authority

This OAP is established pursuant to the Chief Executive Officer (CEO) Charter, section 8.f., which directs the CEO to develop staff policies and procedures to ensure effective and efficient administration of member benefits. The OAP is in conformance with Board Policy, the County Employees Retirement Law (California Government Code section 31450, *et seq.*) (CERL), and the Public Employees' Pension Reform Act (Government Code, sections 7522 - 7522.74) (PEPRA).

III. Overview

"Reciprocity" under the CERL refers to the relationship between certain specified California retirement systems that permits public employees to move between those systems without losing the rights and benefits they already earned.ⁱ Reciprocal retirement systems can protect an employee's earned retirement benefits when those employees enter employment with a reciprocal system within six months (180 days) of terminating employment with the prior system. They do so by enabling a public employee to count all their years of qualifying public service as a single unbroken career with the payment of their total retirement allowance apportioned among each participating system. Reciprocity applies to an OCERS member when the member has worked for a California public retirement system that has reciprocity with OCERS and meets the requirements set forth below.

The reciprocity rules are intended to encourage career public service by eliminating the adverse consequences of having to start over again in a new retirement system. The rules also delineate the financial obligations of each system so they are shared equitably.ⁱⁱ

The following systems have reciprocity with OCERS:

County Retirement Systems

Alameda
Contra Costa
Fresno
Imperial
Kern
Los Angeles

OCERS Administrative Procedure (OAP) Reciprocity

Marin
Mendocino
Merced
Sacramento
San Bernardino
San Diego
San Joaquin
San Mateo
Santa Barbara
Sonoma
Stanislaus
Tulare
Ventura

California Public Employees' Retirement System (CalPERS)
California State Teachers' Retirement System (CalSTRS)
Judges Retirement System (JRS I and JRS II)

Advantages of Reciprocity

- The public employee becomes a member of both (or all, if more than two) retirement systems and is subject to the rights, benefits, and membership requirements of each system.
- If applicable, the member's entry age will be based upon the age they were when they entered the first system.ⁱⁱⁱ This is significant because it may affect the member's contribution rate. When entering a public retirement system, some systems (like OCERS) use a member's age of entry as a factor to calculate the amount the member has to contribute to help fund their retirement. The younger the age of entry, the less a member must pay in member contributions (payroll deductions) to the retirement system. With reciprocity, a member may pay less in member contributions to the second system than they otherwise would if reciprocity did not apply.
- A member whose membership in an eligible reciprocal system began before January 1, 2013, may be eligible for the benefit plan formula in place prior to January 1, 2013, i.e., Legacy member status. Legacy member status is pre-PEPRA, which took effect on January 1, 2013.

OCERS Administrative Procedure (OAP) **Reciprocity**

- Upon concurrent retirement from all reciprocal systems, the member's service under each reciprocal retirement system will count towards the vesting and retirement eligibility requirements of each system.^{iv}
- In calculating the amount of the retirement allowance, each system will use the member's highest "compensation earnable" (for Legacy Members) or "pensionable compensation" for (PEPRA Members), regardless of under which system it was earned if that compensation is recognized as pensionable in the reciprocal system.^v

IV. Requirements of Reciprocity

To be eligible for the advantages of reciprocity, the public employee must:

1. Maintain membership in the prior retirement system by leaving their contributions on deposit with that system^{vi} (i.e., elect deferred retirement); and
2. Enter employment that results in membership in the new system within six months (180 days) of leaving employment with their prior reciprocal system employer.^{vii}

If these two initial eligibility requirements are met, members may elect reciprocity when they join OCERS. However, OCERS must be informed of membership in the prior system(s) to effectuate reciprocity. **Thus, new members must notify OCERS of all previous retirement system memberships and certify whether they wish to elect reciprocity.** This election of reciprocity is irrevocable.

Reciprocity can apply on an incoming basis when a public employee becomes an OCERS member and on an outgoing basis when an OCERS member terminates employment with an OCERS employer and enters a reciprocal retirement system within six months. In addition, each move a public employee makes between systems is considered a separate reciprocal event, and thus they would need to meet the requirements of reciprocity for each move.^{viii}

Concurrent Retirement Required

To be credited with the period of service under each reciprocal system at the time of retirement, the member must apply to retire from each system separately and concurrently, that is, on the same date.^{ix} The member will then receive separate retirement allowances from each system.

However, if a member that elected deferred retirement with OCERS then retires from a reciprocal system but fails to apply to OCERS for concurrent retirement due to oversight or excusable

OCERS Administrative Procedure (OAP) **Reciprocity**

neglect, the member may apply to OCERS for a service retirement allowance that will be effective as of the date of the member's retirement from the reciprocal system.^x

Overlapping Service Prohibited

Service credit cannot be granted from more than one retirement system at a time.^{xi} Thus, periods of service with more than one system may not overlap. That means that a member must discontinue employment with their former system before entering membership with the subsequent system. So, an employee entering membership with OCERS must not still be on the job, or exhausting vacation hours, sick leave credits, or other types of leave with their prior system employer. To the extent permissible under the law, OCERS will adjust the member's entry or exit date to avoid overlap.^{xii}

Breaking Reciprocity

Once established, to maintain reciprocity, the member may not withdraw their accumulated contributions from the reciprocal system and must retire from all reciprocal systems on the same date.^{xiii} Otherwise, they will break reciprocity and lose its advantages, i.e., the member will then be required to meet the minimum eligibility requirements for retirement, disability, and survivor benefits based solely on their employment with the OCERS member employer. For example, an OCERS member with established reciprocity cannot rescind their election of deferred retirement with the previous system(s) or withdraw any of their accumulated contributions and interest. If they did, reciprocity would be broken and no longer recognized by OCERS. In addition, their age-based contribution rate would change to align with their age of entry into OCERS.

Likewise, an OCERS member who transfers to a reciprocal system cannot withdraw funds from OCERS while still a member of the reciprocal system. Such members would need to provide proof of permanent separation and withdrawal of contributions from the other retirement systems to be eligible for a refund of their OCERS contributions.

Should a member retire concurrently with each system but later re-instate membership by returning to work with one of the system's employers, reciprocity will be broken as the retirement date from both systems will no longer be the same.

V. Disability Retirement and Reciprocity

The advantages of reciprocity may also apply to disability retirement benefits. Once reciprocity is established, the disability allowance, as with the service retirement allowance, will be based on the service credit earned with each reciprocal system.^{xiv}

OCERS Administrative Procedure (OAP)

Reciprocity

A member who terminates employment with an OCERS employer, leaves their retirement contributions on deposit with OCERS (is a deferred member), and establishes reciprocity with a reciprocal system may be entitled to a retirement allowance from OCERS when the reciprocal system grants them a disability allowance. A finding by the reciprocal system that the deferred member is entitled to a disability retirement will be binding on OCERS.^{xv} When a reciprocal system grants a deferred member a service-connected disability retirement and the member applies for and is granted a concurrent disability retirement from OCERS, the only benefit payable to the member from OCERS will be an annuity based on their retirement contributions.^{xvi}

Disability Offset

The disability allowance received by a member credited with service in more than one system cannot exceed the amount they would have received had all their service been with only one system.^{xvii} The CERL imposes this benefit cap to ensure the disability allowance awarded does not result in the member receiving an amount that, when combined with any amount the member receives from other counties or the California Public Employees' Retirement System (CalPERS), is greater than the amount the member would have received had all the member's service been with only one entity. The system granting a disability allowance is required to "offset" (reduce) the benefits to be paid to the member to avoid any excess.

For example, ordinarily, a service-connected disability retirement benefit qualifies the retiring employee to receive one-half of their final compensation, or, if eligible, a service allowance.^{xviii} But, again, where a member retires on disability and receives retirement benefits from more than one California public pension system, a disability offset will apply to cap the disability retirement allowance so that it does not exceed a member's final compensation with any one system.

When a member is granted a disability retirement from OCERS and a reciprocal system also grants the member a non-service-connected disability, OCERS will first ascertain the amount of the allowance that would have been paid to the member if all of the member's service had been under one system. OCERS will then pay the member a fraction of that amount, with the numerator of that fraction being the total years of service credit the member has with OCERS and the denominator the total years of service credit the member has with OCERS and the reciprocal system combined.^{xix}

However, when a member receives a service retirement under a California public pension system and becomes a member of a second system but does not elect reciprocity, their first service pension cannot be considered part of a disability allowance and is thus not subject to offset under section 31838.5.^{xx}

OCERS Administrative Procedure (OAP) **Reciprocity**

Calculating the Disability Offset

Following is the process OCERS will follow when applying the disability offset pursuant to Gov. Code, § 31838.5:

1. Is OCERS paying a service-connected disability retirement?
 - a. If no, continue to step 2. If yes, did the member become employed by OCERS on or after January 1, 1984? If no, stop as the offset does not apply. If yes, continue to step 2.
2. Is the first system paying an annuity or a return of contributions? If no, continue to step 3. If yes, then OCERS will pay the full disability retirement amount as no offset applies.
3. Determine the figure subject to offset:
 - a. Add OCERS non-service-connected disability benefit amount to the other system's benefit amount. This is Amount A.
 - b. Determine what the disability retirement allowance would be if the member's combined years of service had been with whichever system would have yielded the highest amount. This is Amount B. (This benefit amount cannot be greater than 100% of the highest Final Average Salary)
 - i. If Amount B is greater than Amount A, there is no offset.
 - ii. If Amount A exceeds Amount B, subtract B from A.
 - iii. This is the figure subject to offset: Amount C ($A-B=C$).

Example: The member with established reciprocity receives a retirement allowance from a reciprocal system and a disability allowance from OCERS. The member's allowance from the other system is \$1000, and their allowance from OCERS is \$2000, for a total of \$3000 (Amount A).

Also, assume that had all the member's service been with OCERS, the member would have received \$2750 (Amount B) and this amount is higher than if all service had been with the reciprocal system.

OCERS Administrative Procedure (OAP) Reciprocity

Since Amount A is greater than Amount B, an offset applies and OCERS would then subtract Amount B (\$2750) from Amount A (\$3000) to equal Amount C (\$250).

4. Determine the percentage of the offset:
 - a. Divide the member's service time with OCERS by the total amount of service time with all systems to determine the percentage of total time that is OCERS.
 - b. Then multiply Amount C by the percentage of OCERS time to determine the amount of the offset.

Example: Assume the member has 24 years of total service, 8 years of which are with OCERS and 16 years with a reciprocal system: $8 \text{ divided by } 24 = 33.3\%$.

Taking Amount C from above, multiply \$250 by 33.3% to determine the amount of offset to apply: $\$250 \times 33.3\% = \83.25 .

The disability allowance provided by OCERS will thus be the original allowance of \$2,000 minus \$83.25, which equals \$1916.75.

Note: OCERS will apply the entire offset amount to the OCERS benefit should the other system not apply the offset to their benefits.

Waiver of Disability Benefits from OCERS

A deferred member who is granted a disability retirement from a reciprocal system may waive disability retirement benefits from OCERS and elect a deferred retirement allowance from OCERS instead.^{xxi} Doing so will break reciprocity, and their vesting requirements and final compensation determination will be based only on their service with OCERS.

OCERS Administrative Procedure (OAP) Reciprocity

ⁱ Gov. Code, §§ 31830-31840.8 govern reciprocal retirement benefits granted to public employees who are entitled to retirement rights and benefits from two or more retirement systems that are subject to the reciprocity rules. Under the Public Employees Retirement Law (PERL), reciprocity is governed by Gov. Code, §§ 20350 *et. seq.*

ⁱⁱ Gov. Code, § 31830

ⁱⁱⁱ Gov. Code, § 31833

^{iv} Gov. Code, § 31836

^v Gov. Code, § 31835

^{vi} Gov. Code, § 31831. In order to elect a deferred retirement from OCERS, the member must have at least five years of service with an OCERS employer or must transfer to a reciprocal system (Gov. Code, § 31700).

^{vii} Gov. Code, §§ 31835, 31840.4

^{viii} If a member moves back and forth between active memberships in OCERS and a reciprocal system, the member can maintain reciprocity so long as there is at least one break that is less than six months with no overlapping service credit. The existence of other breaks of more than six months with that system will not disqualify a member for reciprocity.

^{ix} Gov. Code, § 31835. Exceptions may apply. For example, a member required to retire because of age may be entitled to have his final compensation and service determined as if he had retired concurrently with their prior system (Gov. Code, § 31835.1).

^x OCERS Regulations, Art. X.

^{xi} Gov. Code, § 31836

^{xii} Persons eligible for membership in OCERS normally become a member as of the first day employed with an OCERS member employer (OCERS Regulations, Art. I, April 10, 1995).

^{xiii} Gov. Code, § 31831

^{xiv} Gov. Code, §31837

^{xv} OCERS Regulations, Art. IX.2.

^{xvi} Gov. Code, § 31837, OCERS Regulations, Art. IX.4.

^{xvii} Gov. Code, § 31838.5



OCERS Administrative Procedure (OAP)

Reciprocity

^{xviii} Gov. Code, § 31727.4

^{xix} OCERS Regulations, Art. IX.3.

^{xx} *Casson v. Orange County Employees Retirement System* (Cal. Ct. App., Jan. 30, 2023, No. G060950) 2023 WL 1097958, at *5

^{xxi} OCERS Regulations, Art. IX.5.