



Circular Letter

Final Pay Outs at Separation – Terminal Pay

January 16, 2019

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To: All OCERS Employers

Subject: Final Pay Outs at Separation – Terminal Pay for Legacy Members

OCERS is in the process of reviewing all salary and pay items to ensure proper reporting of pensionable pay. Employee and employer contributions are associated to pensionable salary and pensionable pay items that are paid biweekly throughout a member's career. Any liability associated to pensionable pay that is not reported correctly on a biweekly basis becomes part of the annual actuarial rate setting process.

We understand that there may be confusion surrounding the pay that is distributed upon an employee's separation from employment, and whether OCERS pension contributions should be deducted. The purpose of this Circular Letter is to provide guidance to employers on how final pay outs at separation should be treated for retirement related purposes for Legacy members only.

Background:

In February 1998, the OCERS Board adopted Resolution 98-001 which set forth policies and guidelines regarding compensation earnable for Legacy members. The resolution states: "*Elements to be Included in 'Compensation Earnable'*". Remuneration earned and receivable in cash (under applicable MOU) to the retiring employee during the final compensation period 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:

Payoffs of Vacation and Sick Leave and Holiday to the extent earned (pro-rated on a monthly basis), not taken as time off and permitted to be cashed out (pro-rated on a monthly basis) under the applicable MOU regardless of when actually cashed out.

OCERS' interpretation of compensation earnable for Legacy members was further clarified in OCERS Compensation Earnable Policy. Final pay outs of unused annual leave, vacation and any other hours of paid time off (PTO) may be included in a retiring Legacy member's final average salary up to the amount that is earnable and cashable in a 12-month period under the applicable MOU. Terminal pay paid solely because of termination or payoffs of PTO in excess of what is allowed in a 12-month period may not be included in compensation earnable and therefore is not pensionable.



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Additionally, in accordance with Government Code 7522.34 and OCERS Pensionable Compensation Policy<sup>1</sup>, terminal pay and payments for unused PTO are not pensionable and explicitly excluded from pensionable compensation for PEPRA members, who are OCERS members hired on or after January 1, 2013.

Final Pay Outs for Legacy Members:

Given the difficulty of calculating the amount of terminal pay that may be pensionable, terminal pay cash outs of leave should NOT be reported to OCERS as pensionable and contributions will NOT be deducted for those hours. A reconciliation of hours/final compensation will be done at the time of retirement so that any pensionable hours that should be included in final average salary are manually added to the retiring Legacy members' final average salary. This process of manually reconciling the hours is the preferred method given that the member is not required to cash out the hours in order for them to be included in final average salary, and members are able to cash out more hours than what can be included.

The amount added manually will be communicated to OCERS' actuary during the valuation process so that the future liabilities associated with the hours are included in the calculation of employee and employer contribution rates ("load factor").

This process also applies to annual PTO pay outs (see Circular Letter: Cash Outs of Paid Time Off (PTO) – Vacation, Sick, Annual Leave)

If you have any questions or need additional information please contact me at (714) 558-6215 or via email at [sjenike@ocers.org](mailto:sjenike@ocers.org).

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<sup>1</sup> Policy is pending final adoption by the Board of Retirement