

OCERS Board Policy

Compensation Earnable Policy

Purpose and Background

1. The purpose of this policy is to affirm OCERS' interpretation of the term Compensation Earnable as set forth in California Government Code section 31461 (Section 31461) and OCERS Board of Retirement Resolution 98-001 (Resolution 98-001).
2. Resolution 98-001 was adopted by the OCERS Board of Retirement (Board) on February 6, 1998, in order to implement the decision of the California Supreme Court (Supreme Court) in the case *Ventura County Deputy Sheriffs' Association vs. Board of Retirement of Ventura County Employees Retirement Association* (1997) 16 Cal.4th 483 (Ventura Decision). The Supreme Court in the Ventura Decision interpreted Section 31461 and the term Compensation Earnable and mandated a change in the method for calculating pension benefits for members and their beneficiaries by retirement systems governed by the County Employees Retirement Law of 1937 (CERL).
3. Resolution 98-001, among other things, reflects the Board's interpretation of the Ventura Decision as it applies to various types or categories of speciality or premium pay received by OCERS members from their employers, and delineates those items of pay that are to be included in and those that are to be excluded from Compensation Earnable.
4. On May 4, 1998, Resolution 98-001 was amended by Board Resolution 98-009 in response to litigation brought by the County of Orange and others challenging the legality of Resolution 98-001. Resolution 98-009 deleted Sections 6, 8 and a portion of Section 9 of Resolution 98-001 related to the imposition of contributions in arrears stemming from the change in contribution rates that resulted from the implementation of Resolution 98-001. Additionally on December 18, 2000, Resolution 98-001 was further amended by Resolution 00-003 to address the treatment of certain automobile allowances. For purposes of this policy, any reference to Resolution 98-001 will be as Resolution 98-001 was amended by Resolutions 98-009 and 00-003.
5. OCERS was a party to several litigation matters that arose subsequent to the Ventura Decision and adoption of Resolution 98-001. These cases were coordinated as class actions in San Francisco Superior Court with other litigation involving other county retirement systems involving the interpretation and implementation of the Ventura Decision (Coordinated Cases).
6. On November 1, 2002, the San Francisco Court entered a judgment (Judgment) approving a settlement agreement of the Coordinated Cases that, among other things, included an agreement that all parties would " . . . accept as final and binding the inclusions and exclusions from compensation, compensation earnable and final compensation . . . " as set forth in Resolution 98-001.
7. In 2012, the California Legislature adopted AB 197 and the Public Employees Pension Reform Act of 2012 (PEPRA), which among other things, effective January 1, 2013, amended Section 31461 to add subdivision (b), a list of items of compensation that are expressly excluded from Compensation Earnable. Among the items of compensation excluded from Compensation Earnable by subdivision (b) of Section 31461 are (1) compensation determined by the board to have been paid to enhance a member's retirement allowance, (2) payments for unused vacation, annual leave, etc., in an amount that exceeds what is earned and payable in each 12-month period during the Final

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Compensation Period, (3) payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise, and (4) payments made at termination of employment, except those that do not exceed what is earned and payable in each 12-month period during the Final Compensation Period. PEPRA also added a new term – Pensionable Compensation – to define the items of compensation that are permitted to be included in the calculation of the retirement allowances of OCERS members enrolled in the pension system on or after January 1, 2013. OCERS members who were members of the system prior to January 1, 2013 are referred to as Legacy members in this policy.

8. A number of lawsuits were filed shortly after PEPRA became effective. One of these lawsuits was appealed to the Supreme Court, and on July 30, 2020, resulted in a decision of the court upholding as constitutional AB 197 and PEPRA, including the amendments to Section 31461. (*Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* 9 Cal.5th1032; the Alameda Decision.) The Board has amended Paragraph 10 below to reflect the holding of the Supreme Court in the Alameda Decision.

Policy Objectives

9. The objectives of this policy are to ensure that OCERS fully complies with applicable law including the Alameda Decision when calculating Compensation Earnable and Legacy members' retirement benefits, and to reaffirm the continued applicability of Resolution 98-001 as upheld by the Judgment in the Coordinated Cases.

Policy Guidelines

10. **Compensation Earnable.** Compensation Earnable for Legacy members will be calculated by OCERS in accordance with the following guidelines.

- (a) **Pay Items Included in Compensation Earnable.**

In accordance with Resolution 98-001 and subdivisions (a) and (b) of Section 31461, remuneration that is (i) earned and receivable in cash (under the applicable MOU) by the retiring employee, (ii) during the final compensation period (as defined by Sections 31462 and 31482.1 of the Government Code; hereafter Final Compensation Period), and (iii) for services performed during Normal Working Hours (defined below) will 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
- Bilingual Premium Pay
- Educational Incentive ("POST") Pay
- Aircraft Rescue Firefighting
- Paramedic Pay
- Motorcycle Bonus

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- Emergency Dispatch Pay
- Field Training Officer Bonus
- Shift Differential Pay
- Confined Space Pay
- Longevity Incentive
- Automobile Allowance, if paid in cash; and for members whose Final Compensation Period includes time before January 1, 2001, also to the extent that the automobile was provided for personal use and declared as income
- Uniform Allowance
- Uniform Maintenance Allowance
- Payoffs of Vacation, Sick and Holiday leave time to the extent it was (i) earned in each 12-month period of the Final Compensation Period (pro-rated on a monthly basis); (ii) not taken as time off; and (iii) permitted to be cashed-out during the Final Compensation Period (pro-rated on a monthly basis) under the applicable MOU, regardless of when actually paid or cashed out
- Employee Contributions to a Deferred Compensation Plan [already included in Base Wages and Salary, above]
- "Mandatory or Scheduled Overtime" (including pay items such as On-Call and Standby) provided that it is pay for services rendered during the employee's Normal Working Hours (defined below).
- Compensatory Time (excluding "True Overtime" as defined in Section 10(b) below) in excess of minimum required reserve
- "Madera" Pay (see, *Madera Police Officers Association v. City Of Madera* 36 Cal.3d 403)
- Additional Compensation for Scheduled Meal Periods
- Flexible Benefits ("Cafeteria Plan") paid in cash to members retiring before January 1, 1991

(b) Pay Items Excluded from Compensation Earnable.

In accordance with Resolution 98-001 and subdivisions (a) and (b) of Section 31461, remuneration or other value to the employee that (i) is neither earned nor payable in cash to the employee during the Final Compensation Period; and (ii) is not for services rendered during the employee's Normal Working Hours (defined below) will be excluded from Compensation Earnable, including but not limited to the following items, and others substantially similar to them:

- "True Overtime", including but not limited to On-Call, Standby and similar pay, for additional services rendered outside of Normal Working Hours (as defined below), whether paid in a lump sum or otherwise

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- Employer Contributions to a Deferred Compensation Plan
- Employer Contributions to the Retirement System
- Employer "pick up" of Employee Contributions to the Retirement System
- Payoffs or cash outs of Vacation and Sick Leave and Holiday Pay, to the extent neither earned nor permitted to be cashed out under the applicable MOU, during each 12-month period of the Final Compensation Period, regardless of when actually paid or cashed out
- Flexible Benefits ("Cafeteria Plan") provided in-kind
- Flexible Benefits ("Cafeteria Plan") paid in cash to members retiring on and after January 1, 1991
- Terminal ("Final") Pay, unless included in Compensation Earnable under Section 10(a), above
- Expense Reimbursements
- In-Kind Advantages (e.g. food, lodging, board, laundry, fuel)
- Fees, Licenses, Memberships provided to the member by the employer
- Automobile Allowance, if the automobile is provided for personal use and the allowance is not paid in cash, whether or not declared as income, for members whose Final Compensation Periods **do not** include time before January 1, 2001.

(c) **Definition of Normal Working Hours.**

Normal Working Hours are hours that (i) are required to be worked as part of the employee's regular duties; (ii) are ordinarily worked during the period in question by all other members in the same grade/class/rate of pay as the employee; **and** (iii) are not and cannot be voluntarily worked by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis.

(d) **Calculation of Compensation Earnable.**

The retiring employee's compensation will be "regularized" to what would have been received had the employee been paid for a normal work schedule during the Final Compensation Period. OCERS Staff will calculate Compensation Earnable (Earnable Salary) by creating a fraction, the numerator of which is the amount of the employee's qualifying compensation and the denominator of which is the number of ordinary work hours for which the employee was actually paid. Staff will then multiply that fraction by the number of paid hours ordinarily required to be worked by all other members in the same grade/class as the retiring employee. The result will be the retiring employee's Compensation Earnable for the Final Compensation Period.

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Policy Review

11. The Board of Retirement will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

Policy History

12. The Board of Retirement adopted this policy on March 18, 2019, and this policy was amended by the Board on June 21, 2021.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



Steve Delaney
Secretary of the Board

06/21/2021

Date