

OCERS Administrative Procedure (OAP) Felony Forfeitures

Authority

1. This Administrative Procedure 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).

Overview

2. PEPRA contains a felony forfeiture law at Government Code sections 7522.72 and 7522.74. Under this law, members of OCERS who are convicted of a felony based on certain enumerated conduct, on or after January 1, 2013, in a state or federal trial court, must forfeit all rights and benefits earned or accrued in any public retirement system from the first date the felony was committed through the date of conviction, and they cannot accrue further benefits. Rights and benefits related to service performed before the first date the felony was committed are not forfeited.
3. The forfeiture applies only when the felony conviction is based on criminal conduct that was:
 - Arising out of or in the performance of their official duties as a public employee;
 - In pursuit of the office or appointment;
 - In connection with obtaining salary, disability retirement, service retirement, or other benefits; or
 - Committed within the scope of official duties against or involving a child that the member had contact with as part of their duties.
4. Once a member is convicted of such a felony, the member and the prosecuting agency must notify the member's employer within 60 days of the conviction, and the employer must notify OCERS within 90 days of the conviction. Whether OCERS is notified by the employer or learns of the conviction through another source, OCERS must comply with the felony forfeiture law. Once notified of the conviction, OCERS' staff will place a hold on the member's account to prevent withdrawals pending a determination of the legal effect of the conviction.

Initial Determination by Staff

5. Once OCERS is notified of the conviction, staff will investigate and obtain information necessary to determine the extent to which the forfeiture may apply. This may include gathering court records, employment records, and any other relevant documents, and communicating with the prosecuting agency and the member's employer. OCERS may exercise its subpoena power to obtain the information.
6. Information gathered by staff will be used to:
 - a. Verify that the PEPRA felony forfeiture law applies to the member's conviction;
 - b. Determine the earliest date the felony was committed;
 - c. As applicable, calculate the amount of overpaid benefits, employee contributions made to the

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- system during the forfeiture period, adjustment to future benefits due the member, and any reimbursement owed to the system; and
- d. Confirm that any action taken by OCERS complies with the law.
7. For active or deferred members, the forfeiture will apply as follows:
 - a. The member will be treated for all purposes as if they were a deferred member on the first date the felony was committed. OCERS will remove any service credit the member has earned dating back to the first date the felony was committed. This may affect the member's retirement eligibility.
 - b. The member's employee contributions made to the system on and after the first date the felony was committed will be refunded to the member without interest upon the occurrence of a distribution event, unless otherwise ordered by a court or determined by OCERS.
 8. For retired members, the forfeiture will apply as follows:
 - a. The member will be treated as if they were a deferred member on the first date the felony was committed for purposes of recalculating their service credit and final average salary ("FAS"). OCERS will remove any service credit the member earned as of the first date the felony was committed. In recalculating FAS, OCERS will exclude compensation that falls within the forfeiture period.
 - b. If after application of the forfeiture rules, the member no longer has sufficient service credit to retire as of the first date the felony was committed, OCERS will rescind the retirement and place the member into deferred status.
 - c. If the member did have sufficient service credit to retire as of the first date the felony was committed, OCERS will recalculate the member's retirement allowance by making appropriate changes to their service credits and final average salary. The effective date of retirement and age at retirement will not change.
 - d. OCERS will determine whether the recalculated retirement allowance results in an overpayment of retirement benefits, in which event OCERS will recoup the overpayment from the member pursuant to this Procedure.
 - e. OCERS will also determine the amount of employee contributions the member made to the system as of the first date the felony was committed. These contributions will be refunded to the member without interest. However, if there has been an overpayment of retirement benefits, OCERS will use the contributions, without interest, to offset the overpayment. Contributions will be refunded to the member to the extent they exceed the amount of overpaid benefits.
 - f. For purposes of this Procedure, "overpayment" of retirement benefits includes compounded interest on the principal amount of the overpayment at OCERS' actuarial assumed rate of interest effective from time to time during the forfeiture period.
 9. Staff will send a Notice of Initial Determination to Apply PEPRA Felony Forfeiture ("Notice of Initial Determination" or "Notice"), to the member in writing. The Notice of Initial Determination will:
 - a. Include a copy of this Procedure and all documents relied upon by staff to support the initial

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determination.

- b. Provide an explanation of the felony forfeiture law, the reason it applies to the member's felony conviction, and changes that will be made to the member's retirement status and benefits. This may include staff's calculation of overpayments, employee contributions, an adjusted retirement allowance, the manner and time in which OCERS will recoup any overpayment, and any other change staff determines should be made to the member's retirement status or benefits.
- c. Identify the date on or around which the forfeiture will be implemented.
- d. Inform and instruct the member about their right to contest staff's initial determination by requesting the matter be heard and determined by the Board of Retirement (Board).

Request for Determination by Board of Retirement

10. The member has the right to contest staff's initial determination by requesting that the matter be heard and determined by the Board. The request must be in writing and provide a statement explaining the basis and extent to which the member disagrees with staff's initial determination. The member may include documents in support of the request. The Board's review and determination will be limited solely to questions of:
 - a. Whether the PEPRA felony forfeiture law applies to the member's conviction;
 - b. Whether staff has correctly identified the first date on which the felony was committed; and
 - c. Whether staff has correctly calculated changes to the member's status and benefits.

The request must be *received* by OCERS within 45 days of the Notice of Initial Determination. If the request is not timely received, the member waives their right to have the matter heard and determined by the Board. Staff will then notify the member in writing that they have waived their right, and staff's initial determination will be placed on the consent agenda of the Board's next regular open meeting that is at least 30 days after the date of the notice that the member has waived their right.

11. Upon timely receipt of a member's request, the matter will be placed on the Board's next regular open meeting agenda that is at least 45 days after the request is received by OCERS.
12. The member (or their attorney if they are represented) and OCERS staff may present to the Board written statements, argument, evidence, and sworn testimony. Any party wishing to do so must deliver to the Board and the other party a **Pre-Hearing Statement** at least fourteen (14) days before the date of the Board meeting. Late submissions will not be considered by the Board unless the Party shows good cause.

The Pre-Hearing Statement must be no more than 10 pages (excluding Exhibits) and include: a statement of the issues; contentions of the Party; a brief summary of the evidence in support of the Party's contentions; the name, physical and email address, and telephone number of any witness who will testify; and a brief description of the scope of a witness's testimony.

All documents to be presented by a Party must be attached as Exhibits to the Pre-Hearing Statement and preceded by an appendix that lists the Exhibits in an organized manner.

13. After the matter has been heard, the Board may make a final determination on the issues presented,

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refer the matter to a Hearing Officer, or take other action it deems appropriate.

In the event the matter is referred to a Hearing Officer, the Board will provide a timeline for the hearing to commence, post-hearing briefing to be filed, and the Proposed Findings of Fact and Recommended Decision to be submitted by the Hearing Officer.

Staff will notify the member in writing of the Board's action within three (3) business days.

Implementing the Felony Forfeiture

14. Staff will exercise discretion to implement the forfeiture under this Procedure at the earliest practicable time, unless otherwise directed by the Board. Staff will not implement the forfeiture until the Board makes a final determination, whether in response to the member's request for review and determination, or through consent and approval of staff's initial determination during a regular open meeting.
15. OCERS will exercise discretion to recoup overpaid benefits from the member, their estate, or beneficiaries to the extent permitted by law, including by lump sum payment, installment payment, benefit deduction, or any combination thereof.
16. When a member is owed a refund of their employee contributions, disbursement of the refund will be made by electronic funds transfer to an account of the member in a manner that complies with Internal Revenue Service requirements. OCERS must notify the court and the district attorney (or other prosecuting agency) at least three (3) business days before the disbursement of funds.

The member has the right to challenge OCERS' administrative determination under the writ procedures set forth in the California Code of Civil Procedure. The filing of a writ petition in court will not prevent OCERS from implementing the forfeiture, unless a court orders otherwise.

17. If the member's conviction is reversed, and that decision is final, the employee may either: (a) recover the forfeited rights and benefits as adjusted for any refund of employee contributions; or (b) redeposit those employee contributions plus interest that would have accrued during the forfeiture period (as determined by OCERS actuary) and recover the full amount of the forfeited rights and benefits.

This Procedure is not subject to OCERS' Policy Regarding the Overpayment or Underpayment of Benefits or Contributions.

18. If this Procedure conflicts with any statutory or case law, the statutory or case law will govern.