

## OCERS Board Policy Pay Item Review Policy

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### Purpose and Background

1. This policy sets forth a procedure for submitting and approving pay items by OCERS participating employers. Its purpose is to assist OCERS in properly and timely determining whether elements of compensation are appropriately treated as Compensation Earnable (for Legacy Members) or Pensionable Compensation (for PEPRAs members) before a pay code for a pay item goes into use and to correct pay codes to accurately reflect pensionability.

### Policy Objectives

2. The objectives of this policy are: (1) to comply with the requirements of the County Employees Retirement Law (CERL; California Government Code Title 3, Part 3, Chapters 3 & 3.9), as amended by the Public Employees Pension Reform Act (PEPRA; California Government Code sections 7522 - 7522.74), the holding in the California Supreme Court case of *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 ("*Alameda*"), and OCERS' regulations and policies, and (2) to ensure OCERS' effective assessment and determination of whether an element of compensation is properly categorized for purposes of collecting contributions and including in the calculation of final average salary.

Per AB 3025, employers may face significant financial consequences if they report compensation that OCERS later finds non-compliant with the CERL, PEPRA, the Alameda ruling, or OCERS Board policies and regulations, provided this is not the Member's fault. Detailed information regarding these potential consequences can be found in OCERS' policies on "Overpaid and Underpaid Plan Benefits" and "Overpaid and Underpaid Contributions."

### Review of Pay Items

3. OCERS will not accept any new or modified pay items from employers for processing contributions and reporting compensation *until* each pay item's pay code has been reviewed by OCERS staff and approved by the CEO or their designee for inclusion or exclusion from Compensation Earnable for Legacy members and Pensionable Compensation for PEPRA members. OCERS staff, under the direction of the CEO and with the assistance of the General Counsel, is responsible for implementing this Policy.
4. Employers are responsible for notifying OCERS of new or modified pay code item(s) for sufficient review and approval before implementing them. Failure to do so may result in OCERS imposing costs on the employer per Government Code sections 31580.1, 31542.5, or 31541.2(b)(2)(B).
5. OCERS staff will analyze each pay code item to determine whether each meets the Compensation Earnable or Pensionable Compensation definition and complies with the CERL, PEPRA, the *Alameda* holding, and OCERS regulations and policies. Unless appealed, the CEO's determination shall be final.
6. As a part of its review process, OCERS staff will review employer pay code item listings for compliance with this Policy. When reviewing compensation and pay code items, OCERS will audit pay code items to determine whether each meets the applicable statutory definitions for pensionability and complies with OCERS' regulations and policies.

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7. After concluding the foregoing assessment, OCERS staff shall send written notification to the employer of the staff's determination, including the specific supporting facts, circumstances, reasoning, and analyses.
8. The employer shall have 30 calendar days from the date of staff's final notice of determination to appeal the staff determination to the Board of Retirement (Board). If the employer accepts staff's determination or does not file a timely appeal, the matter shall be deemed concluded, the staff determination shall be final, and the employer shall comply with the determination.
9. Upon receipt of a timely request for appeal to the Board of staff's determination, staff shall place the matter on a future Board agenda and prepare a written report to the Board making a recommendation to the Board on the pay code item(s) in question. Staff shall provide the employer with advance notice of the Board meeting and a copy of staff's report and all materials to be considered by the Board. Likewise, the employer shall provide OCERS with all materials it intends to submit to the Board.
10. The Board shall consider all written materials submitted and any arguments the employer and OCERS staff present. The Board shall then decide whether the pay code item qualifies as Compensation Earnable, Pensionable Compensation, or both. The decision shall be final, and the employer shall comply with the Board's determination.

### **Review of Potential New or Modified Pay Code Items During Employment Contract Negotiations**

11. Pursuant to Government Code section 31541.2(c)(1), an employer or authorized employee representative may request OCERS' review of a proposed new or modified pay item/pay code intended to be included in a proposed employment agreement to determine the pensionability under the CERL, PEPRA, the *Alameda* holding, and OCERS regulations and policies prior to the entry of the employment agreement. Each such submission to OCERS must include all supporting information OCERS deems necessary to perform its review.
12. OCERS staff will evaluate each proposed pay item/pay code under Paragraph 11 and provide guidance solely to the requestor in writing on whether the proposed pay item/paycode is pensionable within 90 days of the receipt of all information OCERS requires to perform its review.
13. Employers must submit all new or modified pay codes for pay items for review and approval by OCERS, per paragraph 4, regardless of whether written guidance has been provided on a proposed pay item or pay code under paragraph 11 or 14.
14. Additionally, an employer or authorized employee representative may request OCERS review a proposed new or modified pay item/pay code intended to be subject to consideration in an upcoming employment contract negotiation. Upon receipt of sufficient supporting information that OCERS considers necessary to review the item, OCERS will endeavor to provide timely written guidance solely to the requestor.

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### Policy Review

15. The Board shall review this policy at least every three (3) years to ensure it remains relevant and appropriate.

### Policy History

16. The Board adopted this policy on March 18, 2019, and revised it on June 20, 2022, December 9, 2024, and April 21, 2025.

### 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

4/21/2025

Date