Santa Clara County Office of Education
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County Superintendent of Schools

Informational Bulletin
For Santa Clara School Districts

District Business and Advisory Services

Bulletin: 22-018

Date: January 18, 2022

To: District Fiscal Directors
District Personnel and Payroll Directors

From: Susan Ady, Director - District Business Services
Nghia Do, Advisor - District Business Services

Re: **California Public Employees' Retirement System (CalPERS) Updates**: Disallowed Compesation Benefit Adjustments Senate Bill (SB) 278, Chapter 331, Statutes of 2021 & 2022 Compensation Limits for Classic and PEPRA Members

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Disallowed Compensation Benefit Adjustments

Effective January 1, 2022, the additional provision of Government (Gov.) Code section 20164.5 (Chapter 331, Statutes of 2021) defines disallowed compensation as compensation reported for a member by a school employer that CalPERS subsequently determines is not in compliance with the California Public Employees' Pension Reform Act of 2013 (PEPRA).

Important:

- Overpayment and Penalty for Disallowed Compensation

  School district will be liable to pay CalPERS the full cost of any overpayment and pay the impacted retiree a portion of the actuarial equivalent of any reduced retirement benefit as a penalty. This penalty is equal to 20% of the lump-sum of the actuarial equivalent (a benefit of equal value when computed upon the basis of the mortality tables adopted and the actuarial interest rate fixed by the board under Gov. Code section 20013) present value of the difference between the monthly allowance based on the disallowed compensation and the adjusted monthly allowance for the duration that allowance is projected to be paid the system. The school district wil be required to pay:

  - 90% of this penalty directly to the affected retired member, survivor, or beneficiary
  - 10 % of the penalty to CalPERS

  Overpayment and penalty apply if all the following conditions under Gov. Code section 20164.5 subdivision (b)(3)(A) are met:

  1. The compensation was reported and contributions were made on that compensation while the member was actively employed.

2. The compensation was agreed to in a memorandum of understanding (MOU) or collective bargaining agreement between the employer and the recognized employee organization as the compensation for pension purposes and the employer and the recognized employee organization did no knowingly agree to compensation that was disallowed.
3. The determination by the system that compensation was disallowed was made after the date of retirement.
4. The member was not aware that the compensation was disallowed at the time it was reported.

- Not Covered under Disallowed Compensation

  The following reporting errors are not within the scope of disallowed compensation under Gov Code section 20614.5:

  1. Lump-sum reporting of reportable compensation
  2. Reporting compensation above the limit defined in the labor policies and/or agreements
  3. Misreporting of payroll such as , but not limited to:

     a. Misreported pay rates such as $10.00 versus $100.00
     b. Misreported pay rate types such as monthly as an hourly pay rate
     c. Misidentified special compensation category and type

- Compensation Review by CalPERS

  1. For pension purposes, the CalPERS MOU Review team will review, verify and determine if the compensation language items in an MOU, collective bargaining agreement, or other labor policies and/or agreements can be reported.

  2. It is important to report accurate member information in compliance with the PERL, PEPRA, and title 2 of the CCR. Retirement benefits are calculated based on a member's years of service credit, age at retirement, and final compensation.

  3. The MOU review process can be completed within 90 days of receipt of all the required information. Email document for considerations to the MOU Review Team at MOU_Review@calpers.ca.gov

- Defining Compensation for Classic Members and PEPRA Members

  1. Compensation Earnable for Classic Members

     a. Pursuant to Gov. Code sections 20636 and 20636.1, compensation earnable is defined as the pay rate and special compensation of the member.
     b. It must also be paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours and paid pursuant to a publicly available pay schedule.
     c. Special compensation includes any payment for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

2. Pensionable Compensation for PEPRA Members

    a. Pursuant to Gov. Code section 7522.34 and CCR, title 2, section 571.1 Pensionable compensation of a PEPRA member of any public retirement system is defined as the normal monthly rate of pay or base pay for normally required duties that must be historically consistent for the job classification and reported periodically as earned.
    b. It must be paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours and paid pursuant to a publicly available pay schedule.

- Requirements of Publicly Available Pay Schedules

1. The list of requriements for a publicly available pay schedule that is used to determine pay rates is listed in Subdivision (a) of CCR, title 2, section 570.5.
2. Pay rates shall be limited to the amount listed on a pay schedule and does not include any additive pay or special compensation items into base pay.
3. Any special compensation items, if requirement are met, must be reported separately from pay rate.

Please refer to CalPERS circular letter 200-076-21 dated on December 29, 2021 for more details: https://www.calpers.ca.gov/docs/circular-letters/2021/200-076-21.pdf

2022 CalPERS Compensation Limits for Classic and PEPRA Members

CalPERS Compensation Limits	2021	2022	Changes
Classic Members	$290,000	$305,000	+$15,000
PEPRA Members			
Social Security Participants	$128,059	$134,974	+$6,915
Non-Social Security Participants	$153,671	$161,969	+$8,298

Notes:

- Members with membership dates prior to July 1, 1996, are not impacted by these limits.
- The employer is responsible for monitoring when an employee meets or exceeds the limit.
- Classic and PEPRA members should not make contributions on compensation that exceeds the limit for each calendar year. In addition, exclude items such as overtime, automobile allowances, and lump-sum payouts for all compensation reported.

Please refer to the CalPERS circular letter 200-001-22 dated on January 3, 2022 for more details: https://www.calpers.ca.gov/docs/circular-letters/2022/200-001-22.pdf

Please distribute this memo within your District as deemed appropriate.

![CalPERS]

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Announcements

Circular Letter

December 29, 2021
Circular Letter: 200-076-21
Distribution: IV, V, VI, X, XII, XVI

To: **All CalPERS Employers**
Subject: **Disallowed Compensation Benefit Adjustments: Senate Bill 278, Chapter 331, Statutes of 2021**

Purpose

The purpose of this Circular Letter is to provide information regarding the addition of Government (Gov.) Code section 20164.5 (Chapter 331, Statutes of 2021) effective January 1, 2022, to the Public Employees' Retirement Law (PERL).

This provision defines disallowed compensation, stipulates what would occur if California Public Employees' Retirement System (CalPERS) determines disallowed compensation has been reported, and identifies the impacts on the pension benefits of a retired member, survivor, or beneficiary.

Disallowed Compensation

Under Gov. Code section 20164.5, disallowed compensation is compensation reported for a member by the state, a school employer, or a contracting agency that CalPERS subsequently determines is not in compliance with the California Public Employees' Pension Reform Act of 2013 (PEPRA) (Article 4 [commencing with section 7522] of Chapter 21 of Division 7 of Title 1), Gov. Code section 20636 or 20636.1 of the PERL, or the administrative regulations of the system under California Code of Regulations (CCR), title 2, section 571 and 571.1.

Overpayment and Penalty Obligations for Disallowed Compensation

If a misapplication or miscalculation of retirement benefits occurs due to disallowed compensation and the conditions under subdivision (b)(3)(A) of Gov. Code section 20164.5 are met, the employer will be liable to pay CalPERS the full cost of any overpayment and pay the impacted retiree a portion of the actuarial equivalent[1] of any reduced retirement benefit as a penalty.

The penalty is equal to 20% of the lump-sum of the actuarial equivalent present value of the difference between the monthly allowance based on the disallowed compensation and the adjusted monthly allowance for the duration that allowance is projected to be paid by the system. The employer will be required to pay:

- 90% of this penalty directly to the affected retired member, survivor, or beneficiary
- 10% of the penalty to CalPERS

Our Actuarial Office will provide the actuarial calculations to the employer for the amount due to both CalPERS and the member.

Overpayment and penalty obligations apply if all the following conditions under Gov. Code section 20164.5 subdivision (b)(3)(A) are met:

1. The compensation was reported, and contributions were made on that compensation while the member was actively employed.
2. The compensation was agreed to in a memorandum of understanding (MOU) or collective bargaining agreement between the employer and the recognized employee organization as compensation for pension purposes and the employer and the recognized employee organization did not knowingly agree to compensation that was disallowed.
3. The determination by the system that compensation was disallowed was made after the date of retirement.
4. The member was not aware that the compensation was disallowed at the time it was reported.

Not Covered under Disallowed Compensation

Payroll reporting errors and reporting special compensation items and pay rates above the maximum amount listed in a labor policy and/or agreements are not considered disallowed compensation; these types of errors are considered payroll reporting errors.

The following reporting errors are not within the scope of disallowed compensation under Gov. Code section 20164.5:

[1] Actuarial equivalent means a benefit of equal value when computed upon the basis of the mortality tables adopted and the actuarial interest rate fixed by the board under Gov. Code section 20013.

- Lump-sum reporting of reportable compensation
- Reporting compensation above the limit defined in the labor policies and/or agreements
- Misreporting of payroll such as, but not limited to:
  - Misreported pay rates such as $10.00 versus $100.00
  - Misreported pay rate types such as monthly as an hourly pay rate
  - Misidentified special compensation category and type

Compensation Review by CalPERS

Employers may submit an MOU, collective bargaining agreement, or other labor policies and/or agreements to CalPERS for review. We will determine if the compensation language item can be reported for retirement purposes.

It is important to report accurate member information in compliance with the PERL, PEPRA, and title 2 of the CCR. Retirement benefits are calculated based on a member's years of service credit, age at retirement, and final compensation.[2] Inaccurate reporting of employee compensation leads to incorrect calculation of retirement benefits further resulting in underpayment or overpayment of contributions and benefits. If compensation items, such as labor agreement language and/or pay schedules, are submitted for review, the CalPERS MOU Review team will verify compliance of your proposed items and determine if the items are reportable for pension purposes. The MOU review can be completed within 90 days of receipt of all the required information. Email items for consideration to the MOU Review Team.

Defining Compensation for Classic Members and PEPRA Members

Compensation Earnable for Classic Members

Pursuant to Gov. Code sections 20636 and 20636.1, compensation earnable is defined as the pay rate and special compensation of the member, as further clarified by those statutes. It must also be paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours and paid pursuant to a publicly available pay schedule.

Gov. Code sections 20636(c) and 20636.1(c) further specify that special compensation includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions. Pursuant to CCR, title 2, section 571, a list of special compensation items is identified along with the requirements under subsection (b).

[2] Final compensation is the highest annual compensation which was earnable during any consecutive 12-or 36-month period of employment preceding the effective date of retirement or last separation from service which ever is earlier.

Pensionable Compensation for PEPRA Members

Gov. Code section 7522.34 and CCR, title 2, section 571.1 state that pensionable compensation of a PEPRA member of any public retirement system is defined as the normal monthly rate of pay or base pay for normally required duties that must be historically consistent for the job classification and reported periodically as earned. It must also be paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours and paid pursuant to a publicly available pay schedule.

CCR, title 2, section 571.1(b) further identifies, clarifies, and defines the types of pay that meet the criteria of pensionable compensation according to each subsequent criterion set forth in subdivision (a) which must also be met.

Requirements of Publicly Available Pay Schedules

Subdivision (a) of CCR, title 2, section 570.5 lists the requirements for a publicly available pay schedule used to determine pay rates. Pay rates shall be limited to the amount listed on a pay schedule and does not include any additive pay or special compensation items into base pay. Any special compensation items, if requirements are met, must be reported separately from pay rate.

Retroactive Application of Procedures

Gov. Code section 20164.5 will apply to any determinations made on or after January 1, 2017, if an appeal has been filed and the member, retired member, survivor, or beneficiary has not exhausted their administrative or legal remedies.

Additional Resources

In reference to Circular Letter 200-041-21 (PDF), the Compliance in Compensation Reporting webpage provides tools and resources to educate employers about compensation reporting requirements to comply with the PERL. In addition, the Special Compensation Reportability Table provides reportability details for each member category within the identified special compensation category and type.

Questions

If you have any questions, call our CalPERS Customer Contact Center at **888 CalPERS** (or **888**-225-7377).

Renee Ostrander, Chief
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Payroll

Circular Letter

January 3, 2022
Circular Letter: 200-001-22
Distribution: IV, V, VI, X, XII, XVI

To: **All CalPERS Employers**
Subject: **2022 Compensation Limits for Classic and PEPRA Members**

Purpose

The purpose of this Circular Letter is to inform you of the 2022 compensation limits for classic and Public Employees' Pension Reform Act (PEPRA) members and provide guidelines for how to report payroll when Internal Revenue Code (IRC) or PEPRA limits have been reached in a calendar year. IRC section 401(a)(17) provides an annual compensation limit considered under a qualified retirement plan for some classic members. Government (Gov.) Code section 7522.10 of the PEPRA law provides the authority for the earnings limit for all PEPRA members.

You should notify all classic or PEPRA members who are subject to the compensation limit requirements.

Compensation Limits

Classic Members

The compensation limit for classic members for the *2022 calendar year is $305,000*. Employees with membership dates prior to July 1, 1996, are not impacted by these limits.

The compensation limits for classic members during calendar years 2018 through 2021 are:

2021	2020	2019	2018
$290,000	$285,000	$280,000	$275,000

PEPRA Members

The compensation limit for PEPRA members for the 2022 calendar year is:

Year	Social Security Participants	Non-Social Security Participants
2022	$134,974	$161,969

The compensation limits for PEPRA members during calendar years 2018 through 2021 are:

Year	Social Security Participants	Non-Social Security Participants
2021	$128,059	$153,671
2020	$126,291	$151,549
2019	$124,180	$149,016
2018	$121,388	$145,666

Reporting Guidelines

Compensation limits for both classic and PEPRA members do not limit the salary an employer can pay; they limit the amount of compensation that can be considered under the defined benefit plan.

For classic members, report compensation earnable to the California Public Employees' Retirement System (CalPERS). For PEPRA members, report pensionable compensation to CalPERS. For classic and PEPRA members, contributions should not be made on compensation that exceeds the limit for each calendar year. All contributions should be reported as earned and not when paid[1]. In addition, exclude items such as overtime, automobile allowances, and lump-sum payouts for all compensation reported.

You are responsible for monitoring when an employee meets or exceeds the limit. Once an employee reaches the compensation limit, you must continue reporting compensation as earned; however, employer and employee contributions should not be reported for the remaining calendar year. myCalPERS will track classic and PEPRA member earnings over multiple CalPERS contracting agencies. Therefore, if a member is hired in the middle of the year from another CalPERS agency, myCalPERS will notify the current employer when the member reaches or exceeds the compensation limit. Monitoring and contribution reporting begin on January 1 of the calendar year. The end date of the payroll earned period determines which calendar year the period falls.

[1] Pursuant to Government Code section 20630, when compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when reported or paid.

Federal law does not permit CalPERS to refund over-reported contributions to an active CalPERS member. You must report these adjustments and refund the money to the employee once the adjustments have posted.

Impact on Final Compensation

For classic members, final compensation is the highest average annual compensation earnable for a 12- or 36-consecutive month employment period, depending on your contract.

Classic members' retirement allowances are subject to final compensation limits under IRC section 401(a)(17). The calculation of each 12-month period will be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. If final compensation exceeds 12 months, each 12-month period is calculated based on the applicable annual compensation limit for that 12-month period.

For PEPRA members, final compensation is the average annual pensionable compensation for a 36-consecutive month employment period.

PEPRA members' retirement allowances are subject to pensionable compensation limits under Gov. Code section 7522.10. The pensionable compensation limit — used to calculate final compensation — is calculated based on the limit in effect for each calendar year and the number of days per year included in the final compensation period.

Online Training

The myCalPERS Payroll: Reporting Earnings Over the Compensation Limit online class is available for employers. This class provides instruction on how to report payroll information when the compensation limit has been reached. To enroll in the class, log in to your myCalPERS account and select the **Education** tab.

If you have any questions, call our CalPERS Customer Contact Center at **888 CalPERS** (or **888**-225-7377).

Renee Ostrander, Chief
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