

**RESOLUTION 2020 - 08**

**IMPLEMENTATION OF CALIFORNIA SUPREME COURT'S ALAMEDA DECISION**

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WHEREAS, the Mendocino County Employees Retirement Association (MCERA) Board of Retirement (Board) is required by Government Code sections 31641 and 31542, to determine compensation earnable for those current members who are not subject to Government Code §7522.34 of the California Public Employees' Pension Reform Act; and

WHEREAS, on July 30, 2020, the California Supreme Court filed its decision in Alameda, which, pursuant to Supreme Court Rule 8.532, is expected to be final on August 30, 2020 (the "Alameda Decision"). The Alameda Decision concludes that all amendments to the definition of Compensation Earnable in Government Code §31461, enacted as a result of the California Public Employees' Pension Reform Act of 2013 and related statutory changes to CERL ("PEPRA"), effective January 1, 2013 are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. The Alameda Decision further determines that CERL retirement boards may not include items in compensation earnable that section 31461 requires them to exclude.; and

WHEREAS, the Alameda Decision also held that CERL retirement boards have no discretion to include pay items in Compensation Earnable that are excluded under CERL, PEPRA, or other applicable statutes, disapproving of statements to the contrary in footnote no. 6 of *Guelfi v. Marin County Employees' Retirement Assn.* (1983) 145 Cal.App.3d 297 ("Guelfi footnote 6"); and

WHEREAS, the Board hereby determines that the Alameda Decision and other applicable law require it to change its determinations of pensionability at it previously determine may be warranted in its Resolution 2012-06; and

WHEREAS, this Resolution is intended to comply with the requirements of the Internal Revenue Code of 1986, as amended or replaced from time to time and the regulations issued thereunder (the "Code") as applicable; therefore be it

RESOLVED, that effective August 19, 2020, resolution number –2020-06 is superseded, and the following actions are authorized by the Board and required of MCERA:

1. Comply with Alameda's directives regarding mandatorily excluded pay items under PEPRA, and apply that directive to all retiree payroll for individuals who are legacy members who retired on or will retire after January 1, 2013, as of the September 1, 2020 retiree payroll; provide a Notice of Correction to each such retiree.

2. Cease collecting member contributions on the pay items excluded from “compensation earnable” by the New Exclusions as soon as practicable, and return contributions to active and deferred members that were taken on the New Exclusions from January 1, 2013 forward.
3. With respect to overpayments that occurred prior to the September 1, 2020 payroll, invoke the “fiduciary and estoppel determination” described in the Error Correction Policy, and therefore do not recoup those amounts from retirees unless ordered to do so by the Internal Revenue Service and/or a final, non-appealable, order of a court of competent jurisdiction (any overpayments made on and after the September 1, 2020 payroll would be recouped); provided, however that if a retiree’s overpaid contributions exceeded the benefit overpayments to the retiree, the affected retiree would receive a refund.
4. Present revised pay codes to the Board to ratify exclusions from compensation earnable in compliance with Alameda.
5. Communicate to MCERA participating employers that member contributions are no longer to be taken on pay codes that are excluded as a result of Alameda, as soon as practicable.
6. Refund active and deferred member contributions that were made on pay codes for the PEPRA Exclusions from January 1, 2013-forward.
7. Inform MCERA members of the foregoing actions through appropriate means.

The foregoing resolution introduced by Dan Gjerde, seconded by Kathryn Smith, and carried this 19th day of August, 2020, by the following vote:

Ayes: Shari Schapmire, Julie Forrester, Kathryn Cavness, Kathryn Smith, Lee Parker, Dan Gjerde Quincy Cromer, Jerilyn Harris, and Tim Knudsen

Noes: 0

Abstain: 0

Absent: 0

WHEREUPON, The Chair declared said Resolution adopted, and SO ORDERED.



Kathryn Cavness  
Board of Retirement Chair

Attest:



Doris L. Rentschler  
Executive Director