

RESOLUTION 2020 - 14

CLARIFICATION OF PLAN DOCUMENT IMPLEMENTATION

WHEREAS, the Mendocino County Employees Retirement Association (MCERA) Board of Retirement (Board) is charged with the administration and management of MCERA under Government Code sections 31520 and 31520.1 of the County Employees Retirement Law of 1937 (CERL);

WHEREAS, the Board has fiduciary responsibility for administering MCERA in a manner that will assure prompt delivery of benefits to members and beneficiaries of the retirement system under Article XVI, section 17 of the California Constitution;

WHEREAS, assets of MCERA are held in trust and must be used for the exclusive purposes of providing benefits to MCERA members and beneficiaries and defraying reasonable expenses of administering the retirement system under Article XVI, section 17 of the California Constitution;

WHEREAS, MCERA is a tax-qualified retirement plan under section 401(a) of the United States Internal Revenue Code;

WHEREAS, the Board has conducted a review of the historical practices and procedures followed by MCERA in paying benefits to Members (“Historical Benefit Review Project”) and has discovered that certain clarifications are warranted with respect to MCERA’s operational practices regarding MCERA retirement plan benefits; and

WHEREAS, the Board seeks to comply with tax qualification requirements to document its operational practices, and hereby reserves its right to modify any of the following resolutions should it be required to do so by the Internal Revenue Service as a condition of tax qualification, or if so ordered by a court of competent jurisdiction; therefore be it

RESOLVED, the Board provides the following clarifications:

1. COLA Bank for Continuance Benefits. Section 31760.1 provides: “Upon the death of any member after retirement ... , 60 percent of his or her retirement allowance, if not modified in accordance with one of the optional settlements ... , shall be continued throughout life to his or her surviving spouse.” Section 31870.1 and other provision of Article 16.5 of the County Employees Retirement Law of 1937 (“CERL, Gov. Code §§ 31450, et seq.) set forth the cost of living adjustment (“COLA”) benefits that the County has granted to MCERA retirees. As an example, section 31870.1 provides in pertinent part: “every retirement allowance, optional death allowance, or annual death allowance

¹ All statutory references hereinafter are to the California Government Code unless otherwise stated.

payable to or on account of any member ...who retires or dies ... shall be increased [by a COLA].” Under this section, the COLA shall not exceed 3% in any year; however, unmet increases (or decreases) in the cost of living in any year shall be “accumulated” (or banked) to be met by increases (or decreases) in future years. Historically, MCERA initiated the continuance benefit with no COLA bank, even if the deceased member had “credits” for prior year deficiencies. Beginning in January 2016, MCERA changed its practice and began transferring any banked credits to the continuance allowance provided to the beneficiary’s survivor. The Board finds the current interpretation is the better reading of the statutes and will result in better administration of the plan because it resolves ambiguities in the statutes in a manner that is most beneficial to members and their beneficiaries. The Board also finds that the prior interpretation was reasonable. The Board therefore ratifies MCERA’s prior interpretation of applicable law and its new interpretation as of January 2016, deeming that they are both reasonable and should not be disturbed. The Board hereby also adopts MCERA’s current interpretation of the applicable statutes as providing for the transfer of any banked COLA credits of MCERA members to the continuance allowances paid to beneficiary survivors of those members.

2. Part-Time Service Credit Purchases. Section 31641.5 provides that members in part-time or “extra help” service prior to becoming an MCERA member may receive service credit for this time upon making contributions to MCERA as specified in the section. These contributions shall be paid “prior to retirement,” as follows: an amount equal to the contributions the member would have made if he or she would had been a member during the time covering this service credit, “computed by applying the contribution rate first applicable to him upon becoming a member to the aggregate compensation he actually received during the time he was in county service ..., together with interest” (Section 31641.5.) If, however, “the member is unable to furnish the information necessary to establish his aggregate compensation ... pursuant to Section 31641.5, then the rate of compensation applicable to him at the time he first became a member of this system after the period to be credited shall be used in making the computation required by Section 31641.5.” (Section 31641.7.) MCERA currently calculates the contribution rates under Section 31641.5 by using the prior part-time aggregate compensation of the member, and it began this practice in January 2017. Under sections 31641.5 and 31647.1, the member, and not MCERA, is responsible for providing the part-time compensation information. If the member does not, then the calculation is made using the member’s initial full-time compensation. These service credit purchase contributions must be made prior to retirement. (Section 31641.5.) The Board finds the current interpretation is the better reading of the statutes and will result in better administration of the plan because it does not use a default methodology for calculating part-time service credit purchases. The Board also finds that MCERA’s prior interpretation of applicable law was reasonable. The Board therefore ratifies MCERA’s calculations using the pre-January 2017 methodology as set forth herein and also ratifies and adopts MCERA’s current interpretation of the applicable statutes regarding the methodology for calculating amounts due to purchase part-time service credit.
3. Purchase of Enhancement in Deferred Status. Section 31678.2(a), as it existed prior to the Public Employees’ Pension Reform Act of 2013 (“PEPRA”), permitted a county board of supervisors to provide enhanced benefit formulae to deferred members. It is unclear whether the Mendocino

County Board of Supervisors (“BOS”) included former employees in the scope of its resolutions implementing enhanced benefit formulae for their then current employees, effective January 1, 2002. Further, other statutory provisions, such as Section 31831.3, permitted certain safety members to redeposit withdrawn contributions in order to obtain such enhanced benefit formulae. There is substantial ambiguity in the applicable statutes such that the Board has determined that it should not unwind current benefits paid to its retirees on the basis of this ambiguity. Also, MCERA changed its practice in 2010, such that only current active members were permitted to upgrade their prior service credit after 2010. Further, PEPRA eliminated all such prior service upgrades based on enhancements adopted on or after January 1, 2013, or a change in a member’s membership classification or employment on or after January 1, 2013, as set forth in Sections 7522.44 and 31678.2(d), both of which are effective January 1, 2013. Given the ambiguities in the underlying statutes and BOS action, the passage of time, the reasonable reliance of members, and other equitable considerations, the Board hereby ratifies MCERA’s former and current interpretation of the applicable statutes on this topic, as set forth herein.

4. Date of Disability Retirements. Section 31724 provides that disability retirement allowances are generally “effective as of the date [the] application is filed with the Board, but not earlier than the day following the last day for which [the member] received regular compensation.” The disability retirement for a member who has been granted or is entitled to sick leave shall not become effective until the expiration of such sick leave, unless the member consents to an earlier date. Finally, when the Board finds that the member’s application was delayed by administrative oversight or by the inability to ascertain the permanency of the disability until after the last day the member received regular compensation, such date will be “deemed” to be the date the application was filed. (Section 31724.) Since at least 2007, MCERA has followed different practices with respect to setting the effective date for disability retirement for Service-Connected Disability Retirement (“SCD Retirement”) and Non-Service Connected Disability Retirement (“NSCD Retirement”). For SCD, the system selected the day following the last day of receipt of any compensation (either regular or paid leave) as the retirement date, irrespective of the date of the application. For NSCD Retirement, the system used the date of the filing of the application or, if later, the date the member ended his or her paid leave. *Katosh v. Sonoma County Employees’ Retirement Association* ((2008) 163 Cal.App.4th 56) confirms that such “regular compensation” includes period of paid sick leave. In *Flethez v. San Bernardino County Employees’ Retirement Association* (2017) 2 Cal. 5th 630 (“*Flethez*”), the California Supreme Court discussed the role of the Board of Retirement in determining whether the disability retirement effective date should be the day following the last day for which the member received compensation, rather than, in that case, a much later application date. On a prospective basis, MCERA staff is to ask members for the effective date of retirement they are seeking in their applications, with reference to the foregoing rules regarding whether the filing of their application was delayed by their inability to determine the permanency of their stated disability. The Board of Retirement will make this effective date determination for the disability retirement applications that it grants as well.
5. Reciprocity provided to members who purchased service credit to bridge a more than 6 month gap in memberships. MCERA historically afforded reciprocity to its members who bridged a more than 6

month gap in memberships between reciprocal retirement systems by purchasing service credit for their nonmembership county service rendered prior to joining MCERA as a member. Purchases of service credit do not move an individual's membership date, and therefore is not a legal basis upon which to move their membership date, and Section 31831 refers to the time between "memberships" when calculating that time lapse for purposes of reciprocity. However, Section 31840.4, which extends the 90-day intervening time period provision to 6 months, conditions reciprocity upon "reemployment" within six months of "termination of employment" covered by a retirement system. Accordingly, there was a reasonable statutory basis for an incoming member of MCERA to have been permitted to purchase service credit reflecting earlier "reemployment" for the County, and to have that purchase provide a basis for establishing reciprocity. Given the differences of the language in applicable statutes, the Board concludes that MCERA's prior interpretation of applicable law and current interpretation are reasonable and hereby ratifies both the prior reciprocity determinations by MCERA, as well as ratifies and adopts MCERA's current methodology used to determine eligibility for reciprocity.

The foregoing resolution introduced by Dan Gjerde, seconded by Kathryn Smith, and carried this 4th day of November, 2020 by the following vote:

Ayes: Shari Schapmire, Julie Forrester, Kathryn Cavness, Kathryn Smith, Dan Gjerde Quincy Cromer, and Tim Knudsen.

Noes:

Abstain:

Absent: Lee Parker and Jerilyn Harris.

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



Kathryn Cavness
Board of Retirement Chair

Attest: 

Doris L. Rentschler
Executive Director