

RESOLUTION 2024-~~0103~~

**TO SUPERSEDE RESOLUTION ~~2023-02~~2024-01 DEFINING COMPENSATION EARNABLE
PURSUANT TO GOVERNMENT CODE §31461 FOR MEMBERS WHO ARE NOT SUBJECT TO
GOVERNMENT CODE §7522.34 (NON-PEPRA MEMBERS)**

WHEREAS, for those members who became active members prior to January 1, 2013, and those members who became active members on or after January 1, 2013, but who are not subject to Government Code §7522.34 of the California Public Employees' Pension Reform Act (PEPRA), the determination of their compensation earnable for remuneration earned is governed by Government Code §31461; and

WHEREAS, Government Code §31461 provides that compensation earnable by a member means the average compensation as determined by the Board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay; and

WHEREAS, Government Code §31461 provides that this Board determine which items of remuneration earned by members shall constitute "compensation earnable"; and

WHEREAS, the Board has reviewed the current pay items and has determined which of those items are to be included in "compensation earnable" and which items are not to be included; and

WHEREAS, it is necessary for this Board from time to time to amend its determinations of compensation earnable due to changes in the compensation schedules of MCERA employers or changes in the law; Therefore, be it

RESOLVED, that effective ~~February 21~~ March 20, 2024, resolution number ~~2023-02~~ 2024-01 is superseded, and pursuant to Government Code §31461 as interpreted by the courts, the Board hereby makes the following determinations as to what is included in "compensation earnable" and items of remuneration that are not included, as required by the amendments to §31461 as described by the California Supreme Court in *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al.* (2020) __ P.3d. __ (WL 4360051) (S247095) ("*Alameda*");

1. Compensation earnable shall include:

Pay Code	Description
100	Regular Pay
101	Exempt Regular Pay
103	Regular Pay - Elected
300	Vacation
303	Vacation Pay-Out Non Management
304	Vacation Pay-Out Management
310	Sick Leave

Pay Code	Description
311	Sick: Family
312	Sick: Bereavement
313	Sick: Industrial
316	Paid Administrative Leave
322	CTO/FTO Used
323	ATO Used-MCPAA
325	Personal Leave
330	3% NC Rtd-Courts
330	Catastrophic Leave
331	5% Cert Rtd-Courts
331	SEIU Mentor/Officer Time
335	Court-Coast Assignment Pay
332	Union Time Bank
340	Holiday Bank
345	Military Leave
350	Bereavement: County Paid
351	PSPS Paid Time Off
375	Police Leave
376	Police Leave Elected Official
380	Management Leave
388	CA Supplemental Paid Sick Leave
390	FFCRA Type 1,2,3 EPSL
391	FFCRA Type 4,5,6 EPFSL
392	FFCRA Make Whole 4,5,6
393	Advanced Sick Leave
399	FFCRA Type 5 EFML
406	Shift PM
407	Shift AM
409	Supervisor Shift
415	<9% Bilingual 25
416	>10% Bilingual 75
417	>10% Bilingual 50
418	<9% Bilingual 24
422	Confidential 5%
432	Insurance Stipend
434	Clothing Allowance
435	Supplemental Pay
437	Retroactive Longevity
438	2.5% Longevity
439	5% Longevity
443	7.5% Longevity
444	10% Longevity
445	Car Allowance
452	Retroactive Salary Adjustment
456	Board Of Supervisors Car Allowance
461	Retroactive Regional Pay
472	Salary Adjustment Negative

Pay Code	Description
473	Police Leave Differential Pay
481	Longevity Yrs of Svc 1
482	Longevity Yrs of Svc 3
483	Longevity Yrs of Svc 4 DSA
484	Longevity-MCLEMA
486	Longevity-Management Assoc.
487	Longevity - MCPEA
506	Shift PM – DSA \$2
515	Animal Handler
520	Field/Specialized Training
521	Special Assignment
523	5% Bilingual-MCPEA/MCPAA/MCLEMA
525	Uniform Allowance
528	Housing
529	Resident Deputy Bonus
530	Officer In Charge
531	Officer In Charge Level 2
532	Detective/Investigator Premium
533	10% Special Assignment-MCLEMA
534	5% Special Assignment-MCLEMA
<u>550</u>	<u>14% Edu Incentive - MCLEMA</u>
<u>551</u>	<u>13% Edu Incentive - MCLEMA</u>
<u>552</u>	<u>17% Edu Incentive - MCLEMA</u>
<u>553</u>	<u>3% Edu Incentive - MCLEMA</u>
<u>554</u>	<u>7% Edu Incentive - MCLEMA</u>
<u>555</u>	<u>6% Edu Incentive - MCLEMA</u>
556	5% Edu/Longevity Incentive-MCLEMA
557	2.5% Edu/Longevity Incentive-MCLEMA
558	10% Edu/Longevity Incentive-MCLEMA
559	5% Regional
561	Hourly 5% Regional
562	10% Assignment-Family & Children’s Services SEIU Social Workers
567	3% Bilingual-MCPEA/MCPAA/MCLEMA
581	Longevity Yrs. of Svc 2
582	Longevity Yrs. of Svc 5 MCACE
600	Vacation Exempt
604	Vacation Payout Management Exempt
610	Sick Leave Exempt
611	Sick Family Exempt
612	Sick Bereavement Exempt
613	Sick Industrial Exempt
616	Paid Admin Leave Exempt
622	FTO Used Exempt
623	ATO Used – MCPAA
625	Personal Leave Exempt
630	CAT Leave Exempt
645	Military Leave Exempt

Pay Code	Description
650	Bereavement Leave County Pd Exempt
651	PSPS Paid Time Off Exempt
675	Police Leave Exempt
682	Management Leave Exempt
688	CA SPSL Exempt
693	Advanced Sick Leave Exempt
COV	COVID-19 Paid Administrative Leave-Courts
ESL	Emergency Sick Leave-Courts
FML	COVID-19 FMLA-Courts

2. Compensation earnable, at a minimum, shall **not** include, in any case, the following pay items.

A. The following pay codes are **not** included:

Pay Code	Description
200	Overtime
201	Overtime Premium
202	Overtime Straight Time
205	Overtime Straight Time - Extra Help
302	Vacation Term Pay
305	Excess Vacation Cash Non Ret
321	CTO: Paid
324	CTO: Paid on Termination
341	Holiday Bank: Paid
342	Holiday Bank: Paid MCPEA
343	Holiday Bank Conversion to CTO
346	Deceased Wages
386	Retro CA SPSP Supplemental Paid Sick Leave
387	Retro CA SPSL2 Supplemental Paid Sick Leave – affecting accruals
405	Holiday Premium Pay-SEIU/JH
424	On Call 3.50 Per Hour-MCPEA
427	On Call 4.50 Weekends/Holidays-MCPEA
429	On Call 0.50 SW-SEIU
430	HI Txble Reimb-Non-Box 12
440	On Call 3.50 Weekdays-SEIU
441	On Call 4.00 Weekends/Holidays-SEIU
446	Car Accountable
447	Deferred Compensation Match Fixed Amount
448	3% Deferred Compensation Match
449	4% Deferred Compensation Match
450	Retroactive Salary Adj-OT
453	2% Deferred Compensation Match
454	Board of Supervisors Phone Allowance
458	Severance Pay
459	Military Adjustment
460	SDI Adjustment
465	Work Comp Adjustment
467	Retention Pay
469	Misc Ded: OT

Pay Code	Description
470	Misc Adj +/- Not Subj Rtmt
480	Call Back
485	Holiday Worked
498	Non-Taxable Adjustment
510	Recruitment Incentive
513	K9 Care-Taking Stipend
514	Standby Pay – Weekday
516	Standby Pay – Weekend
602	Vacation Term Pay Exempt
605	Excess Vacation Cash Non Ret Exempt
618	ATO Earned Straight Time Exempt
619	FTO Earned X1 Exempt
655	Leave Without Pay Exempt
660	LWOP Terminated Exempt
665	FMLA Leave Without Pay Exempt
668	Mandatory Time Off Exempt
670	Voluntary Time Off Exempt
686	CA SPSL Retro LWOP Exempt
687	CA SPL Retro LWOP2 Exempt
680	MCLEMA OT
827	Clothing Reimburse
834	Tool Reimburse
891	Moving Expense
892	Taxable Reimburse
894	Gym Membership Reimburse
953	Taxable Benefit State
954	Taxable Benefit Federal
966	Taxable Benefit Fed+/-State
995	Taxable Fringe

- B. Pursuant to Government Code §31461(b) compensation earnable, shall not include in any case the following:
1. Any compensation determined by the Board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:
 2. Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.
 3. Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.
 4. Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

5. Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.
 6. Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
 7. Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.
3. Pursuant to Government Code §31641(c), the terms listed above in paragraph 2 are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003)110 Cal.App.4th 426.

FURTHER RESOLVED that any pay codes not specifically listed in this Resolution as included in compensation earnable shall be excluded from compensation earnable. In the event a new pay item is created by a plan sponsor, the new pay item shall be excluded from compensation earnable unless, and until, this resolution is amended by the Board of Retirement to include the pay item in compensation earnable.

FURTHER RESOLVED that the above listed determinations by the Board of what is included or not included in compensation earnable, shall be in effect until such time as action taken by the Board or action by the Legislature or the Courts as a matter of law requires a different determination.

The foregoing resolution introduced by _____, seconded by _____, and carried this 20th 4st day of ~~February~~ March, 2024, by the following vote:

- Ayes:
- Noes:
- Abstain:
- Absent:

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

Kathryn Cavness, Board of Retirement Chair

Attest: _____
Doris L. Rentschler, Executive Director