

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM  
2223 E. WELLINGTON AVENUE, SUITE 100  
SANTA ANA, CALIFORNIA 92701**

**GOVERNANCE COMMITTEE MEETING  
March 19, 2021  
2:00 p.m.**

**Members of the Committee**

Frank Eley, Chair  
Charles Packard, Vice Chair  
Wayne Lindholm  
Roger Hilton

Pursuant to Executive Order N-29-20, certain provisions of the Brown Act are suspended due to a State of Emergency in response to the COVID-19 pandemic. Consistent with the Executive Order, this meeting will be conducted by video/teleconference only. None of the locations from which the Committee members will participate will be open to the public.

Members of the public who wish to observe and/or participate in the meeting may do so via the Zoom app or via telephone. Members of the public who wish to provide comment during the meeting may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing \* 9 on your telephone keypad.

OCERS Zoom Video/Teleconference information	
<p><b>Join Using the Zoom App (Video &amp; Audio)</b> <a href="https://ocers.zoom.us/j/95882719928">https://ocers.zoom.us/j/95882719928</a></p> <p><b>Meeting ID: 958 8271 9928</b> <b>Passcode: 184656</b></p> <p>Go to <a href="https://www.zoom.us/download">https://www.zoom.us/download</a> to download Zoom app before meeting</p> <p>Go to <a href="https://zoom.us">https://zoom.us</a> to connect online using any browser.</p>	<p><b>Join by Telephone (Audio Only)</b> Dial by your location</p> <ul style="list-style-type: none"> <li>+1 669 900 6833 US (San Jose)</li> <li>+1 346 248 7799 US (Houston)</li> <li>+1 253 215 8782 US (Tacoma)</li> <li>+1 929 436 2866 US (New York)</li> <li>+1 301 715 8592 US (Germantown)</li> <li>+1 312 626 6799 US (Chicago)</li> </ul> <p><b>Meeting ID: 958 8271 9928</b> <b>Passcode: 184656</b></p>

**AGENDA**

This agenda contains a brief general description of each item to be considered. The Committee may take action on any item listed on this Agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the Agenda. The Committee may consider matters included on the agenda in any order, and not necessarily in the order listed.

**OPEN SESSION**

**CALL MEETING TO ORDER AND ROLL CALL**

**PUBLIC COMMENT**

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Committee; and (2) any matter appearing on the Consent Agenda. Members of the public who wish to provide comment at this time may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing \* 9 on your telephone keypad. When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

In addition, public comment on matters listed on this agenda will be taken at the time the item is addressed.

**CONSENT AGENDA**

**C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES**

Governance Committee Meeting Minutes

March 5, 2021

**ACTION ITEMS**

**NOTE:** Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Committee’s discussion of the item. **Members of the public who wish to provide comment in connection with any matter listed in this agenda may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing \*9, at the time the item is called.**

**A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA**

**A-2 PROPOSED REVISIONS TO POLICIES, ADMINISTRATIVE PROCEDURES AND OTHER OCERS DOCUMENTS TO REFLECT THE TEST FOR PENSIONABILITY OF PAY FOR SERVICES AFTER NORMAL WORKING HOURS APPROVED BY THE OCERS BOARD ON MARCH 15, 2020**

*Presentation by Suzanne Jenike, Assistant Chief Executive Officer, External Operations, and Steve Delaney, Chief Executive Officer, OCERS*

**Recommendation:** Staff recommends that the Committee approve and recommend that the Board adopt revisions to the following policies, procedures, pay item request form and OCERS administrative procedures, as presented:

- (1) Compensation Earnable Policy
- (2) Pensionable Compensation Policy
- (3) Pay Item Request and Approval Procedures for Employers
- (4) Employer Pay Item Request Form
- (5) Administrative Procedure Relating to Compensation Earnable and Pensionable Compensation Determination
- (6) Administrative Procedure Relating to Final Average Salary Calculation

**COMMITTEE MEMBER COMMENTS**

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

**COUNSEL COMMENTS**

**ADJOURNMENT**

**NOTICE OF NEXT MEETINGS**

**AUDIT COMMITTEE MEETING**

**March 22, 2021**

**9:00 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

**INVESTMENT COMMITTEE MEETING**

**March 24, 2021**

**9:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

**DISABILITY COMMITTEE MEETING**

**APRIL 19, 2021**

**8:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

*AVAILABILITY OF AGENDA MATERIALS - Documents and other materials that are non-exempt public records distributed to all or a majority of the members of the OCERS Board or Committee of the Board in connection with a matter subject to discussion or consideration at an open meeting of the Board or Committee of the Board are available at the OCERS' website: <https://www.ocers.org/board-committee-meetings>. If such materials are distributed to members of the Board or Committee of the Board less than 72 hours prior to the meeting, they will be made available on the OCERS' website at the same time as they are distributed to the Board or Committee members. Non-exempt materials distributed during an open meeting of the Board or Committee of the Board will be made available on the OCERS' website as soon as practicable and will be available promptly upon request.*

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at [adminsupport@ocers.org](mailto:adminsupport@ocers.org) or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours notice, if possible. Please also advise us if you plan to attend meetings on a regular basis.

Governance Committee Meeting  
March 5, 2021

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM  
2223 E. WELLINGTON AVENUE, SUITE 100  
SANTA ANA, CALIFORNIA 92701**

**GOVERNANCE COMMITTEE MEETING  
March 5, 2021  
9:00 a.m.**

**MINUTES**

The Chair called the meeting to order at 9:03 a.m.

Present via Zoom Video conference pursuant to Executive Order N-29-20 issued by Governor Newsom on March 17, 2020:

Frank Eley, Chair; Charles Packard, Vice Chair; Roger Hilton; Wayne Lindholm

Also present via Zoom:

Steve Delaney, Chief Executive Officer; Gina Ratto, General Counsel; Suzanne Jenike, Assistant CEO, External Operations; Brenda Shott, Assistant CEO, Internal Operations; Sonal Sharma-Beeson, Recording Secretary; Anthony Beltran, Audio Visual Technician

**CONSENT AGENDA**

**C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES**

Governance Committee Meeting Minutes

October 6, 2020

**MOTION** by Hilton, **seconded** by Packard, to approve the Minutes.

The motion passed **unanimously**.

**ACTION ITEMS**

**A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA**

**No items were trailed from the Consent Agenda.**

**A-2 TRIENNIAL REVIEW OF LEGISLATIVE POLICY**

*Presentation by Gina M. Ratto, General Counsel*

**Recommendation:** Review, approve and recommend that the Board approve revisions to the Legislative Policy, as presented.

Governance Committee Meeting  
March 5, 2021

**MOTION** by Packard, **seconded** by Hilton, to approve and recommend that the Board approve revisions to the Legislative Policy, as presented.

The motion passed **unanimously**.

**A-3 TRIENNIAL REVIEW OF THE EXTRAORDINARY EXPENSE RECOVERY POLICY**

*Presentation by Gina M. Ratto, General Counsel*

**Recommendation:** Review, approve and recommend that the Board approve revisions to the Extraordinary Expense Recovery Policy, as presented.

**MOTION** by Lindholm, **seconded** by Packard, to approve and recommend that the Board approve revisions to the Extraordinary Expense Recovery Policy, as presented.

The motion passed **unanimously**.

**A-4 TRIENNIAL REVIEW OF THE COST IMPACTING POLICY**

*Presentation by Gina M. Ratto, General Counsel*

**Recommendation:** Review, approve and recommend that the Board approve revisions to the Cost Impacting Policy, as presented.

**MOTION** by Packard, **seconded** by Hilton, to approve and recommend that the Board approve revisions to the Cost Impacting Policy, as presented.

The motion passed **unanimously**.

**A-5 TRIENNIAL REVIEW OF THE DISPOSITION OF SURPLUS PROPERTY POLICY**

*Presentation by Brenda Shott, Asst. CEO, Internal Operations and Finance*

**Recommendation:** Review, approve and recommend that the Board approve revisions to the Disposition of Surplus Property Policy, as presented.

**MOTION** by Packard, **seconded** by Lindholm, to approve and recommend that the Board approve revisions to the Disposition of Surplus Property Policy, as presented.

The motion passed **unanimously**.

**A-6 TRIENNIAL REVIEW OF THE MEMBER SERVICES CUSTOMER SERVICE POLICY**

*Presentation by Suzanne Jenike, Asst. CEO, External Operations*

**Recommendation:** Review, approve and recommend that the Board approve revisions to the Member Services Customer Service Policy, as presented.

**MOTION** by Packard, **seconded** by Hilton, to approve and recommend that the Board approve revisions to the Member Services Customer Service Policy, as presented.

Governance Committee Meeting  
March 5, 2021

After discussion, the motion was rescinded by Mr. Packard with concurrence by Mr. Hilton.

The Chair directed staff to revise the Policy to add a goal for measuring customer service levels for Member communications that are received by means other than telephone call and to bring the Policy with this revision back to the Committee at a future meeting.

**A-7 SCHEDULE NEXT COMMITTEE MEETING**

Ms. Ratto discussed the expected work of the Committee in 2021, which will include a review of the Write Off Policy, the Overpaid and Underpaid Plan Benefits Policy, the Overpaid and Underpaid Contributions Policy, and the Procurement and Contracting Policy. In addition, Mr. Delaney expects to bring forward the recommendations of a board governance consultant – likely in the fall of 2021.

The next Governance Committee Meeting is scheduled for June 10, 2021 at 2:00pm.

**COMMITTEE MEMBER COMMENTS**

None.

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

None.

**COUNSEL COMMENTS**

None.

**ADJOURNMENT**

The meeting adjourned at 10:03a.m.

**Submitted by:**

**Approved by:**

\_\_\_\_\_  
Steve Delaney  
Secretary to the Board

\_\_\_\_\_  
Shawn Dewane, Chair



## Memorandum

---

**DATE:** March 19, 2021  
**TO:** Members of the Governance Committee  
**FROM:** Steve Delaney, Chief Executive Officer  
Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT:** **PROPOSED REVISIONS TO POLICIES, ADMINISTRATIVE PROCEDURES AND OTHER OCERS DOCUMENTS TO REFLECT THE TEST FOR PENSIONABILITY OF PAY FOR SERVICES AFTER NORMAL WORKING HOURS APPROVED BY THE OCERS BOARD ON MARCH 15, 2020**

---

### Background/Discussion

On Monday March 15, 2021 the Board approved the following test and definition of “normal working hours” for purposes of determining whether certain items of pay can be included in compensation earnable under the terms of the OCERS plan.

Basic Test: Pay for services rendered outside normal working hours is excluded from compensation earnable. Conversely, pay for services rendered during normal working hours is included in compensation earnable (unless the Board otherwise determines the pay was given in order to enhance a member’s retirement allowance).

Definition of Normal Working Hours: “Normal working hours” are hours that (1) are required to be worked as part of the employee’s regular duties; (2) are ordinarily worked by all other members in the same grade/class/rate of pay as the employee; and (3) are not and cannot be voluntarily worked by the employee.

OCERS staff updated the policies, employer procedures and pay item request form to reflect the test for determining pensionability of pay items and definition of normal working hours and present them to the Governance Committee for review and approval.

### Staff Recommendation:

Staff recommends that the Committee approve and recommend that the Board adopt revisions to the following policies, procedures, pay item request form and OCERS administrative procedures, as presented:

- (1) Compensation Earnable Policy
- (2) Pensionable Compensation Policy
- (3) Pay Item Request and Approval Procedures for Employers
- (4) Employer Pay Item Request Form
- (5) Administrative Procedure Relating to Compensation Earnable and Pensionable Compensation Determination
- (6) Administrative Procedure Relating to Final Average Salary Calculation



**Submitted by:**



SD - APPROVED

---

Steve Delaney  
Chief Executive Officer

**Submitted by:**



SJ - APPROVED

---

Suzanne Jenike  
Assistant CEO, External Operations



## OCERS Board Policy

# Compensation Earnable Policy

---

## Purpose and Background

1. The purpose of this policy is to affirm OCERS' interpretation of the term Compensation Earnable as set forth in California Government Code section 31461 (Section 31461) and OCERS Board of Retirement Resolution 98-001 (Resolution 98-001).
2. Resolution 98-001 was adopted by the OCERS Board of Retirement (Board) on February 6, 1998, in order to implement the decision of the California Supreme Court (Supreme Court) in the case *Ventura County Deputy Sheriffs' Association vs. Board of Retirement of Ventura County Employees Retirement Association* (1997) 16 Cal.4th 483 (Ventura Decision). The Supreme Court in the Ventura Decision interpreted Section 31461 and the term Compensation Earnable and mandated a change in the method for calculating pension benefits for members and their beneficiaries by retirement systems governed by the County Employees Retirement Law of 1937 (CERL).
3. Resolution 98-001, among other things, reflects the Board's interpretation of the Ventura Decision as it applies to various types or categories of speciality or premium pay received by OCERS members from their employers, and delineates those items of pay that are to be included in and those that are to be excluded from Compensation Earnable.
4. On May 4, 1998, Resolution 98-001 was amended by Board Resolution 98-009 in response to litigation brought by the County of Orange and others challenging the legality of Resolution 98-001. Resolution 98-009 deleted Sections 6, 8 and a portion of Section 9 of Resolution 98-001 related to the imposition of contributions in arrears stemming from the change in contribution rates that resulted from the implementation of Resolution 98-001. Additionally on December 18, 2000, Resolution 98-001 was further amended by Resolution 00-003 to address the treatment of certain automobile allowances. For purposes of this policy, any reference to Resolution 98-001 will be as Resolution 98-001 was amended by Resolutions 98-009 and 00-003.
5. OCERS was a party to several litigation matters that arose subsequent to the Ventura Decision and adoption of Resolution 98-001. These cases were coordinated as class actions in San Francisco Superior Court with other litigation involving other county retirement systems involving the interpretation and implementation of the Ventura Decision (Coordinated Cases).
6. On November 1, 2002, the San Francisco Court entered a judgment (Judgment) approving a settlement agreement of the Coordinated Cases that, among other things, included an agreement that all parties would "... accept as final and binding the inclusions and exclusions from compensation, compensation earnable and final compensation ..." as set forth in Resolution 98-001.
7. In 2012, the California Legislature adopted AB 197 and the Public Employees Pension Reform Act of 2012 ("PEPRA"), which among other things, effective January 1, 2013, amended Section 31641 to add subdivision (b), a list of items of compensation that are expressly excluded from Compensation Earnable. Among the items of compensation excluded from Compensation Earnable by subdivision (b) of Section 31641 are payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise. PEPRA also added a new term – Pensionable Compensation – to define the items of compensation that are permitted to be included in the



## OCERS Board Policy

# Compensation Earnable Policy

calculation of the retirement allowances of OCERS members enrolled in the pension system on or after January 1, 2013. OCERS members who were members of the system prior to January 1, 2013 are referred to as Legacy members in this policy.

8. A number of lawsuits were filed shortly after PEPRA became effective. One of these lawsuits was appealed to the Supreme Court, and resulted in a decision of the court upholding as constitutional AB 197 and PEPRA, including the amendments to Section 31641. (*Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* 9 Cal.5<sup>th</sup>1032; the Alameda Decision.) The Board has amended Paragraph 10 below to reflect the holding of the Supreme Court in the Alameda Decision.

## Policy Objectives

9. The objectives of this policy are to ensure that OCERS fully complies with applicable law including the Alameda Decision when calculating Compensation Earnable and Legacy members' retirement benefits, and to reaffirm the continued applicability of Resolution 98-001 as upheld by the Judgment in the Coordinated Cases.

## Policy Guidelines

10. **Compensation Earnable.** Compensation Earnable for Legacy members will be calculated by OCERS in accordance with the following guidelines.
  - (a) Pay Items Included in Compensation Earnable. In accordance with Resolution 98-001 and subdivisions (a) and (b) of Section 31461, remuneration that is (i) earned and receivable in cash (under the applicable MOU) by the retiring employee, (ii) during the final compensation period (as defined by Sections 31462 and 31482.1 of the Government Code; hereafter Final Compensation Period), and (iii) for services performed during Normal Working Hours (defined below) will be included in Compensation Earnable, including but not limited to the following items of compensation, and others substantially similar to them:
    - Base Salary and Wages
    - Bilingual Premium Pay
    - Educational Incentive ("POST") Pay
    - Aircraft Rescue Firefighting
    - Paramedic Pay
    - Motorcycle Bonus
    - Emergency Dispatch Pay
    - Field Training Officer Bonus
    - Shift Differential Pay



## OCERS Board Policy

# Compensation Earnable Policy

---

- Confined Space Pay
  - Longevity Incentive
  - Automobile Allowance, if paid in cash; and for members whose Final Compensation Period includes time before January 1, 2001, also to the extent that the automobile was provided for personal use and declared as income
  - Uniform Allowance
  - Uniform Maintenance Allowance
  - Payoffs of Vacation, Sick and Holiday leave time to the extent it was (i) earned in the 12-month Final Compensation Period (pro-rated on a monthly basis); (ii) not taken as time off; and (iii) permitted to be cashed-out during the Final Compensation Period (pro-rated on a monthly basis) under the applicable MOU, regardless of when actually paid or cashed out
  - Employee Contributions to a Deferred Compensation Plan [already included in Base Wages and Salary, above]
  - "Mandatory or Scheduled Overtime" (including pay items such as On-Call and Standby) provided that it is pay for services rendered during the employee's Normal Working Hours (defined below).
  - Compensatory Time (excluding "True Overtime" as defined in Section 10(b) below) in excess of minimum required reserve
  - "Madera" Pay (see, *Madera Police Officers Association v. City Of Madera* 36 Cal.3d 403)
  - Additional Compensation for Scheduled Meal Periods
  - Flexible Benefits ("Cafeteria Plan") paid in cash to members retiring before January 1, 1991
- (b) Pay Items Excluded from Compensation Earnable. In accordance with Resolution 98-001 and subdivisions (a) and (b) of Section 31461, remuneration or other value to the employee that (i) is neither earned nor payable in cash to the employee during the Final Compensation Period; and (ii) is not for services rendered during the employee's Normal Working Hours (defined below) will be excluded from Compensation Earnable, including but not limited to the following items, and others substantially similar to them:
- "True Overtime", including but not limited to On-Call, Standby and similar pay, for additional services rendered outside of Normal Working Hours (as defined below), whether paid in a lump sum or otherwise
  - Employer Contributions to a Deferred Compensation Plan
  - Employer Contributions to the Retirement System
  - Employer "pick up" of Employee Contributions to the Retirement System
  - Payoffs or cash outs of Vacation and Sick Leave and Holiday Pay, to the extent neither earned nor permitted to be cashed out under the applicable MOU, during the 12-month Final Compensation Period, regardless of when actually paid or cashed out



## OCERS Board Policy

# Compensation Earnable Policy

---

- Flexible Benefits ("Cafeteria Plan") provided in-kind
  - Flexible Benefits ("Cafeteria Plan") paid in cash to members retiring on and after January 1, 1991
  - Terminal ("Final") Pay, unless included in Compensation Earnable under Section 10(a), above
  - Expense Reimbursements
  - In-Kind Advantages (e.g. food, lodging, board, laundry, fuel)
  - Fees, Licenses, Memberships provided to the member by the employer
  - Automobile Allowance, if the automobile is provided for personal use and the allowance is not paid in cash, whether or not declared as income, for members whose Final Compensation Periods **do not** include time before January 1, 2001.
- (c) Definition of Normal Working Hours. Normal Working Hours are hours that (i) are required to be worked as part of the employee's regular duties; (ii) are ordinarily worked during the period in question by all other members in the same grade/class/rate of pay as the employee; **and** (iii) are not and cannot be voluntarily worked by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis.
- (d) Calculation of Compensation Earnable. The retiring employee's compensation will be "regularized" to what would have been received had the employee been paid for a normal work schedule during the Final Compensation Period. OCERS Staff will calculate Compensation Earnable (Earnable Salary) by creating a fraction, the numerator of which is the amount of the employee's qualifying compensation and the denominator of which is the number of ordinary work hours for which the employee was actually paid. Staff will then multiply that fraction by the number of paid hours ordinarily required to be worked by all other members in the same grade/class as the retiring employee. The result will be the retiring employee's Compensation Earnable for the Final Compensation Period.

## Policy Review

11. The Board of Retirement will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

## Policy History

12. The Board of Retirement adopted this policy on March 18, 2019, and this policy was amended by the Board on \_\_\_\_\_, 2021.



## OCERS Board Policy

# Compensation Earnable Policy

---

### Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

A handwritten signature in cursive script that reads "Steve Delaney".

---

Steve Delaney  
Secretary of the Board

---

Date



## OCERS Board Policy

# Compensation Earnable Policy

---

### Purpose and Background

1. The purpose of this policy is to affirm OCERS' interpretation of the term Compensation Earnable as set forth in California Government Code section 31461 (Section 31461) and OCERS Board of Retirement Resolution 98-001 (Resolution 98-001).
2. Resolution 98-001 was adopted by the OCERS Board of Retirement (Board) on February 6, 1998, in order to implement the decision of the California Supreme Court (Supreme Court) in the case *Ventura County Deputy Sheriffs' Association vs. Board of Retirement of Ventura County Employees Retirement Association* (1997) 16 Cal.4th 483 (Ventura Decision). The Supreme Court in the Ventura Decision interpreted Section 31461 and the term Compensation Earnable ~~as set forth therein~~ and mandated a change in the method for calculating pension benefits for members and their beneficiaries by retirement systems governed by the County Employees Retirement Law of 1937 (CERL).
3. Resolution 98-001, among other things, reflects the Board's interpretation of the Ventura Decision as it applies to various types or categories of speciality or premium pay received by OCERS members from their employers, and delineates those items of pay that are to be included in and those that are to be excluded from Compensation Earnable.
4. On May 4, 1998, Resolution 98-001 was amended by Board Resolution 98-009 in response to litigation brought by the County of Orange and others challenging the legality of Resolution 98-001. Resolution 98-009 deleted Sections 6, 8 and a portion of Section 9 of Resolution 98-001 related to the imposition of contributions in arrears stemming from the change in contribution rates that resulted from the implementation of Resolution 98-001. Additionally on December 18, 2000, Resolution 98-001 was further amended by Resolution 00-003 to address the treatment of certain automobile allowances. For purposes of this policy, any reference to Resolution 98-001 ~~shall will~~ be as Resolution 98-001 was amended by Resolutions 98-009 and 00-003.
5. OCERS was a party to several litigation matters that arose subsequent to the Ventura Decision and adoption of Resolution 98-001. These cases were coordinated as class actions in San Francisco Superior Court with other litigation involving other county retirement systems involving the interpretation and implementation of the Ventura Decision (Coordinated Cases).
6. On November 1, 2002, the San Francisco Court entered a judgment (Judgment) approving a settlement agreement of the Coordinated Cases that, among other things, included an agreement that all parties would " . . . accept as final and binding the inclusions and exclusions from compensation, compensation earnable and final compensation . . . " as set forth in Resolution 98-001.
7. In 2012, the California Legislature adopted [AB 197](#) and the Public Employees Pension Reform Act of 2012 ("PEPRA"), which among other things, effective January 1, 2013, amended Section 31641 to add [subdivision \(b\)](#), a list of items of compensation that are expressly excluded from Compensation Earnable. [Among the items of compensation excluded from Compensation Earnable by subdivision \(b\) of Section 31641 are payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.](#) PEPRA also added a new term – Pensionable



## OCERS Board Policy

# Compensation Earnable Policy

Compensation – to define the items of compensation that are permitted to be included in the calculation of the retirement allowances of ~~all~~ OCERS members enrolled in the pension system on or after January 1, 2013. OCERS members who were members of the system prior to January 1, 2013 are referred to as Legacy members in this policy.

- ~~8. A number of lawsuits were filed shortly after PEPRA became effective. OCERS did not fully implement the exclusion in subdivision (b)(3) of Section 31641 for payments for additional services rendered outside of normal working hours.~~
- ~~7. One of these lawsuits was appealed to the Supreme Court, and resulted in a decision of the court upholding as constitutional AB 197 and PEPRA, including the amendments to Section 31641, were upheld as constitutional by the Supreme Court in the case (Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association 9 Cal.5<sup>th</sup>1032; the (Alameda Decision.); In light of the Alameda Decision t~~The Board has amended Paragraph ~~1011~~ below to reflect the holding of the Supreme Court in the Alameda Decision.

## Policy Objectives

~~8. 9.~~ The objectives of this policy are to ensure that OCERS fully complies with applicable law including the Alameda Decision when calculating Compensation Earnable and Legacy members' retirement benefits, and to reaffirm the continued applicability of Resolution 98-001 as upheld by the Judgment in the Coordinated Cases.

## Policy Guidelines

~~9. 10.~~ **Compensation Earnable.** Compensation Earnable for Legacy members ~~will shall~~ be calculated by OCERS in accordance with the following guidelines.

- (a) Pay Items Included in Compensation Earnable. In accordance with Resolution 98-001 and subdivisions (a) and (b) of Section 31461, (f) remuneration that is (i) earned and receivable in cash (under the applicable MOU) by the retiring employee, (ii) during the final compensation period (as defined by Sections 31462 and 31482.1 of the Government Code; hereafter Final Compensation Period), and (iii) for services performed during Normal Working Hours (defined below) ~~working the ordinary time required of all other employees in the same grade/class,~~ will be included in Compensation Earnable, including, but not limited to the following items of compensation, and others substantially similar to them:

- Base Salary and Wages
- Bilingual Premium Pay
- Educational Incentive ("POST") Pay
- Aircraft Rescue Firefighting
- Paramedic Pay
- Motorcycle Bonus
- Emergency Dispatch Pay





## OCERS Board Policy

# Compensation Earnable Policy

---

- Field Training Officer Bonus
  - Shift Differential Pay
  - Confined Space Pay
  - Longevity Incentive
  - Automobile Allowance, if paid in cash; and for members whose ~~"final compensation" period (as defined under Sections 31462 and 31482.1 of the Government Code; hereafter Final Compensation Period)~~ includes time before January 1, 2001, also to the extent that the automobile was provided for personal use and declared as income.
  - Uniform Allowance
  - Uniform Maintenance Allowance
  - Payoffs of Vacation, ~~and Sick Leave~~ and Holiday leave time to the extent it was (i) earned in the 12-month Final Compensation Period (pro-rated on a monthly basis); (ii) ~~was~~ not taken as time off; and (iii) permitted to be cashed-out during the Final Compensation Period (pro-rated on a monthly basis) under the applicable MOU, regardless of when actually paid or cashed out
  - Employee Contributions to a Deferred Compensation Plan [already included in Base Wages and Salary, above]
  - "Mandatory or Scheduled Overtime" (including pay items such as On-Call and Standby) provided that it is pay for services rendered during the employee's Normal Working Hours (defined below). Normal Working Hours are those that (i) are that is required to be worked as part of the employees regular duties; and (ii) are that is ordinarily worked during the period in question as part of the regular assignments of all other members in the same grade or class as the employee; and (iii) are not served voluntarily by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis by others in same grade/class/rate of pay [Mandatory or Scheduled Overtime]
  - Compensatory Time (excluding "True Overtime" as defined in Section ~~10(b)11(b) 9(b)~~ below) in excess of minimum required reserve
  - "Madera" Pay (see, *Madera Police Officers Association v. City Of Madera* 36 Cal.3d 403)
  - Additional Compensation for Scheduled Meal Periods
  - Flexible Benefits ("Cafeteria Plan") paid in cash to members retiring before January 1, 1991
- (b) Pay Items Excluded from Compensation Earnable. In accordance with Resolution 98-001 and subdivisions (a) and (b) of Section 31461, (f) remuneration or other value to the employee that (i) is neither earned nor payable in cash to the employee during the ~~final~~ Final Compensation Compensation periodPeriod; and (ii) is not for ~~services rendered during the employee's Normal Working Hours (defined below)~~ working the ordinary time required of other employees in the



## OCERS Board Policy

# Compensation Earnable Policy

~~same grade/class shall will~~ be excluded from Compensation Earnable, including but not limited to the following items, and others substantially similar to them:

- ~~“True Overtime”, including but not limited to On-Call-, Standby and similar pay, for additional services rendered outside of Normal Working Hours (as defined belowabove), whether paid in a lump sum or otherwise. (i.e., amounts paid for working in excess of the time required and ordinarily worked by others in the same grade/class) [Overtime that does not qualify as Mandatory or Scheduled Overtime]~~
- Employer Contributions to a Deferred Compensation Plan
- Employer Contributions to the Retirement System
- Employer "pick up" of Employee Contributions to the Retirement System
- Payoffs or cash outs of Vacation and Sick Leave and Holiday Pay, to the extent neither earned nor permitted to be cashed out under the applicable MOU, during the 12-month Final Compensation Period, regardless of when actually paid or cashed out
- Flexible Benefits ("Cafeteria Plan") provided in-kind
- Flexible Benefits ("Cafeteria Plan") paid in cash to members retiring on and after January 1, 1991
- Terminal ("Final") Pay, unless included in Compensation Earnable under Section 910(a), above
- Expense Reimbursements
- In-Kind Advantages (e.g. food, lodging, board, laundry, fuel)
- Fees, Licenses, Memberships provided to the member by the employer
- Automobile Allowance, if the automobile is provided for personal use and the allowance is not paid in cash, whether or not declared as income, for members whose Final Compensation Periods ~~(as defined in Section 9(a), above)~~ **do not** include time before January 1, 2001.

(c) Definition of Normal Working Hours. Normal Working Hours are hours that (i) are required to be worked as part of the employee's regular duties; (ii) are ordinarily worked during the period in question by all other members in the same grade/class/rate of pay as the employee; and (iii) are not and cannot be voluntarily worked by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis.

~~(e)(d)~~ Calculation of Compensation Earnable. The retiring employee's compensation ~~shall will~~ be "regularized" to what would have been received had the employee been paid for a normal work schedule during the Final Compensation Period ~~(as defined in Section 9(a), above)~~. OCERS Staff will calculate Compensation Earnable ~~([Earnable Salary])~~ by creating a fraction, the numerator of which is the amount of the employee's qualifying compensation and the denominator of which is the number of ordinary work hours for which the employee was actually paid. ~~The~~ Staff will



**OCERS Board Policy**

**Compensation Earnable Policy**

then multiply that fraction by the number of paid hours ordinarily required to be worked by all other members in the same grade/class as the retiring employee. The result will be the retiring employee's Compensation Earnable for the Final Compensation Period.

**Policy Review**

119. The Board of Retirement will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

**Policy History**

121. The Board of Retirement adopted this policy on March 18, 2019, and this policy was amended by the Board on \_\_\_\_\_, 2021.

**Secretary's Certificate**

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

**03/18/19**

Steve Delaney  
Secretary of the Board

Date



## OCERS Board Policy

# Pensionable Compensation Policy

---

## Purpose and Background

1. Effective January 1, 2013, the State of California enacted the Public Employees Pension Reform Act of 2012, Government Code section 7522, et.seq. (PEPRA). PEPRA created a new class of pension plan members composed of those members enrolled in the pension plan on or after January 1, 2013 ("PEPRA Members").
2. Under Government Code section 7522.34 (Section 7522.34), the earnings that are to be included in a retiring PEPRA Member's final compensation are defined as "Pensionable Compensation."
3. The purpose of this policy is to set forth OCERS' interpretation of the term "Pensionable Compensation" as defined in Section 7522.34, in the context of the specific pay items utilized by OCERS' plan sponsors.

## Policy Objectives

4. The objective of this policy is to ensure that OCERS fully complies with applicable law when calculating a PEPRA Member's retirement benefit.

## Policy Guidelines

5. **Pensionable Compensation.** OCERS shall calculate Pensionable Compensation for PEPRA Members in accordance with the following guidelines.
  - (a) Pay Items Included in Pensionable Compensation. Pensionable Compensation means (i) the normal monthly rate of pay or base pay of the member; (ii) paid in cash; (iii) to similarly situated members of the same group or class of employment; (iv) for services rendered on a full-time basis; (v) during Normal Working Hours; (vi) pursuant to publicly available pay schedules; and (vi) subject to the limitations of Section 5(b), below. Normal Working Hours are those that (i) are required to be worked as part of the employee's regular duties; (ii) are ordinarily worked during the period in question by all other members in the same grade/class/rate of pay as the employee; **and** (iii) are not and cannot be served voluntarily by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis.

Subject to the requirements set forth in the preceding paragraph above, Pensionable Compensation includes the following items of compensation: Base Salary and Wages (gross of any employee contributions to deferred compensation plans) and includes additional compensation for scheduled meal periods, plus the following skill-based or shift-based premium pay items (Premium Pay), and others substantially similar to them:

- Bilingual Pay
- Educational Pay
- Aircraft Rescue Firefighting Pay
- Paramedic Pay
- Motorcycle Pay



## OCERS Board Policy

# Pensionable Compensation Policy

---

- Emergency Dispatch Pay
- Field Training Officer Pay
- Shift Differential Pay
- Confined Space Pay

Premium Pay will be included only if the assignment, certification or license:

- Is part of a member's regularly assigned responsibilities,
- is an essential, normal or traditional function of the job,
- is part of the regular assignment of all other members in the same grade or class, and,
- is not for work performed or received solely during the final average compensation period.

(b) Pay Items Excluded From Pensionable Compensation. The following categories of compensation shall be excluded from "Pensionable Compensation":

- Any compensation determined by the Board to have been paid to increase a member's retirement benefit or is inconsistent with the requirements of subsection (a) above
- Overtime, other than as defined in Section 207k of Title 29 of the United States Code, that is not performed during Normal Working Hours
- Payments for additional services rendered outside of Normal Working Hours, whether paid in a lump sum or otherwise
- Employer contributions to deferred compensation plan or retirement system
- Flexible benefits ("Cafeteria Plan") provided in-kind or paid in cash
- Automobile, uniform or other allowances
- Payments for unused vacation, annual leave, personal leave, sick leave, holiday pay or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid
- Expense reimbursements and in-kind advantages (e.g. food, lodging, board, laundry, fuel)
- Fees, licenses, or memberships provided to or for a member by employer
- Any bonus paid in addition to the compensation defined in (a) above
- Any ad hoc or one-time pay of any sort
- Longevity Incentive Pay
- 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.



## OCERS Board Policy

# Pensionable Compensation Policy

---

- Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.
6. **Publicly Available Pay Schedule.** In accordance with Section 7522.34, OCERS will not recognize as Pensionable Compensation any pay code or item of compensation that is not included in a Publicly Available Pay Schedule. For purposes of this policy, "Publicly Available Pay Schedule" means a document or documents that reflect the amount or category of pay that meets all of the following requirements:
- (a) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
  - (b) Identifies the position title for every employee position;
  - (c) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
  - (d) Is posted on the employer's internet website. If not on the website it shall be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours; and
  - (e) Does not reference a document which is not available in accordance with (d), above in lieu of disclosing the payrate.

The requirement for a Publicly Available Pay Schedule can be met by posting on the employer's internet website the applicable labor memoranda of understanding, compensation resolutions or ordinances and all salary schedules or matrices, so long as taken together the documents contain all required information. The employer need not create a new document to comply with this requirement.

If an employer fails to meet the requirements of Paragraph 6(a) above, the Board, in its sole discretion, may determine an amount that will be considered to be the applicable payrate, taking into consideration all information the Board deems relevant including, but not limited to, the following:

- a) Documents approved by the employer's governing body in accordance with the requirements of public meetings laws and maintained by the employer;
- b) The last payrate listed on a conforming pay schedule with the same employer for the position at issue;
- c) The last payrate for the member that is listed on a conforming pay schedule with the same employer for a different position.

## Policy Review

7. The Board of Retirement will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.



## OCERS Board Policy

# Pensionable Compensation Policy

---

### Policy History

- 8. The Board of Retirement adopted this policy on March 18, 2019, and this policy was amended on \_\_\_\_\_, 2021.

### 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

\_\_\_\_\_  
Date



## OCERS Board Policy

# Pensionable Compensation Policy

## Purpose and Background

1. Effective January 1, 2013, the State of California enacted the Public Employees Pension Reform Act of 2012, Government Code section 7522, et.seq. (PEPRA). PEPRA created a new class of pension plan members composed of those members enrolled in the pension plan on or after January 1, 2013 ("PEPRA Members").
2. Under Government Code section 7522.34 (Section 7522.34), the earnings that are to be included in a retiring PEPRA Member's final compensation are defined as "Pensionable Compensation."
3. The purpose of this policy is to set forth OCERS' interpretation of the term "Pensionable Compensation" as defined in Section 7522.34, in the context of the specific pay items utilized by OCERS' plan sponsors.

## Policy Objectives

4. The objective of this policy is to ensure that OCERS fully complies with applicable law when calculating a PEPRA Member's retirement benefit.

## Policy Guidelines

5. **Pensionable Compensation.** OCERS shall calculate Pensionable Compensation for PEPRA Members in accordance with the following guidelines.

(a) Pay Items Included in Pensionable Compensation. Pensionable Compensation means (i) the normal monthly rate of pay or base pay of the member; (ii) paid in cash; (iii) to similarly situated members of the same group or class of employment; (iv) for services rendered on a full-time basis; (v) during ~~N~~ormal ~~W~~orking ~~H~~ours; (vi) pursuant to publicly available pay schedules; and (vi) subject to the limitations of Section 5(b), below. Normal Working Hours are those that (i) are required to be worked as part of the employee's regular duties; (ii) are ordinarily worked during the period in question by all other members in the same grade/class/rate of pay as the employee; and (iii) are not and cannot be served voluntarily by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis.

~~Subject to the requirements set forth in the preceding paragraph above,~~ Pensionable Compensation includes the following items of compensation: Base Salary and Wages (gross of any employee contributions to deferred compensation plans) and includes additional compensation for scheduled meal periods, plus the following skill-based or shift-based premium pay items (Premium Pay), and others substantially similar to them:

- Bilingual Pay
- Educational Pay
- Aircraft Rescue Firefighting Pay
- Paramedic Pay
- Motorcycle Pay





## OCERS Board Policy

# Pensionable Compensation Policy

- Emergency Dispatch Pay
- Field Training Officer Pay
- Shift Differential Pay
- Confined Space Pay

Premium Pay will be included only if the assignment, certification or license:

- i. Is part of a member's regularly assigned responsibilities,
- ii. is an essential, normal or traditional function of the job,
- iii. is part of the regular assignment of all other members in the same group-grade or class, and,
- iv. is not for work performed or received solely during the final average compensation period.

(b) Pay Items Excluded From Pensionable Compensation. The following categories of compensation shall be excluded from "Pensionable Compensation":

- Any compensation determined by the Board to have been paid to increase a member's retirement benefit or is inconsistent with the requirements of subsection (a) above
- Overtime, other than as defined in Section 207k of Title 29 of the United States Code, that is not performed during~~does not meet the definition of~~ Normal Working Hours
- Payments for additional services rendered outside of Normal Working Hours, whether paid in a lump sum or otherwise
- Employer contributions to deferred compensation plan or retirement system
- Flexible benefits ("Cafeteria Plan") provided in-kind or paid in cash
- Automobile, uniform or other allowances
- Payments for unused vacation, annual leave, personal leave, sick leave, holiday pay or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid
- Expense reimbursements and in-kind advantages (e.g. food, lodging, board, laundry, fuel)
- Fees, licenses, or memberships provided to or for a member by employer
- Any bonus paid in addition to the compensation defined in (a) above
- Any ad hoc or one-time pay of any sort
- Longevity Incentive Pay
- 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.



## OCERS Board Policy

# Pensionable Compensation Policy

- Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.
6. **Publicly Available Pay Schedule.** In accordance with Section 7522.34, OCERS ~~will shall~~ not recognize as Pensionable Compensation any pay code or item of compensation that is not included in a Publicly Available Pay Schedule. For purposes of this policy, "Publicly Available Pay Schedule" means a document or documents that reflect the amount or category of pay that meets all of the following requirements:
- (a) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
  - (b) Identifies the position title for every employee position;
  - (c) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
  - (d) Is posted on the employer's internet website. If not on the website it shall be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours; and
  - (e) Does not reference a document which is not available in accordance with (d), above in lieu of disclosing the payrate.

The requirement for a Publicly Available Pay Schedule can be met by posting on the employer's internet website the applicable labor memoranda of understanding, compensation resolutions or ordinances and all salary schedules or matrices, so long as taken together the documents contain all required information. The employer need not create a new document to comply with this requirement.

If an employer fails to meet the ~~foregoing~~ requirements ~~of Paragraph 6 subdivision (a) above~~, the OCERS Board, in its sole discretion, may ~~consider which determine an~~ and amount that will be considered to be the applicable payrate, taking into consideration all information the Board deems relevant including, but not limited to, the following: amounts will be considered qualifying Pensionable Compensation based on available evidence of pay codes that meet the statutory requirements.

- a) Documents approved by the employer's governing body in accordance with the requirements of public meetings laws and maintained by the employer;
- b) The last payrate listed on a conforming pay schedule with the same employer for the position at issue;
- c) The last payrate for the member that is listed on a conforming pay schedule with the same employer for a different position.

## Policy Review

7. The Board of Retirement will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.



## OCERS Board Policy Pensionable Compensation Policy

---

### Policy History

8. The Board of Retirement adopted this policy on March 18, 2019, and this policy was amended on 2021.

### Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

A rectangular box containing a handwritten signature in cursive that reads "Steve Delaney".

Steve Delaney  
Secretary of the Board

03/18/19

Date



## PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS

---

### I. Purpose

This document explains the process for requesting OCERS' review and approval of new pay items or changes to existing pay items. In accordance with OCERS Board Policy - Pay Item Review, employers must submit a new pay item request for approval to OCERS 30-days before implementation of the pay item so that OCERS can make a determination as to whether the requested pay item is pensionable and can be included in the final average salary. This analysis will help ensure proper, timely, and accurate reporting of pay on transmittal files, collection of contributions and calculation of members' pension benefits. It is part of the overall compensation review process.

### II. Process Summary

When an employer has a new pay item and is requesting a new pay code for the transmittal file, the employer must submit a Pay Item Request describing the pay item including details regarding how, to whom and when it is paid. OCERS will analyze the pay item and make a determination as to whether the pay item is pensionable or non-pensionable under the County Employees Retirement Law ("CERL") or Public Employees' Pension Reform Act ("PEPRA"). OCERS will notify the employer of the determination of the pay item to implement. The pay item and status will then be added to the system and the master list of pay items. If the employer disagrees with the determination, it will have 30 days from the date of OCERS' notice of determination to appeal the determination to the Board. Upon receipt of a timely appeal, the Board will consider the appeal and make a decision on whether or not the pay item is pensionable.

### III. Critical Aspects of Procedures

For this process, the most important elements are the following:

- **Timing:** Request must be submitted 30-days prior to the implementation of the pay item to provide sufficient time for OCERS to analyze the pay item and set up the code in OCERS' system. **The pay item must be properly reviewed, approved and set up in the system, or else exceptions will be created when validating the payroll transmittal and calculation of contributions and member retirement benefits may be miscalculated.**
- **Publicly Available Pay Schedule:** PEPRA requires that in order for a pay item to be included in a PEPRA member's final average salary, it must be included in a "publicly available pay schedule." In accordance with PEPRA, the pay item must be included in a pay schedule that:
  - Was duly approved by the employer's governing body;
  - Identifies the position title for every employee position along with the applicable elements of compensation;
  - Is posted or immediately accessible and available for public review at the office of the employer or posted on the employer's internet website; and



## PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS

- 
- Does not reference an unavailable document in lieu of disclosing the element of compensation.

- **OCERS' Approval:** OCERS must approve the pay item for it to be pensionable.
- **Accuracy:** The pay item must be coded and reported correctly to prevent under or overpayment of contributions and/or a member's pension.
- **Implementation:** Employers must transmit the pay item in accordance with OCERS' determination. Failure to do may result in OCERS imposing administrative costs on the employer. Employers also will be required to prepare appropriate adjustments and calculate any refunds that may be due to an employee.

#### IV. Required Documents

The following documentation will be required to process new pay item requests:

1. Copies of the applicable sections of the Memorandum of Understanding (MOU), contract and/or compensation resolution in which the terms of the particular pay code are established.
2. Copies of any other official employer documents such as personnel rules or departmental procedures that evidence the conditions under which the pay item may or may not be pensionable, if not clearly determinable from the MOU.
3. Completed Pay Item Request Form, which includes:
  - General information
  - Pay item
  - Description of the pay item
  - List of job classification(s) of employees eligible for the pay item
  - Type of payment
  - Basis for eligibility

***A separate Pay Item Request is required for each new or changed pay item***
4. Access to the publicly available pay schedule as described in section IV.

#### V. Preceding Step (Prerequisites)

To the extent possible, OCERS should be notified of pending negotiations that may result in new items of compensation or modifications to current pay items, so that OCERS can assist the bargaining parties in determining whether the pay item(s) will be considered pensionable. OCERS must approve the pay item for it to be pensionable. Advance notice will also allow OCERS staff to be prepared for the new pay item request and minimize the review time.



## PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS

### VI. Procedure Detail for Submitting Pay Item Request for Review and Approval

As new pay items are approved by the employer's governing body, the employer must submit each item for review and approval by OCERS to determine if it is pensionable or non-pensionable.

The following describes the steps for submitting your request:

1. Gather required documentation listed in Section IV.
2. Refer to OCERS policy documents including, but not limited to, the Compensation Earnable Board Policy and Pensionable Compensation Board Policy for guidance on pensionability of various forms of compensation.
3. Download the Pay Item Request Form from the Employer Section of the OCERS website at [www.ocers.org](http://www.ocers.org).
4. Fill in and complete the Pay Item Request Form (see attached form)
5. Send the completed form and required documentation to:  
**OCERS Employer Payroll Unit**  
 By Email: [Employerpayroll@ocers.org](mailto:Employerpayroll@ocers.org)

### VII. Subsequent Steps for Approval and Implementation

Once the request for new pay item has been received:

1. The pay item will be reviewed by OCERS staff for compliance with the OCERS Pay Item Review Policy.
2. OCERS staff will evaluate the pay item to determine whether it is pensionable by using the applicable criteria for Compensation Earnable for Legacy members and Pensionable Compensation for PEPRA members. Legacy members refer to existing OCERS members as of January 1, 2013. PEPRA members refer to OCERS members hired on or after January 1, 2013. For more information on Compensation Earnable or Pensionable Compensation, please refer to the Compensation Earnable Policy and Pensionable Compensation Policy at [www.ocers.org](http://www.ocers.org).
3. After completing the review, staff will send the employer a written notification of its determination, including the reasons for its determination and supporting facts and analyses.
4. If staff determines that the pay item meets the criteria for either Compensation Earnable or Pensionable Compensation but not both, a separate pay code will be required; the employer must submit a separate Pay Item Request for the non-pensionable component.
5. Employer will implement the pay item with the approved pay item status (pensionable or non-pensionable) as determined by OCERS.
6. OCERS will set up the pay code in the pension administration system and add the pay item to the approved Pay Item Master List.



## PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS

### VIII. Appeal Process

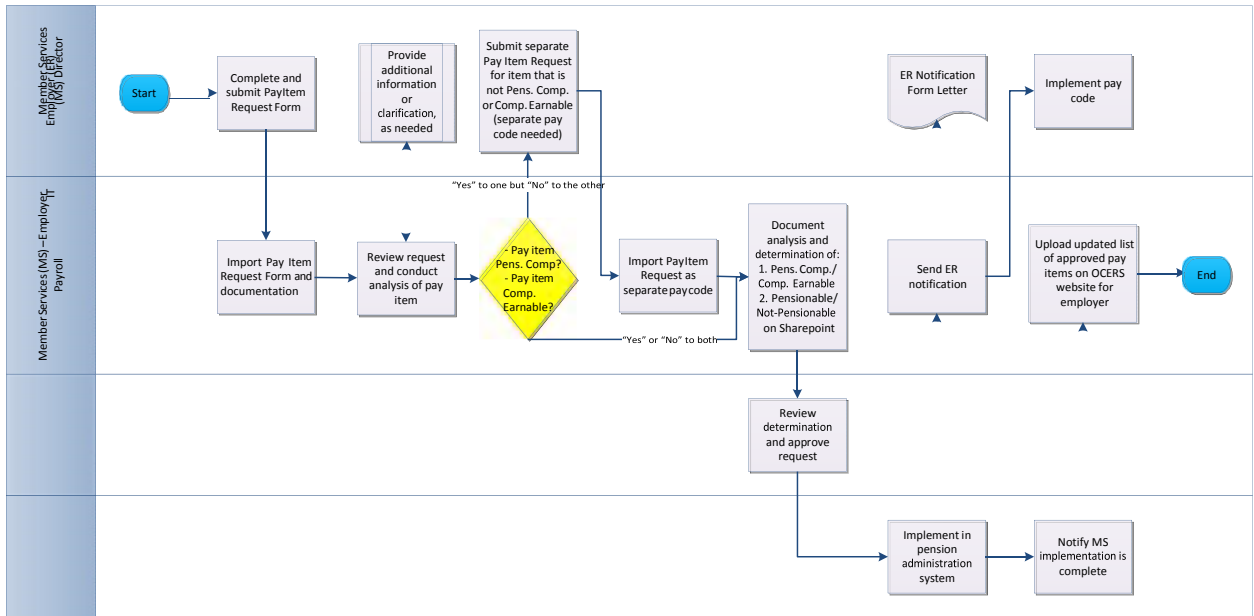
If the employer disagrees with OCERS determination, the employer will have 30 calendar days from the date of the final notice of determination to file a request for review to the Board. The Employer must send a letter including the reasons for the review and specific supporting facts and documentation to the CEO or his/her designee.

Upon receipt of a timely request, OCERS staff will schedule the review for a future Board meeting and will prepare a written report with its recommendation on the pay item in question. OCERS will 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.

At the meeting, the Board will consider the written materials and any arguments provided by the employer. The Board will then make a determination as to whether the pay item qualifies for either or both Compensation Earnable or Pensionable Compensation. The Board's decision is final.

### IX. Overall Process Flow

The following process flowchart is an overview of the pay item request and approval process.





## **PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS**

---

ATTACHMENT --FORM





## PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS

---

### I. Purpose

This document explains the process for requesting OCERS' review and approval of new pay items or changes to existing pay items. In accordance with OCERS Board Policy - Pay Item Review, employers must submit a new pay item request for approval to OCERS 30-days before implementation of the pay item so that OCERS can make a determination as to whether the requested pay item is pensionable and can be included in the final average salary. This analysis will help ensure proper, timely, and accurate reporting of pay on transmittal files, collection of contributions and calculation of members' pension benefits. It is part of the overall compensation review process.

### II. Process Summary

When an employer has a new pay item and is requesting a new pay code for the transmittal file, the employer must submit a Pay Item Request describing the pay item including details regarding how, to whom and when it is paid. OCERS will analyze the pay item and make a determination as to whether the pay item is pensionable or non-pensionable under the County Employees Retirement Law ("CERL") or Public Employees' Pension Reform Act ("PEPRA"). OCERS will notify the employer of the determination of the pay item to implement. The pay item and status will then be added to the system and the master list of pay items. If the employer disagrees with the determination, it will have 30 days from the date of OCERS' notice of determination to appeal the determination to the Board. Upon receipt of a timely appeal, the Board will consider the appeal and make a decision on whether or not the pay item is pensionable.

### III. Critical Aspects of Procedures

For this process, the most important elements are the following:

- **Timing:** Request must be submitted 30-days prior to the implementation of the pay item to provide sufficient time for OCERS to analyze the pay item and set up the code in OCERS' system. **The pay item must be properly reviewed, approved and set up in the system, or else exceptions will be created when validating the payroll transmittal and calculation of contributions and member retirement benefits may be miscalculated.**
- **Publicly Available Pay Schedule:** PEPRA requires that in order for a pay item to be included in a PEPRA member's final average salary, it must be included in a "publicly available pay schedule." In accordance with PEPRA, the pay item must be included in a pay schedule that:
  - Was duly approved by the employer's governing body;
  - Identifies the position title for every employee position along with the applicable elements of compensation;
  - Is posted or immediately accessible and available for public review at the office of the employer or posted on the employer's internet website; and



## PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS

- Does not reference an unavailable document in lieu of disclosing the element of compensation.
- **OCERS' Approval:** OCERS must approve the pay item for it to be pensionable.
- **Accuracy:** The pay item must be coded and reported correctly to prevent under or overpayment of contributions and/or a member's pension.
- **Implementation:** Employers must transmit the pay item in accordance with OCERS' determination. Failure to do may result in OCERS imposing administrative costs on the employer. Employers also will be required to prepare appropriate adjustments and calculate any refunds that may be due to an employee.

### IV. Required Documents

The following documentation will be required to process new pay item requests:

1. Copies of the applicable sections of the Memorandum of Understanding (MOU), ~~or~~ contract and/or compensation resolution in which the terms of the particular pay code are established.
- ~~1-2.~~ Copies of any other official employer documents such as personnel rules or departmental procedures that evidence the conditions under which the pay item may or may not be pensionable, if not clearly determinable from the MOU.
- ~~2-3.~~ Completed Pay Item Request Form, which includes:
  - General information
  - Pay item
  - Description of the pay item
  - List of job classification(s) of employees eligible for the pay item
  - Type of payment
  - Basis for eligibility

***A separate Pay Item Request is required for each new or changed pay item***
- ~~3-4.~~ Access to the publicly available pay schedule as described in section IV.

### V. Preceding Step (Prerequisites)

To the extent possible, OCERS should be notified of pending negotiations that may result in new items of compensation or modifications to current pay items, so that OCERS can assist the bargaining parties in determining whether the pay item(s) will be considered pensionable. OCERS must approve the pay item for it to be pensionable. Advance notice will also allow OCERS staff to be prepared for the new pay item request and minimize the review time.



## PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS

### VI. Procedure Detail for Submitting Pay Item Request for Review and Approval

As new pay items are approved by the employer's governing body, the employer must submit each item for review and approval by OCERS to determine if it is pensionable or non-pensionable.

The following describes the steps for submitting your request:

1. Gather required documentation listed in Section IV.
- ~~1-2.~~ 2. Refer to OCERS policy documents including, but not limited to, the Compensation Earnable Board Policy and Pensionable Compensation Board Policy for guidance on pensionability of various forms of compensation.
- ~~2-3.~~ 3. Download the Pay Item Request Form from the Plan Sponsor/ Employer Section of the OCERS website at [www.ocers.org](http://www.ocers.org).
- ~~3-4.~~ 4. Fill in and complete the Pay Item Request Form (see attached form)
- ~~4-5.~~ 5. Send the completed form and required documentation to:  
**OCERS Employer Payroll Unit**  
 By Email: [Employerpayroll@ocers.org](mailto:Employerpayroll@ocers.org)

### VII. Subsequent Steps for Approval and Implementation

Once the request for new pay item has been received:

1. The pay item will be reviewed by OCERS staff for compliance with the OCERS Pay Item Review Policy.
2. OCERS staff will evaluate the pay item to determine whether it is pensionable by using the applicable criteria for Compensation Earnable for Legacy members and Pensionable Compensation for PEPRA members. Legacy members refer to existing OCERS members as of January 1, 2013. PEPRA members refer to OCERS members hired on or after January 1, 2013. For more information on Compensation Earnable or Pensionable Compensation, please refer to the Compensation Earnable Policy and Pensionable Compensation Policy at [www.ocers.org](http://www.ocers.org).
3. After completing the review, staff will send the employer a written notification of its determination, including the reasons for its determination and supporting facts and analyses.
4. If staff determines that the pay item meets the criteria for either Compensation Earnable or Pensionable Compensation but not both, a separate pay code will be required; the employer must submit a separate Pay Item Request for the non-pensionable component.
5. Employer will implement the pay item with the approved pay item status (pensionable or non-pensionable) as determined by OCERS.
6. OCERS will set up the pay code in the pension administration system and add the pay item to the approved Pay Item Master List.



## PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS

### VIII. Appeal Process

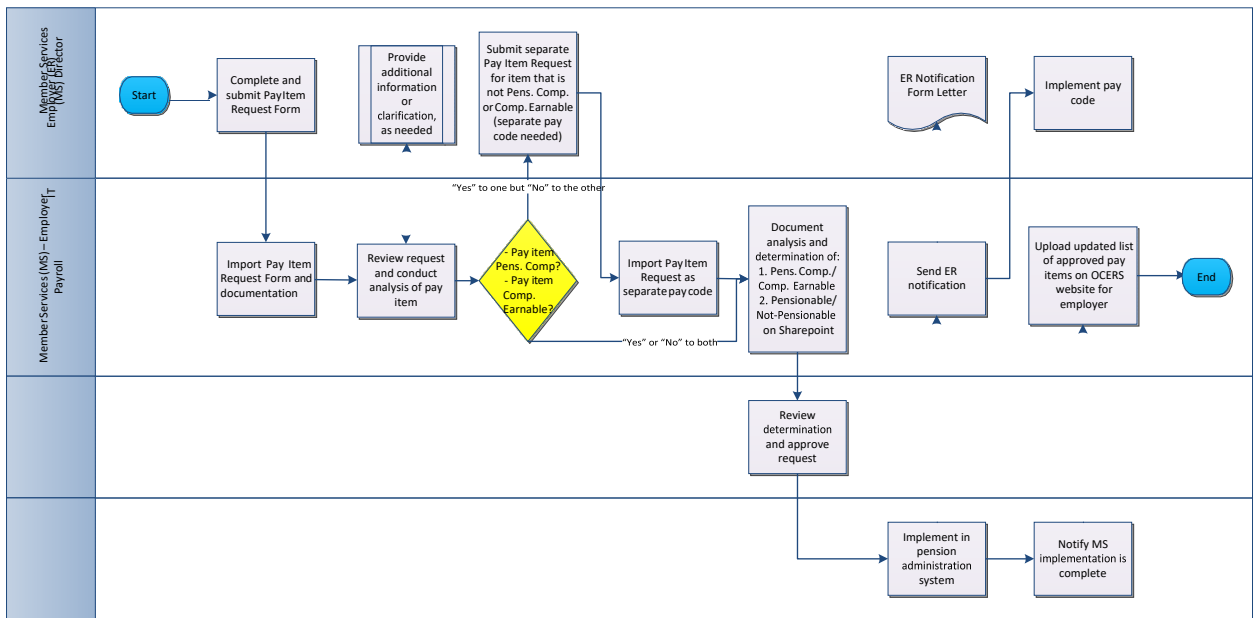
If the employer disagrees with OCERS determination, the employer will have 30 calendar days from the date of the final notice of determination to file [an appeal request for review](#) to the Board. ~~To file an appeal,~~ The Employer must send a letter including the reasons for the [appeal review](#) and specific supporting facts and documentation to the CEO or his/her designee.

Upon receipt of a timely request, OCERS staff will schedule the [appeal review](#) for a future Board meeting and will prepare a written report with its recommendation on the pay item in question. OCERS will 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.

At the meeting, the Board will consider the written materials and any arguments provided by the employer. The Board will then make a determination as to whether the pay item qualifies for either or both Compensation Earnable or Pensionable Compensation. The Board's decision is final.

### IX. Overall Process Flow

The following process flowchart is an overview of the pay item request and approval process.





## **PAY ITEM REQUEST & APPROVAL PROCEDURES FOR EMPLOYERS**

---

ATTACHMENT --FORM



# OCERS Pay Item Request Form 1-16-19

2223 E. Wellington Ave Suite I 100 Santa Ana, CA 92701 I Office: 714.558.6200 I FAX: 714.558.6234 I www.ocers.org

### IMPORTANT INFORMATION REGARDING PAY CODES:

Please complete and submit this request form for review and approval of new codes or changes to existing pay codes. New or changed **Pay Items must be submitted 30-days prior to the time of implementation of the code.** Once the code has been approved and entered into the pension system the pay code can be sent on the transmittal. **The pay code must be set up in the system or exceptions are created when validating the file.**

Return completed form and required documentation to Employer Payroll Unit by **Email:** Employerpayroll@ocers.org or **Fax:** 714-558-6234

Use only one form per code

SECTION 1: GENERAL INFORMATION				
Employer Name	Employer Representative	Contact Number	Date	
SECTION 2: PAY CODE & EFFECTIVE DATES				
Pay Code ID	Pay Code Description (Title)	Pay Period Effective	Pay Period Begin Date	Pay Period End Date
SECTION 3: PAY ITEM MOU REFERENCE MATERIAL & INFORMATION				
Name of the governing MOU/Contract:	Term of MOU/Contract:	Date of Adoption:	MOU Page Number(s)	
<b>NOTE: Please attach a copy of the applicable MOU article, section, and page(s), amendment "side letter" and/or other official documents establishing the compensation underlying the pay code and which support your answers, below. (Do not provide copy of entire MOU)</b>				
Please provide a full description of the pay item:				
1. List all job classification(s) of employees are eligible for this pay item? (Please list job classifications)				
2. Indicate if all members or employees in the job classification(s) listed above are eligible to receive this pay item.			<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>
3. If the pay item is premium pay or special pay, indicate if the assignment, certificate or license:			<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>
i. Is part of a member's regularly assigned responsibilities,			<input type="checkbox"/>	<input type="checkbox"/>
ii. is an essential, normal or traditional function of the job, and			<input type="checkbox"/>	<input type="checkbox"/>
iii. is part of the regular assignment of all other members in the same grade or class			<input type="checkbox"/>	<input type="checkbox"/>
4. Indicate how this Pay Item is calculated.			<u>Fixed Amount</u> <input type="checkbox"/>	<u>% of Base Pay</u> <input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>



# OCERS Pay Item Request Form 1-16-19

2223 E. Wellington Ave Suite I 100 Santa Ana, CA 92701 I Office: 714.558.6200 I FAX: 714.558.6234 I www.ocers.org

5. Is the pay item for work performed outside of Normal Working Hours? If the answer is No, but served at times other than during a traditional 8,10 or 12 hour shifts or 40-hour work week, please include supporting official documentation for that conclusion.	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
6. Is the pay item a bonus?	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
7. Is the pay item paid one-time or ad hoc?	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
8. Is the pay item an allowance (i.e. car allowance, uniform allowance, cell phone allowance)?	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
9. Is the pay item a reimbursement?	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
10. Is the pay item for deferred compensation?	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
11. Is the payment for accrued unused Leave/Vacation Payout, earned and payable within 12-month period?	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
12. Is the payment for 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 or employee?	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
13. Is the payment severance or other payment in connection with or in anticipation of a separation or termination from employment?	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
14. If terminal pay, pay is both earned and payable within 12-month period?	<u>YES</u> <input type="checkbox"/>	<u>NO</u> <input type="checkbox"/>	<u>N/A</u> <input type="checkbox"/>
15. What is the basis of eligibility for the pay item in the case of premium pay or special pay (i.e. certification, degree, shift, assignment)?			
16. Is the pay item included in publicly available pay schedule as defined in the OCERS Pensionable Compensation Board Policy? If so in what publicly available salary schedule is the pay item listed or described? (Please provide the title and location of the document)			



# OCERS Pay Item Request Form 1-16-19

2223 E. Wellington Ave Suite I 100 Santa Ana, CA 92701 I Office: 714.558.6200 I FAX: 714.558.6234 I www.ocers.org

PEPRA PENSIONABLE COMPENSATION CRITERIA –		SECTION BELOW RESERVED FOR OCERS STAFF			
		Qualifier	YES	NO	N/A
1.	Normal Monthly Rate of Pay or Base Pay:	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Payable to Similarly Situated:	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	In Public Pay Schedule:	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	If Premium Pay or Special Pay, is the assignment, certification or license: <ul style="list-style-type: none"> <li>i. part of a member's regularly assigned responsibilities,</li> <li>ii. an essential, normal or traditional function of the job, and</li> <li>iii. part of the regular assignment of all other members in the samegrade or class</li> </ul>	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Earned for Normal Working Hrs. If yes and the Normal Working Hours are other than a traditional 8, 10, or 12 hour shift and/or 40 hour work week, please explain in detail:	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Allowance, Reimbursement or Previously Paid In-Kind:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Bonus, one-time ad hoc payment:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.	Severance or Terminal Pay:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.	Overtime other than Section 207(k) time:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10.	Payment for any Unused Leave:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11.	Employer contribution to deferred comp:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<b>PEPRA Pensionable?</b>			
<b>Notes &amp; Comments Regarding Decisions</b>					

COMPENSATION EARNABLE CRITERIA – PER GC SECTION 31461		Qualifier	YES	NO	N/A
1.	Compensation at Same Pay Rate as Persons in Same Grade or Class	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	One-Time or Ad Hoc Payment Paid to All Similarly Situated	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Leave/Vacation Payout Earned & Payable in 12 Month Period	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Terminal Pay Earned & Payable in 12 Month Period	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Compensation Previously Paid In Kind & Now as Cash	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Payment for Services Rendered During Normal Working Hours. If yes and the Normal Working Hours are other than a traditional 8, 10, or 12 hour shift and/or 40 hour work week, please explain in detail :	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<b>Comp Earnable?</b>			

**Notes & Comments Regarding Decisions**

Applicable Plans	Pensionable	Used in FAS	Prorated in FAS	Additional Notes:
<input type="checkbox"/> PEPRA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> LEGACY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> BOTH	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

\_\_\_\_\_

APPROVED BY

\_\_\_\_\_

DATE





# OCERS Pay Item Request Form 1-16-19

2223 E. Wellington Ave Suite I 100 Santa Ana, CA 92701 I Office: 714.558.6200 I FAX: 714.558.6234 I www.ocers.org

### IMPORTANT INFORMATION REGARDING PAY CODES:

Please complete and submit this request form for review and approval of new codes or changes to existing pay codes. New or changed **Pay Items must be submitted 30-days prior to the time of implementation of the code.** Once the code has been approved and entered into the pension system the pay code can be sent on the transmittal. **The pay code must be set up in the system or exceptions are created when validating the file.**

Return completed form and required documentation to Employer Payroll Unit by **Email:** Employerpayroll@ocers.org or **Fax:** 714-558-6234

Use only one form per code

SECTION 1: GENERAL INFORMATION				
Plan Sponsor/Employer Name	Plan Sponsor/Employer Representative	Contact Number	Date	
SECTION 2: PAY CODE & EFFECTIVE DATES				
Pay Code ID	Pay Code Description (Title)	Pay Period Effective	Pay Period Begin Date	Pay Period End Date
SECTION 3: PAY ITEM MOU REFERENCE MATERIAL & INFORMATION				
Name of the governing MOU/Contract:	Term of MOU/Contract:	Date of Adoption:	MOU Page Number(s)	
<p><b>NOTE: Please attach a copy of the applicable MOU article, section, and page(s), amendment and/or "side letter" and/or other official documents establishing the compensation underlying the pay code and which support your answers, below. (Do not provide copy of entire MOU)</b></p>				
Please provide a full description of the pay item:				
1. List all job classification(s) of employees are eligible for this pay item? (Please list job classifications)				
2. Indicate if all members or employees in the job classification(s) listed above are eligible to receive this pay item.			<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
3. If the pay item is premium pay or special pay, indicate if the assignment, certificate or license:			<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
i. Is part of a member's regularly assigned responsibilities,			<input type="checkbox"/>	<input type="checkbox"/>
ii. is an essential, normal or traditional function of the job, and			<input type="checkbox"/>	<input type="checkbox"/>
iii. is part of the regular assignment of <u>all</u> other members in the same <u>group-grade</u> or class			<input type="checkbox"/>	<input type="checkbox"/>
4. Indicate how this Pay Item is calculated.			<b>Fixed Amount</b> <input type="checkbox"/>	<b>% of Base Pay</b> <input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>



# OCERS Pay Item Request Form 1-16-19

2223 E. Wellington Ave Suite I 100 Santa Ana, CA 92701 I Office: 714.558.6200 I FAX: 714.558.6234 I www.ocers.org

5. Is the pay item for work performed outside of <del>regular-Normal W</del> working Hhours? (i.e. payment for work or services performed outside of employee's regular shift or If the answer is No, but served at times other than during a traditional 8,10 or 12 hour shifts or 40-hour work week, please include supporting official documentation for that conclusion).?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
6. Is the pay item a bonus?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
7. Is the pay item paid one-time or ad hoc?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
8. Is the pay item an allowance (i.e. car allowance, uniform allowance, cell phone allowance)?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
9. Is the pay item a reimbursement?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
10. Is the pay item for deferred compensation?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
11. Is the payment for accrued unused Leave/Vacation Payout, earned and payable within 12-month period?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
12. Is the payment for 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 or employee?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
13. Is the payment severance or other payment in connection with or in anticipation of a separation or termination from employment?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
14. If terminal pay, pay is both earned and payable within 12-month period?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
15. What is the basis of eligibility for the pay item in the case of premium pay or special pay (i.e. certification, degree, shift, assignment)?			
16. Is the pay item included in publicly available pay schedule as defined in the OCERS Pensionable Compensation Board Policy? If so in what publicly available salary schedule is the pay item listed or described? (Please provide the title and location of the document)			



# OCERS Pay Item Request Form 1-16-19

2223 E. Wellington Ave Suite I 100 Santa Ana, CA 92701 I Office: 714.558.6200 I FAX: 714.558.6234 I www.ocers.org

PEPRA PENSIONABLE COMPENSATION CRITERIA –		SECTION BELOW RESERVED FOR OCERS STAFF			
		Qualifier	YES	NO	N/A
1.	Normal Monthly Rate of Pay or Base Pay:	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Payable to Similarly Situated:	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	In Public Pay Schedule:	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	If Premium Pay or Special Pay, is the assignment, certification or license: <ul style="list-style-type: none"> <li>i. part of a member's regularly assigned responsibilities,</li> <li>ii. an essential, normal or traditional function of the job, and</li> <li>iii. part of the regular assignment of <u>all</u> other members in the same <u>group/grade</u> or class</li> </ul>	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Earned for Normal Working Hrs. <u>If yes and the Normal Working Hours are other than a traditional 8, 10, or 12 hour shift and/or 40 hour work week, please explain in detail:</u>	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Allowance, Reimbursement or Previously Paid In-Kind:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Bonus, one-time ad hoc payment:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.	Severance or Terminal Pay:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.	Overtime other than Section 207(k) time:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10.	Payment for any Unused Leave:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11.	Employer contribution to deferred comp:	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<b>PEPRA Pensionable?</b>			
<b>Notes &amp; Comments Regarding Decisions</b>					

COMPENSATION EARNABLE CRITERIA – PER GC SECTION 31461		Qualifier	YES	NO	N/A
1.	Compensation at Same Pay Rate as Persons in Same Grade or Class	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	One-Time or Ad Hoc Payment Paid to All Similarly Situated	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Leave/Vacation Payout Earned & Payable in 12 Month Period	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Terminal Pay Earned & Payable in 12 Month Period	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Compensation Previously Paid In Kind & Now as Cash	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Payment for Services Rendered <u>Outside-During</u> Normal Working Hours. <u>If yes and the Normal Working Hours are other than a traditional 8, 10, or 12 hour shift and/or 40 hour work week, please explain in detail :</u>	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<b>Comp Earnable?</b>			
<b>Notes &amp; Comments Regarding Decisions</b>					

Applicable Plans	Pensionable	Used in FAS	Prorated in FAS	Additional Notes:
<input type="checkbox"/> PEPRA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> LEGACY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> BOTH	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
_____ APPROVED BY		_____ DATE		



# Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

---

## I. Purpose

The purpose of this OAP is to describe the procedure for determining whether an element of pay is pensionable and can be included as Compensation Earnable and/or Pensionable Compensation for inclusion in the Final Average Salary that is used to calculate a member's pension benefit.

## II. Authority

This OAP is established pursuant to OCERS Board Policies: Compensation Earnable Policy, Pensionable Compensation Policy, Retirement Enhancement Review Policy and Pay Item Review Policy.

OCERS Board Resolution 98-001 and OCERS Compensation Earnable Policy affirm the OCERS interpretation of the term Compensation Earnable as defined in California Government Code Section 31461.

The Public Employees' Pension Reform Act of 2012 (PEPRA) and AB 197 amended Section 31461 and created the term Pensionable Compensation for members hired on or after January 1, 2013. OCERS Pensionable Compensation Policy explains OCERS interpretation of the term Pensionable Compensation as defined in California Government Code Section 7522.34.

A number of lawsuits were filed shortly after PEPRA became effective. One of these lawsuits was appealed to the Supreme Court, and resulted in a decision of the Court upholding as constitutional AB 197 and PEPRA, including the amendments to Section 31641. (*Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* 9 Cal.5th1032; the Alameda Decision.) The Board has amended this OAP to reflect the holding of the Court in the Alameda Decision.

California Government Code Section 31542 requires the OCERS Board to establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit. In keeping with this requirement, the Board adopted the Retirement Enhancement Review Policy and the Pay Item Review Policy, which include policy guidelines for assessing compensation included in the calculation of the member's final average salary to ensure that an element of pay was not paid to spike a member's retirement benefit.

## III. Definitions

Following are definitions of terms that are used throughout this OAP.

**Compensation Earnable:** See Section V.

**Final Average Salary:** One of the factors used to calculate a member's monthly retirement allowance. It is a measure of a member's level of earnings based on the member's average salary for a specified period of time (e.g. one-year of 12 consecutive months or three-years of 36



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

---

consecutive months). It includes base salary and may also include other pay items that the OCERS Board of Retirement has defined as Compensation Earnable or Pensionable Compensation.

**Legacy member:** Member hired before January 1, 2013.

**Non-pensionable:** Pay item is not included in Final Average Salary and not subject to pension contributions; no pension contributions are collected from the employee or employer.

**Normal Working Hours:** Those hours an employee must work in order to be paid their base salary, plus overtime hours, including on-call or standby pay, only to the extent that the overtime hours including on-call or standby pay: (i) are required to be worked as part of the employee's regular duties; (ii) are ordinarily worked during the period in question by all other members in same grade/class/rate of pay as the employee; and (iii) are not and cannot be served voluntarily by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis. Normal Working Hours will be established by the employer, but must meet OCERS and CERL requirements. OCERS will rely upon official County or District approved documentation establishing grades/classes/rates of pay.

**Pay Item:** Element of compensation.

**Pensionable Compensation:** See Section V.

**Pensionable:** Pay item is included in the Final Average Salary and subject to pension contributions; pension contributions are collected from the employee and employer.

**PEPRA member:** Member hired on or after January 1, 2013.

**Publicly Available Pay Schedule:** A document that:

- a) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- b) Identifies the position title for every employee position;
- c) Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- d) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- e) Does not reference an unavailable document in lieu of disclosing pay rate.

### IV. Limitations

This administrative procedure shall be construed consistently with the requirements of the California Government Code Sections 31460, 31461 and 31462 (Compensation Earnable), 7522.32 and 7522.34 (Pensionable Compensation), 31542, and the Ventura Decision, the Alameda Decision, and other interpretations issued thereunder.



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

### V. Compensation Earnable and Pensionable Compensation

#### *Compensation Earnable*

Compensation Earnable applies to Legacy members who are existing members of OCERS as of January 1, 2013.

#### ***ITEMS INCLUDED IN COMPENSATION EARNABLE***

As set out in Resolution 98-001 and subdivisions (a) and (b) of Section 31461, and further clarified in OCERS' Compensation Earnable Policy, elements included in Compensation Earnable are remuneration that is (i) earned and receivable in cash (under the applicable MOU) by the retiring member, (ii) during the final compensation period (as defined by Sections 31462 and 31482.1 of the Government Code; hereafter Final Compensation Period), and (iii) for services performed during Normal Working Hours including but not limited to the following items of compensation, and others substantially similar to them:

- Base Salary and Wages
- Bilingual Premium Pay
- Educational Incentive ("POST") Pay
- Aircraft Rescue Firefighting
- Paramedic Pay
- Motorcycle Bonus
- Emergency Dispatch Pay
- Field Training Officer Bonus
- Shift Differential Pay
- Confined Space Pay
- Longevity Incentive
- Automobile Allowance, if paid in cash; and for members whose Final Compensation period includes time before January 1, 2001, also to the extent that the automobile was provided for personal use and declared as income
- Uniform Allowance
- Uniform Maintenance Allowance
- Payoffs of Vacation, Sick and Holiday leave to the extent (i) was earned in the 12-month Final Compensation Period (pro-rated on a monthly basis); (ii) was not taken as time off; and (iii) was permitted to be cashed -out during the 12-month Final Compensation period



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

---

(prorated on a monthly basis) under the applicable MOU regardless of when actually paid or cashed out

- Employee Contributions to Deferred Compensation Plan (already included in Base Salary and Wages, above)
- "Mandatory or Scheduled Overtime" (including pay items such as On-Call, and Standby) provided that the pay is for services rendered during the employee's Normal Working Hours.
- Compensatory Time (excluding "True Overtime" in excess of minimum required reserve)
- "Madera" Pay (see, *Madera Police Officers Association v. City Of Madera* 36 Cal.3d 403)
- Additional Compensation for Scheduled Meal Periods
- Flexible Benefits ("Cafeteria Plan") paid in cash to members retiring before January 1, 1991

### ***ITEMS EXCLUDED FROM COMPENSATION EARNABLE***

As further set out in Resolution 98-001 and subdivisions (a) and (b) of Section 31461, and clarified in the Compensation Earnable Policy, remuneration or other value to the employee that (i) is neither earned nor payable in cash to the employee during the final compensation period; and (ii) is not for services rendered during the employee's Normal Working Hours will be excluded from Compensation Earnable, including but not limited to the following items, and others substantially similar to them:

- "True Overtime", including but not limited to On-Call, Standby and similar pay, for additional services rendered outside of Normal Working hours, whether paid in a lump sum or otherwise.
- Employer Contributions for Deferred Compensation plan or to Retirement System
- Employer "pick up" of Employee Contributions to Retirement System
- Payoffs or cash outs of Vacation and Sick Leave and Holiday Pay, to the extent neither earned nor permitted to be cashed-out under the applicable MOU, during the 12-month Final Compensation Period, regardless of when actually cashed out.
- Flexible Benefits ("Cafeteria Plan") provided in-kind
- Flexible Benefits paid in cash to the extent paid to members retiring on or after January 1, 1991
- Terminal ("Final") Pay, unless included in Compensation Earnable under the section above
- Expense Reimbursements
- In-Kind Advantages (e.g. food, lodging, board, laundry, fuel)
- Fees, Licenses, Memberships provided to member by employers



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

---

- Automobile Allowance, if the automobile is provided for personal use and the allowance is not paid in cash, whether or not declared as income, for members whose Final Compensation periods **do not** include time before January 1, 2001.

### *Pensionable Compensation*

Pensionable Compensation applies to PEPRA members, who are OCERS members hired on or after January 1, 2013.

#### ***ITEMS INCLUDED IN PENSIONABLE COMPENSATION***

For PEPRA members, Pensionable Compensation means (i) the normal monthly rate of pay or base pay of the member; (ii) paid in cash; (iii) to similarly situated members of the same group or class of employment; (iv) for services rendered on a full-time basis; (v) during Normal Working Hours; pursuant to publicly available pay schedules; and (vi) subject to limitations. Pensionable Compensation includes the following items of compensation: Base Salary and Wages, (which includes any employee contributions to deferred compensation plans) and additional compensation for scheduled meal periods, plus the following skill-based or shift-based premium pay categories, and others substantially similar to them:

- Bilingual Pay
- Educational Pay
- Aircraft Rescue Firefighting Pay
- Paramedic Pay
- Motorcycle Pay
- Emergency Dispatch Pay
- Field Training Officer Pay
- Shift Differential Pay
- Confined Space Pay
- Longevity Incentive Pay (other than one-time payments based on longevity)

Premium Pay will be included only if the assignment, certification or license:

- Is part of a member's regularly assigned responsibilities,
- Is an essential, normal or traditional function of the job,
- Is part of the regular assignment of all other members in the same grade or class, and,
- Is not for work performed or received solely during the final average compensation period.





## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

---

### *ITEMS EXCLUDED FROM PENSIONABLE COMPENSATION*

As described in OCERS Board Policy Pensionable Compensation, Pensionable Compensation does not include items explicitly excluded from Pensionable Compensation under Government Code Section 7522.34, including the following and others substantially similar to them:

- Any item of compensation determined by the Board to have been paid in order to increase a member's retirement benefit (pension spiking) or is inconsistent with the requirements of Pensionable Compensation Policy.
- Overtime other than as defined in Section 207(k) of the Title 29 of the United States Code
- Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise
- Employer Contribution to deferred compensation plan or retirement system
- Flexible benefits ("Cafeteria Plan") provided in-kind or paid in cash
- Automobile, uniform or other allowances
- Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.
- Expense reimbursements and in-kind advantages (e.g. food, lodging, board, laundry, fuel)
- Fees, licenses, or memberships provided to or for a member by employer
- Any bonus paid in addition to the compensation defined as Pensionable Compensation above
- Any ad hoc or one-time pay of any sort including one-time longevity pay
- 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.
- Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.

## VI. Process

As pay items are requested, each item must be evaluated by OCERS to determine whether it is Compensation Earnable and/or Pensionable Compensation. Employers are required to submit a request for a new pay item or changes to a pay item for OCERS review and approval in compliance with the Pay Item Request and Approval Procedures for Employers.



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

The following describes the process of analyzing and determining if a pay item is Compensation Earnable and/or Pensionable Compensation.

1. Upon receiving a pay item request, OCERS staff reviews and analyses the following:
  - a. Pay item description;
  - b. Relevant MOU/contract/side letter or other employer document that establishes the terms or requirements of the pay item;
  - c. Specific provision(s)/section(s) of the MOU/contract, and
  - d. Any other relevant policy or governing code.

Staff will ask the employer for clarification if the descriptions of the pay item or requirements are unclear.

2. OCERS staff reviews the information provided by the employer to determine:
  - a. What job classifications are eligible to receive the pay item
  - b. Whether payment is provided to all members in the same grade/class
  - c. How the pay item is calculated – fixed amount or % of pay
  - d. Type of pay – allowance, reimbursement, bonus, cash-out, etc.
  - e. Frequency of payment – recurring, ad-hoc, one time
  - f. If payment is for work performed during normal working hours
3. Then the following criteria and guidelines are applied to determine if the pay item qualifies for inclusion in Compensation Earnable and/or Pensionable Compensation:

For Legacy members, if the answer to questions 1-4 below is "Yes" and "NO" to questions 5 and 6, the pay item is Compensation Earnable. If the answers to questions 1-4 are "NO" and "Yes" to questions 5 and 6, the pay item is **not** Compensation Earnable.

COMPENSATION EARNABLE CRITERIA – PER GC SECTION 31461		Qualifier	YES	NO	N/A
1.	Compensation at same pay rate as persons in same grade/class	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	
2.	One-time or ad hoc payment paid to all similarly situated	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Leave/vacation payout earned & payable in 12-month period	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Terminal pay earned & payable in 12-month period	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Compensation previously paid in-kind & now in cash	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

COMPENSATION EARNABLE CRITERIA – PER GC SECTION 31461		Qualifier	YES	NO	N/A
6.	Payment for services rendered outside normal working hours	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Compensation Earnable?</b>					

For PEPRAs members, Pensionable Compensation must meet the following qualifying criteria pursuant to Government Code Section 7522.34. If the answers are “YES” to questions 1-4 below, the pay item is determined Pensionable Compensation. If the answer is “NO” to questions 1-4 and/or “YES” to questions 5-10, the pay item is **not** Pensionable Compensation.

PENSIONABLE COMPENSATION CRITERIA – PER GC SECTION 7522.34(a)		Qualifier	YES	NO	N/A
1.	Normal rate of pay or base pay	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Payable to similarly situated	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Earned for normal working hours	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	In public pay schedule	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Allowance, reimbursement or previously paid in-kind	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Bonus, one-time or ad-hoc	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.	Severance or terminal pay	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.	Overtime other than Section 207(k) time	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.	Payment for any unused leave	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10.	Employer contribution to deferred compensation	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Pensionable Compensation?</b>					



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

---

4. If the pay item is determined to be Compensation Earnable and/or Pensionable Compensation it will be entered into the pension system as pensionable.<sup>1</sup> OCERS will collect retirement contributions on the approved pay item and include it in retirement benefit calculations.

If the pay item is not Compensation Earnable or Pensionable Compensation, it will be entered into the pension system as non-pensionable. OCERS will not collect retirement contributions on the pay item and will not include it in retirement benefit calculation.

5. After completing its assessment, OCERS staff will notify the employer of its determination. The employer will implement the pay code for the new pay item with the approved pay item status.

OCERS will add the approved pay item to the master list of approved pay codes. A listing of approved pay items may be found on the Employer Section page of the OCERS website.

---

<sup>1</sup> Exceptions may apply. For example, payoff of compensatory time for holidays, sick leave, vacation, and annual leave may be Compensation Earnable but is reported as non-pensionable for salary reporting purposes. The payoff amount may be considered at the time of retirement.



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

### Reference Guide to Compensation Earnable for Legacy Members and Pensionable Compensation for PEPRA Members

	Compensation Earnable Legacy (GC 31461)	Pensionable Compensation PEPRA (GC 7522.34)
Base Salary and Wages	Yes	Yes
Bilingual Premium Pay	Yes	Yes
Educational Incentive ("POST") Pay	Yes	Yes
Aircraft Rescue Firefighting	Yes	Yes
Paramedic Pay	Yes	Yes
Motorcycle Pay	Yes	Yes
Emergency Dispatch Pay	Yes	Yes
Field Training Officer Bonus	Yes	Yes
Shift Differential Pay	Yes	Yes
Confined Space Pay	Yes	Yes
Longevity Incentive	Yes	Yes
Employee Contributions to Deferred Compensation Plan	Yes	Yes
Overtime (i) that is required to be worked; and (ii) that is ordinarily worked by all in the same grade/class; and (iii) not voluntary (Normal Working Hours)	Yes	Only Yes, if Section 207k time
"Madera" Pay and additional compensation for scheduled meal periods	Yes	Yes
Automobile Allowance, if paid in cash; and, for members whose "final compensation" period (as defined under Sections 31462 and 31482.1 of the Government Code) includes time before January 1, 2001, also to the extent automobile was provided for personal use and declared as income	Yes	No
Uniform Allowance and Uniform Maintenance Allowance	Yes	No



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

	Compensation Earnable Legacy (GC 31461)	Pensionable Compensation PEPRA (GC 7522.34)
Payoffs and cash outs of Vacation and Sick Leave and Holiday provided that the time (1) was earned (pro-rated on a monthly basis); (ii) was not taken as time off; and (iii) was permitted to be cashed-out (pro-rated on a monthly basis) under the applicable MOU regardless of when actually paid or cashed-out	Yes	No
Compensatory Time (excluding "True-Overtime" in excess of minimum required reserve)	Yes	No
Any compensation determined by the Board to have been paid to increase a member's retirement benefit	No	No
True Overtime (amounts paid for working outside normal working hours )	No	No
Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise	No	No
Employer contributions for deferred compensation plan or to retirement system	No	No
Employer "pick up" of employee contributions to retirement system	No	No
Payoffs of vacation and sick leave and holiday pay, to the extent neither earned nor permitted to be cashed-out under the applicable MOU, regardless of when actually cashed out.	No	No
Flexible benefits ("Cafeteria Plan") provided in-kind	No	No
Flexible benefits paid in cash to the extent paid to members retiring on or after January 1, 1991	No	No
Terminal ("Final") pay in excess of what is earned in 12-month period	No	No
Expense reimbursements	No	No
In-kind advantages (e.g. food, lodging, board, laundry, fuel)	No	No
Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a	No	No



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

	Compensation Earnable Legacy (GC 31461)	Pensionable Compensation PEPRA (GC 7522.34)
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		
Fees, licenses, memberships provided to member by employers	No	No
Automobile allowance to the extent automobile is provided for personal use and not paid in cash, whether or not declared as income, for members whose "final compensation" periods (as defined under Sections 31462 and 31482.1 of the Government Code) do not include time before January 1, 2001.	No	No
Any ad hoc or one-time pay of any sort including one-time longevity pay	Yes - if payment made to all similarly situated members in the member's grade/class.  No - if not paid to all similarly situated members in the member's grade/class.	No
Any bonus paid in addition to normal monthly rate of pay or base pay	Yes - if payment made to all similarly situated members in the member's grade/class.	No



## **Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure**

---





# Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

---

## I. Purpose

The purpose of this OAP is to describe the procedure for determining whether an element of pay is pensionable and can be included as Compensation Earnable and/or Pensionable Compensation for inclusion in the Final Average Salary that is used to calculate a member's pension benefit.

## II. Authority

This OAP is established pursuant to OCERS Board Policies: Compensation Earnable Policy, Pensionable Compensation Policy, Retirement Enhancement Review Policy and Pay Item Review Policy.

OCERS Board Resolution 98-001 and OCERS Compensation Earnable Policy affirm the OCERS interpretation of the term Compensation Earnable as defined in California Government Code Section 31461.

The Public Employees' Pension Reform Act of 2012 (PEPRA) [and AB 197 amended Section 31461](#) and created the term Pensionable Compensation for members hired on or after January 1, 2013. OCERS Pensionable Compensation Policy explains OCERS interpretation of the term Pensionable Compensation as defined in California Government Code Section 7522.34.

[A number of lawsuits were filed shortly after PEPRA became effective. One of these lawsuits was appealed to the Supreme Court, and resulted in a decision of the Court upholding as constitutional AB 197 and PEPRA, including the amendments to Section 31641. \(Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association 9 Cal.5th 1032; the Alameda Decision.\) The Board has amended this OAP to reflect the holding of the Court in the Alameda Decision.](#)

~~In light of that litigation, the Board chose not to fully implement the exclusion in subsection (b) of Section 31641 for payments for additional services rendered outside normal working hours, pending final resolution of that litigation. AB 197 and PEPRA, including the amendments to Section 31641, were upheld as constitutional by the California Supreme Court in the case Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association 9 Cal.5th 1032 (Alameda Decision). Therefore the Board determined to further implement PEPRA accordingly.~~

California Government Code Section 31542 requires the OCERS Board to establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit. In keeping with this requirement, the Board adopted the Retirement Enhancement Review Policy and the Pay Item Review Policy, which include policy guidelines for assessing compensation included in the calculation of the member's final average salary to ensure that an element of pay was not paid to spike a member's retirement benefit.



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

### III. Definitions

Following are definitions of terms that are used throughout this OAP.

**Compensation Earnable:** See Section V.

**Final Average Salary:** One of the factors used to calculate a member's monthly retirement allowance. It is a measure of a member's level of earnings based on the member's average salary for a specified period of time (e.g. one-year of 12 consecutive months or three-years of 36 consecutive months). It includes base salary and may also include other pay items that the OCERS Board of Retirement has defined as Compensation Earnable or Pensionable Compensation.

**Legacy member:** Member hired before January 1, 2013.

**Non-pensionable:** Pay item is not included in Final Average Salary and not subject to pension contributions; no pension contributions are collected from the employee or employer.

**Normal Working Hours:** Those hours an employee must work in order to be paid their base salary, plus overtime hours, including on-call or standby pay, only to the extent that the overtime hours including on-call or standby pay: (i) are required to be worked as part of the employee's regular duties; (ii) are ordinarily worked during the period in question by all other members in same grade/class/rate of pay as the employee; and (iii) are not and cannot be served voluntarily by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis. Normal Working Hours will shall be established by the employer, but must meet OCERS and CERS requirements. OCERS will rely shall reply upon official County or District documentation adopted or approved documentation establishing grades/classes/rates of pay by the employer's governing body such as collective bargaining agreements, compensation resolutions or ordinances and personnel rules. Other policies promulgated by employer administrative staff must be pursuant to properly delegated authority from the governing body.

**Pay Item:** Element of compensation.

**Pensionable Compensation:** See Section V.

**Pensionable:** Pay item is included in the Final Average Salary and subject to pension contributions; pension contributions are collected from the employee and employer.

**PEPRA member:** Member hired on or after January 1, 2013.

**Publicly Available Pay Schedule:** A document that:

- a) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- b) Identifies the position title for every employee position;
- c) Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

- d) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- e) Does not reference an unavailable document in lieu of disclosing pay rate.

### IV. Limitations

This administrative procedure shall be construed consistently with the requirements of the California Government Code Sections 31460, 31461 and 31462 (Compensation Earnable), 7522.32 and 7522.34 (Pensionable Compensation), 31542, and the Ventura Decision, the Alameda Decision, and other interpretations issued thereunder.

### V. Compensation Earnable and Pensionable Compensation

#### *Compensation Earnable*

Compensation Earnable applies to Legacy members who are existing members of OCERS as of January 1, 2013.

#### ***ITEMS INCLUDED IN COMPENSATION EARNABLE***

As set out in Resolution 98-001 and subdivisions (a) and (b) of Section 31461, and further clarified in OCERS' Compensation Earnable Policy, elements included in Compensation Earnable are ~~(#)~~ remuneration that is (i) earned and receivable in cash (under the applicable MOU) by the retiring member, (ii) during the final compensation period (as defined by Sections 31462 and 31482.1 of the Government Code; hereafter Final Compensation Period), and (iii) for services performed during Normal Working Hours ~~working the ordinary time required of all other employees, in the same grade/class~~, including, but not limited to the following items of compensation, and others substantially similar to them:

- Base Salary and Wages
- Bilingual Premium Pay
- Educational Incentive ("POST") Pay
- Aircraft Rescue Firefighting
- Paramedic Pay
- Motorcycle Bonus
- Emergency Dispatch Pay
- Field Training Officer Bonus
- Shift Differential Pay
- Confined Space Pay



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

- Longevity Incentive
- Automobile Allowance, if paid in cash; and for members whose ~~"Final compensation period"~~ period (as defined under Sections 31462 and 31482.1 of the Government Code; hereafter Final Compensation) includes time before January 1, 2001, also to the extent that the automobile was provided for personal use and declared as income
- Uniform Allowance
- Uniform Maintenance Allowance
- Payoffs of Vacation, ~~and Sick Leave~~ and Holiday leave to the extent (i) was earned in the 12-month Final Compensation Period (pro-rated on a monthly basis); (ii) was not taken as time off; and (iii) was permitted to be cashed -out during the 12-month Final Compensation period (prorated on a monthly basis) under the applicable MOU regardless of when actually paid or cashed out
- Employee Contributions to Deferred Compensation Plan (already included in Base Salary and Wages, above)
- "Mandatory or Scheduled Overtime" (including pay items such as On-Call, and Standby) provided that the pay is for services rendered during the employee's Normal Working Hours. ~~Mandatory or Schedule Overtime~~ (i) that is required to be worked; and (ii) that is ordinarily worked by others in same grade/class/rate of pay. Overtime must be mandatory and regularly scheduled for the entire grade/class/rate of pay.
- Compensatory Time (excluding "True Overtime" in excess of minimum required reserve)
- "Madera" Pay (see, Madera Police Officers Association v. City Of Madera 36 Cal.3d 403)
- and a Additional Compensation for Scheduled Meal Periods
- Flexible Benefits ("Cafeteria Plan") paid in cash to members retiring before January 1, 1991

### ***ITEMS EXCLUDED FROM COMPENSATION EARNABLE***

As further set out in Resolution 98-001 and subdivisions (a) and (b) of Section 31461, and clarified in the Compensation Earnable Policy, ~~(i)~~ remuneration or other value to the employee that (i) is neither earned nor payable in cash to the employee during the final compensation period; and (ii) is not for services rendered during the employee's Normal Working Hours working the ordinary time required of other employees in the same grade/class shall will be excluded from Compensation Earnable, including but not limited to the following items, and others substantially similar to them:

- "True Overtime", including but not limited to On-Call, Standby and similar pay, for additional services rendered outside of Normal Working hours, whether paid in a lump sum or otherwise. (i.e. amounts paid for working in excess of the time required and ordinarily worked by others in the same grade/class)
- Employer Contributions for Deferred Compensation plan or to Retirement System



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

- Employer “pick up” of Employee Contributions to Retirement System
- Payoffs or cash outs of Vacation and Sick Leave and Holiday Pay, to the extent neither earned nor permitted to be cashed-out under the applicable MOU, during the 12-month Final Compensation Period, regardless of when actually cashed out.
- Flexible Benefits (“Cafeteria Plan”) provided in-kind
- Flexible Benefits paid in cash to the extent paid to members retiring on or after January 1, 1991
- Terminal (“Final”) Pay, unless included in Compensation Earnable under the section above
- Expense Reimbursements
- In-Kind Advantages (e.g. food, lodging, board, laundry, fuel)
- Fees, Licenses, Memberships provided to member by employers
- Automobile Allowance, if the automobile is provided for personal use and the allowance is not paid in cash, whether or not declared as income, for members whose Final Compensation periods (as defined in Section 9(a) of the Compensation Earnable Policy) **do not** include time before January 1, 2001.

### *Pensionable Compensation*

Pensionable Compensation applies to PEPRAs members, who are OCERS members hired on or after January 1, 2013.

#### ***ITEMS INCLUDED IN PENSIONABLE COMPENSATION***

For PEPRAs members, Pensionable Compensation means (i) the normal monthly rate of pay or base pay of the member; (ii) paid in cash; (iii) to similarly situated members of the same group or class of employment; (iv) for services rendered on a full-time basis; (v) during Normal Working Hours; pursuant to publicly available pay schedules; and (vi) subject to limitations. Pensionable Compensation includes the following items of compensation: Base Salary and Wages, (which includes any employee contributions to deferred compensation plans) and additional compensation for scheduled meal periods, plus the following skill-based or shift-based premium pay categories, and others substantially similar to them:

- Bilingual Pay
- Educational Pay
- Aircraft Rescue Firefighting Pay
- Paramedic Pay
- Motorcycle Pay
- Emergency Dispatch Pay



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

---

- Field Training Officer Pay
- Shift Differential Pay
- Confined Space Pay
- Longevity Incentive Pay (other than one-time payments based on longevity)

Premium Pay will be included only if the assignment, certification or license:

- Is part of a member's regularly assigned responsibilities,
- Is an essential, normal or traditional function of the job,
- Is part of the regular assignment of all other members in the same grade or class,  
and,
- Is not for work performed or received solely during the final average compensation period.

### ***ITEMS EXCLUDED FROM PENSIONABLE COMPENSATION***

As described in OCERS Board Policy Pensionable Compensation, Pensionable Compensation does not include items explicitly excluded from Pensionable Compensation under Government Code Section 7522.34, including the following and others substantially similar to them:

- Any item of compensation determined by the Board to have been paid in order to increase a member's retirement benefit (pension spiking) or is inconsistent with the requirements of Pensionable Compensation Policy.
- Overtime other than as defined in Section 207(k) of the Title 29 of the United States Code
- Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise
- Employer Contribution to deferred compensation plan or retirement system
- Flexible benefits ("Cafeteria Plan") provided in-kind or paid in cash
- Automobile, uniform or other allowances
- Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.
- Expense reimbursements and in-kind advantages (e.g. food, lodging, board, laundry, fuel)
- Fees, licenses, or memberships provided to or for a member by employer
- Any bonus paid in addition to the compensation defined as Pensionable Compensation above
- Any ad hoc or one-time pay of any sort including one-time longevity pay



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

---

- 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.
- Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.

### VI. Process

As pay items are requested, each item must be evaluated by OCERS to determine whether it is Compensation Earnable and/or Pensionable Compensation. Employers are required to submit a request for a new pay item or changes to a pay item for OCERS review and approval in compliance with the Pay Item Request and Approval Procedures for Employers.

The following describes the process of analyzing and determining if a pay item is Compensation Earnable and/or Pensionable Compensation.

1. Upon receiving a pay item request, OCERS staff reviews and analyses the following:
  - a. Pay item description;
  - b. Relevant MOU/contract/side letter [or other employer document that establishes the terms or requirements of the pay item](#);
  - c. Specific provision(s)/section(s) of the MOU/contract, and
  - d. Any other relevant policy or governing code.

Staff will ask the employer for clarification if the descriptions of the pay item or requirements are unclear.

2. OCERS staff reviews the information provided by the employer to determine:
  - a. What job classifications are eligible to receive the pay item
  - b. Whether payment is provided to all members in the same grade/class
  - c. How the pay item is calculated – fixed amount or % of pay
  - d. Type of pay – allowance, reimbursement, bonus, cash-out, etc.
  - e. Frequency of payment – recurring, ad-hoc, one time
  - f. If payment is for work performed during normal working hours
3. Then the following criteria and guidelines are applied to determine if the pay item qualifies for inclusion in Compensation Earnable and/or Pensionable Compensation:





## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

For Legacy members, if the answer to questions 1-4 below is "Yes" and "NO" to questions 5 and 6, the pay item is Compensation Earnable. If the answers to questions 1-4 are "NO" and "Yes" to questions 5 and 6, the pay item is **not** Compensation Earnable.

COMPENSATION EARNABLE CRITERIA – PER GC SECTION 31461		Qualifier	YES	NO	N/A
1.	Compensation at same pay rate as persons in same grade/class	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	
2.	One-time or ad hoc payment paid to all similarly situated	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Leave/vacation payout earned & payable in 12-month period	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Terminal pay earned & payable in 12-month period	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Compensation previously paid in-kind & now in cash	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Payment for services rendered outside normal working hours	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Compensation Earnable?</b>					

For PEPRA members, Pensionable Compensation must meet the following qualifying criteria pursuant to Government Code Section 7522.34 If the answers are "YES" to questions 1-4 below, the pay item is determined Pensionable Compensation. If the answer is "NO" to questions 1-4 and/or "YES" to questions 5-10, the pay item is **not** Pensionable Compensation.

PENSIONABLE COMPENSATION CRITERIA – PER GC SECTION 7522.34(a)		Qualifier	YES	NO	N/A
1.	Normal rate of pay or base pay	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Payable to similarly situated	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Earned for normal working hours	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	In public pay schedule	<u>YES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Allowance, reimbursement or previously paid in-kind	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Bonus, one-time or ad-hoc	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>





## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

PENSIONABLE COMPENSATION CRITERIA – PER GC SECTION 7522.34(a)		<u>Qualifier</u>	<u>YES</u>	<u>NO</u>	<u>N/A</u>
7.	Severance or terminal pay	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.	Overtime other than Section 207(k) time	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.	Payment for any unused leave	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10.	Employer contribution to deferred compensation	<u>NO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Pensionable Compensation?</b>					

4. If the pay item is determined to be Compensation Earnable and/or Pensionable Compensation it will be entered into the pension system as pensionable.<sup>1</sup> OCERS will collect retirement contributions on the approved pay item and include it in retirement benefit calculations.

If the pay item is not Compensation Earnable or Pensionable Compensation, it will be entered into the pension system as non-pensionable. OCERS will not collect retirement contributions on the pay item and will not include it in retirement benefit calculation.

5. After completing its assessment, OCERS staff will notify the employer of its determination. The employer will implement the pay code for the new pay item with the approved pay item status.

OCERS will add the approved pay item to the master list of approved pay codes. A listing of approved pay items may be found on the [Plan Sponsor/ Employer](#) Section page of the OCERS website.

<sup>1</sup> Exceptions may apply. For example, payoff of compensatory time for holidays, sick leave, vacation, and annual leave may be Compensation Earnable but is reported as non-pensionable for salary reporting purposes. The payoff amount may be considered at the time of retirement.



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

### Reference Guide to Compensation Earnable for Legacy Members and Pensionable Compensation for PEPRA Members

	Compensation Earnable Legacy (GC 31461)	Pensionable Compensation PEPRA (GC 7522.34)
Base Salary and Wages	Yes	Yes
Bilingual Premium Pay	Yes	Yes
Educational Incentive ("POST") Pay	Yes	Yes
Aircraft Rescue Firefighting	Yes	Yes
Paramedic Pay	Yes	Yes
Motorcycle Pay	Yes	Yes
Emergency Dispatch Pay	Yes	Yes
Field Training Officer Bonus	Yes	Yes
Shift Differential Pay	Yes	Yes
Confined Space Pay	Yes	Yes
Longevity Incentive	Yes	Yes
Employee Contributions to Deferred Compensation Plan	Yes	Yes
Overtime (i) that is required to be worked; and (ii) that is ordinarily worked by <u>the entire all in the same grade/class/rate of pay; and (iii) not voluntary (Normal Working Hours)</u>	Yes	Only Yes, if Section 207k time
"Madera" Pay and additional compensation for scheduled meal periods	Yes	Yes
Automobile Allowance, if paid in cash; and, for members whose "final compensation" period (as defined under Sections 31462 and 31482.1 of the Government Code) includes time before January 1, 2001, also to the extent automobile was provided for personal use and declared as income	Yes	No
Uniform Allowance and Uniform Maintenance Allowance	Yes	No



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

	Compensation Earnable Legacy (GC 31461)	Pensionable Compensation PEPRA (GC 7522.34)
Payoffs and cash outs of Vacation and Sick Leave and Holiday provided that the time (1) was earned (pro-rated on a monthly basis); (ii) was not taken as time off; and (iii) was permitted to be cashed-out (pro-rated on a monthly basis) under the applicable MOU regardless of when actually paid or cashed-out	Yes	No
Compensatory Time (excluding "True-Overtime" in excess of minimum required reserve)	Yes	No
Any compensation determined by the Board to have been paid to increase a member's retirement benefit	No	No
True Overtime (amounts paid for working <u>outside normal working hours</u> <del>in excess of the time required an ordinary worked by others in the same grade/class</del> )	No	No
Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise	No	No
Employer contributions for deferred compensation plan or to retirement system	No	No
Employer "pick up" of employee contributions to retirement system	No	No
Payoffs of vacation and sick leave and holiday pay, to the extent neither earned nor permitted to be cashed-out under the applicable MOU, regardless of when actually cashed out.	No	No
Flexible benefits ("Cafeteria Plan") provided in-kind	No	No
Flexible benefits paid in cash to the extent paid to members retiring on or after January 1, 1991	No	No
Terminal ("Final") pay in excess of what is earned in 12-month period	No	No
Expense reimbursements	No	No
In-kind advantages (e.g. food, lodging, board, laundry, fuel)	No	No



## Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure

	Compensation Earnable Legacy (GC 31461)	Pensionable Compensation PEPRA (GC 7522.34)
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	No	No
Fees, licenses, memberships provided to member by employers	No	No
Automobile allowance to the extent automobile is provided for personal use and not paid in cash, whether or not declared as income, for members whose "final compensation" periods (as defined under Sections 31462 and 31482.1 of the Government Code) do not include time before January 1, 2001.	No	No
Any ad hoc or one-time pay of any sort including one-time longevity pay	Yes - if payment made to all similarly situated members in the member's grade/class.  No – if not paid to all similarly situated members in the member's grade/class.	No
Any bonus paid in addition to normal monthly rate of pay or base pay	Yes - if payment made to all similarly situated members in the member's grade/class.	No



## **Compensation Earnable and Pensionable Compensation Analysis & Determination Procedure**

---



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

### I. Purpose

This OAP describes the procedure for calculating the Final Average Salary (FAS) of a retiring member when calculating the member’s monthly retirement allowance.

### II. Authority

This OAP is in accordance with OCERS Board Retirement Enhancement Review Policy Compensation Review Policy, pursuant to California Government Code (GC) Section 31542 and in compliance with GC Sections 7522.32, 7522.34, 31460, 31461, 31462, and related applicable sections.

### III. Final Average Salary Components

Final Average Salary (FAS) is one of the four factors used to calculate a member’s monthly retirement allowance; it includes a member’s base salary and may also include other pay items that the OCERS Board of Retirement (Board) has defined as Compensation Earnable or Pensionable Compensation.



#### ***COMPENSATION EARNABLE***

Compensation Earnable means (i) remuneration earned and receivable in cash (under the applicable MOU) by the retiring employee, (ii) during the final compensation period, and (iii) for working the ordinary time required of all other employees in the same grade/class. Compensation Earnable is applicable to existing members as of January 1, 2013, referred to as Legacy members.

#### ***PENSIONABLE COMPENSATION***

Pensionable Compensation means (i) the normal monthly rate of pay or base pay of the member; (ii) paid in cash; (iii) to similarly situated members of the same grade or class of employment; (iv) for services rendered on a full-time basis; (v) during normal working hours; (vi) pursuant to publicly available pay schedules; and (vii) subject to limitations. Pensionable Compensation is applicable to all OCERS members enrolled on or after January 1, 2013, referred to as PEPRAs members.

#### ***EARNABLE SALARY***

FAS is based on a member’s earnable salary, which represents the total base salary that could have been earned during a bi-weekly pay period. Earnable salary is calculated by multiplying the member’s hourly rate by the total number of hours a member could have worked within a reported pay period

#### ***GROSS SALARY***

A member’s gross salary represents the total payment made to a member within a reported bi-weekly pay period. Gross salary records are used by OCERS when calculating an eligible part-time member’s FAS at retirement.



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

### IV. Limitations

This administrative procedure shall be construed consistently with the requirements of the California Government Code Sections 31460, 31461, and 31462 (Compensation Earnable), 7522.32 and 7522.34 (Pensionable Compensation), 31542 and the Ventura Decision and other interpretations issued thereunder.

### V. Process

The following describes the Final Average Salary calculation process.

#### 1. Plan Verification

The first step in calculating FAS is to identify the member's plan membership and benefit plan formula.

- **Legacy**
  - **Plan Members**
    - a. Active member of OCERS prior to January 1, 2013; or
    - b. An individual who was deferred member of OCERS prior to January 1, 2013, and who returns to the same employer; or
    - c. An individual who was a deferred member of a reciprocal retirement system with service under that system prior to January 1, 2013 who became an active member of OCERS within six months of deferring membership in the reciprocal system.
    - d. Deferred Legacy members (who do not return) as either PEPRAs or Legacy (depending on what they were when they deferred)
  - **Plans**
    - Plan A B C, D, E, F, G, H, I, J, M, N, O, P, Q, R and S
- **PEPRA**
  - **Plan Members** – Member enrolled in OCERS on or after January 1, 2013
  - **Plans**
    - Plan T, U, V, and W

#### 2. Measuring Period

Then the measuring period – one-year or three-years (12 or 36 consecutive months)- is identified based on the member's plan and entry date. Members who entered OCERS prior to September 21, 1979 have a one-year measuring period; all others have a three-year measuring period.

- **One-year (12-months):** Plan A, C, E, G, I, M, O and Q
- **Three-years (36-months):** Plan B, D, F, H, J, N, P, R, S, T, U, V and W



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

### 3. Compensation Review

1. Based on the selected retirement date, the highest average salary earned within a consecutive 12-month or 36-month period, whichever applies based on the member's plan and entry date, is identified.
2. OCERS staff then examines the member's earnable salary records for the highest 12 or 36 consecutive months provided by the employer to determine the member's base pay and whether there are any additional pay items that qualify for inclusion in Compensation Earnable or Pensionable Compensation.

#### ***A) ITEMS INCLUDED IN COMPENSATION EARNABLE – LEGACY MEMBERS***

For Legacy members, OCERS will determine whether the member has any additional premium pay or cash out items that may be included in Compensation Earnable.

#### **TYPES OF PAY ITEMS INCLUDED**

The following pay items are included, in addition to a member's hourly base wages:

- Premium pay (e.g. shift differential, bilingual premium pay, etc.)
- Allowances (e.g. automobile, if paid in cash or used for personal use, uniform, or uniform maintenance, etc.)
- Overtime, including on-call/standby pay but only if is: (i) required to be worked as part of the employee's regular duties; (ii) ordinarily worked during the period in question as part of the regular assignments of all other members in same grade/class as the employee; and (iii) not served voluntarily by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis.

#### **TYPES OF CASH OUT ITEMS INCLUDED**

Cash out items, often referring to Paid Time Off (PTO) hours, up to the maximum amount earned and cashable during a 12-month period, for each year of the measuring period:

- **Annual Leave/Vacation** – amount earned, not taken as time off and permitted to be cashed-out during the measuring period under the member's applicable MOU, regardless of when actually cashed out. (e.g. Employees are typically able to cash out 40, 60, or 80 hours of vacation or annual leave in a 12-month period.)
- **Sick Leave** – time that (i) was earned; (ii) was not taken as time off; and (iii) was permitted to be cashed-out during the measuring period under the member's applicable MOU, regardless of when actually paid or cashed out.
- **Compensatory Time for Holidays** - for holidays worked or for holidays that fall on a member's regularly scheduled day off, (i) the amount earned; (ii) was not taken as time off; and (iii) was permitted to be cashed-out during the





## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

measuring period under the member’s applicable MOU, regardless of when actually paid or cashed out.

For Legacy members, if members have a measuring period that spans multiple fiscal years, OCERS will only include in Compensation Earnable the amount earned and could have been cashed out during each 12-month period of the measuring period.

***B) ITEMS INCLUDED IN PENSIONABLE COMPENSATION – PEPRA MEMBERS***

For PEPRA members, OCERS will determine the normal monthly rate of pay and any pensionable items that meet the following criteria for Pensionable Compensation:

- Pay is the normal monthly rate of pay or base pay
- Pay is paid in cash
- Paid to similarly situated members of the same group or class of employment
- Pay is for services rendered on a full-time basis during normal working hours
- Pay is paid pursuant to publicly available schedules

**PAY ITEMS INCLUDED**

- Base Salary and Wages (which includes employee contributions to deferred compensation plans), and including additional compensation for scheduled meal periods, plus skill-based or shift-based premium pay categories as defined in the Pensionable Compensation Policy.

***C) ITEMS EXCLUDED FROM COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION***

In accordance with Resolution 98-001 and GC Section 7522.34, the following are excluded from Compensation Earnable for Legacy members and Pensionable Compensation for PEPRA members including, but not limited to the following items, and others substantially similar to them.

Items Excluded from Compensation Earnable and Pensionable Compensation	
Compensation Earnable Legacy Members	Pensionable Compensation PEPRA Members
Any compensation determined by the Board to have been paid to spike a member’s retirement benefit or is inconsistent with the requirements of OCERS Board Policies Compensation Earnable and Pensionable Compensation.	
True overtime (not qualifying in 3[A], above)	Overtime other than as defined in Section 207(k) of Title 29 of the United States Code



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

Items Excluded from Compensation Earnable and Pensionable Compensation	
Compensation Earnable Legacy Members	Pensionable Compensation PEPRA Members
Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.	
Payoffs or cash outs of vacation and sick leave and holiday pay, to the extent neither earned nor permitted to be cashed-out under the applicable MOU, regardless of when actually paid or cashed out	Payments for unused vacation, annual, leave, personal leave, sick leave or compensatory time off, however denominated, whether paid in lump sum or otherwise, regardless of when reported or paid.
Flexible benefits (“Cafeteria Plan”) provided in kind and Flexible Benefits paid in cash	
Expense reimbursements and in-kind advantages (e.g. food, lodging, board, laundry, fuel)	
Fees, licences, memberships provide to member by employer	
Automobile allowance, if the automobile is provided for personal use and the allowance is not paid in cash, whether or not declared as income, for members whose Final Compensation Periods (as defined in Section 9(a) of the Compensation Earnable Policy) <b>do not</b> include time before January 1, 2001.	Automobile, uniform, or other allowances
Terminal “Final” pay, to the extent not included in Cash Out items	Severance or other termination pay that is received while employed
	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.
	Any ad hoc or one-time pay of any sort

3. OCERS staff reviews each pay period that contains a pay item to determine whether the pay item is included in the approved list of pay items and is reported as pensionable. Staff then confirms that the member is eligible to receive the pay item by verifying the member’s job



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

---

classification, bargaining unit and MOU that was applicable during the measuring period. Staff also validates that the pay item was reported and paid correctly according to the applicable MOU.

4. For Legacy members, to determine whether a cash out item should be included in Compensation Earnable, OCERS reviews all payroll records from the employer and any relevant documents the member may have. Then, using the MOU that was applicable during the measuring period, OCERS confirms that the item was earned, not taken as time off and cashable during a 12-month period for each year of the measuring period. Members cannot receive credit for time that was used for time off.

If payment for compensatory time for holidays has not been reported as a cash out item by the employer, the member may be required to provide supporting documentation, including pay stubs and timesheets to show that the holiday hours accrued were not used as time off and that the member either received payment for the holiday hours, or could have received payment for those hours within 12-months of the measuring period.

No cash out items are included in Pensionable Compensation for PEPRA members.

5. OCERS will research any item of compensation that may look inconsistent or appear to have been paid to spike a member's retirement benefit.
6. OCERS may request additional documentation from the employer or member to verify what has been provided and reported.
7. If OCERS staff determines that one or more items of compensation were paid to inappropriately enhance a member's retirement benefit, OCERS staff will send written notification to the member and the employer of its determination.
8. OCERS may conduct written or oral follow-up communication with the member and/or employer as appropriate in the exercise of reasonable diligence. Staff will document any such communications and when concluded, will issue a final notice of determination.
9. Once all pay items and applicable cash out items have been validated, staff adds each pay item and/or applicable cash out item to the base salary to compute the total Compensation Earnable or Pensionable Compensation.

### 4. FAS Calculation

After completing the compensation review, OCERS calculates the Final Average Salary.

- For **Legacy members in Tier 1**, FAS is calculated by taking the sum of the member's highest consecutive 12-months of Compensation Earnable and dividing it by 12.
- For **Legacy members in Tier 2**, FAS is calculated by taking the sum of the member's highest 36-months of Compensation Earnable and dividing it by 36.
- For **PEPRA members**, FAS is calculated by taking the sum of the member's highest 36-months of Pensionable Compensation and dividing it by 36.

FAS is limited to applicable IRS 401(a)17 and Social Security limits.



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

---

The FAS is then applied to the calculation of the member's monthly retirement allowance.

### ***Part-Time or Full-Time Members with Less than One (1) Year (Tier 1) or Three (3) Years (Tier 2) of Service***

If a member is a part-time employee or a full-time employee with less than 1 year of service (Tier 1) or 3 years of service (Tier 2), then the FAS is calculated using the member's Gross Salary. The member's sum of Gross Salary is divided by the number of months of service credited in OCERS and multiplied by 12.

### ***Part-Time Members with Equivalent of Three (3) Years of Full-Time Service***

For part-time members, FAS is calculated by using the member's Gross Salary over 6272 hours and dividing it by 36.



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

### I. Purpose

This OAP describes the procedure for calculating the Final Average Salary (FAS) of a retiring member when calculating the member’s monthly retirement allowance.

### II. Authority

This OAP is in accordance with OCERS Board Retirement Enhancement Review Policy Compensation Review Policy, pursuant to California Government Code (GC) Section 31542 and in compliance with GC Sections 7522.32, 7522.34, 31460, 31461, 31462, and related applicable sections.

### III. Final Average Salary Components

Final Average Salary (FAS) is one of the four factors used to calculate a member’s monthly retirement allowance; it includes a member’s base salary and may also include other pay items that the OCERS Board of Retirement (Board) has defined as Compensation Earnable or Pensionable Compensation.



#### **COMPENSATION EARNABLE**

Compensation Earnable means (i) remuneration earned and receivable in cash (under the applicable MOU) by the retiring employee, (ii) during the final compensation period, and (iii) for working the ordinary time required of all other employees in the same grade/class. Compensation Earnable is applicable to existing members as of January 1, 2013, referred to as Legacy members.

#### **PENSIONABLE COMPENSATION**

Pensionable Compensation means (i) the normal monthly rate of pay or base pay of the member; (ii) paid in cash; (iii) to similarly situated members of the same group grade or class of employment; (iv) for services rendered on a full-time basis; (v) during normal working hours; (vi) pursuant to publicly available pay schedules; and (vii) subject to limitations. Pensionable Compensation is applicable to all OCERS members enrolled on or after January 1, 2013, referred to as PEPRAs members.

#### **EARNABLE SALARY**

FAS is based on a member’s earnable salary, which represents the total base salary that could have been earned during a bi-weekly pay period. Earnable salary is calculated by multiplying the member’s hourly rate by the total number of hours a member could have worked within a reported pay period, ~~based on 80 (or 112) hours for full-time, and 40 hours for part-time, as based on designated member status.~~

#### **GROSS SALARY**

A member’s gross salary represents the total payment made to a member within a reported bi-weekly pay period. Gross salary records are used by OCERS when calculating an eligible part-time member’s FAS at retirement.



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

---

### IV. Limitations

This administrative procedure shall be construed consistently with the requirements of the California Government Code Sections 31460, 31461, and 31462 (Compensation Earnable), 7522.32 and 7522.34 (Pensionable Compensation), 31542 and the Ventura Decision and other interpretations issued thereunder.

### V. Process

The following describes the Final Average Salary calculation process.

#### *1. Plan Verification*

The first step in calculating FAS is to identify the member's plan membership and benefit plan formula.

- **Legacy**
  - **Plan Members**
    - a. Active member of OCERS prior to January 1, 2013; or
    - b. An individual who was a deferred member of OCERS prior to January 1, 2013, and who returns to the same employer; or
    - c. An individual who was a deferred member of a reciprocal retirement system with service under that system prior to January 1, 2013 who became an active member of OCERS within six months of deferring membership in the reciprocal system.
    - d. Deferred Legacy members (who do not return) as either PEPRAs or Legacy (depending on what they were when they deferred)
  - **Plans**
    - Plan A B C, D, E, F, G, H, I, J, M, N, O, P, Q, R and S
- **PEPRA**
  - **Plan Members** – Member enrolled in OCERS on or after January 1, 2013
  - **Plans**
    - Plan T, U, V, and W

#### *2. Measuring Period*

Then the measuring period – one-year or three-years (12 or 36 consecutive months)- is identified based on the member's plan and entry date. Members who entered OCERS prior to September 21, 1979 have a one-year measuring period; all others have a three-year measuring period.

- **One-year (12-months):** Plan A, C, E, G, I, M, O and Q
- **Three-years (36-months):** Plan B, D, F, H, J, N, P, R, S, T, U, V and W



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

### 3. Compensation Review

1. Based on the selected retirement date, the highest average salary earned within a consecutive 12-month or 36-month period, whichever applies based on the member's plan and entry date, is identified.
2. OCERS staff then examines the member's earnable salary records for the highest 12 or 36 consecutive months provided by the employer to determine the member's base pay and whether there are any additional pay items that qualify for inclusion in Compensation Earnable or Pensionable Compensation.

#### ***A) ITEMS INCLUDED IN COMPENSATION EARNABLE – LEGACY MEMBERS***

For Legacy members, OCERS will determine whether the member has any additional premium pay or cash out items that may be included in Compensation Earnable.

##### TYPES OF PAY ITEMS INCLUDED

The following pay items are included, in addition to a member's hourly base wages:

- Premium pay (e.g. shift differential, bilingual premium pay, etc.)
- Allowances (e.g. automobile, if paid in cash or used for personal use, uniform, or uniform maintenance, etc.)
- Overtime, including on-call/standby pay but only if is: (i) required to be worked as part of the employee's regular duties; (ii) ordinarily worked during the period in question as part of the regular assignments of all other members in same grade/class as the employee; and (iii) not served voluntarily by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis.
- ~~Overtime (i) that is required and (ii) that is ordinarily worked by the entire grade/class/rate of pay.~~

##### TYPES OF CASH OUT ITEMS INCLUDED

Cash out items, often referring to Paid Time Off (PTO) hours, up to the maximum amount earned and cashable during a 12-month period, for each year of the measuring period:

- **Annual Leave/Vacation** – amount earned, not taken as time off and permitted to be cashed-out during the measuring period under the member's applicable MOU, regardless of when actually cashed out. (e.g. Employees are typically able to cash out 40, 60, or 80 hours of vacation or annual leave in a 12-month period.)
- **Sick Leave** – time that (i) was earned; (ii) was not taken as time off; and (iii) was permitted to be cashed-out during the measuring period under the member's applicable MOU, regardless of when actually paid or cashed out.



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

- **Compensatory Time for Holidays** - for holidays worked or for holidays that fall on a member’s regularly scheduled day off, (i) the amount earned; (ii) was not taken as time off; and (iii) was permitted to be cashed-out during the measuring period under the member’s applicable MOU, regardless of when actually paid or cashed out.

For Legacy members, if members have a measuring period that spans multiple fiscal years, OCERS will only include in Compensation Earnable the amount earned and could have been cashed out during each 12-month period of the measuring period.

***B) ITEMS INCLUDED IN PENSIONABLE COMPENSATION – PEPRAs ~~MEMEBRS~~ MEMBERS***

For PEPRAs members, OCERS will determine the normal monthly rate of pay and any pensionable items that meet the following criteria for Pensionable Compensation:

- Pay is the normal monthly rate of pay or base pay
- Pay is paid in cash
- Paid to similarly situated members of the same group or class of employment
- Pay is for services rendered on a full-time basis during normal working hours
- Pay is paid pursuant to publicly available schedules

**PAY ITEMS INCLUDED**

- Base Salary and Wages (which includes employee contributions to deferred compensation plans), and including additional compensation for scheduled meal periods, plus skill-based or shift-based premium pay categories as defined in the Pensionable Compensation Policy.

***C) ITEMS EXCLUDED FROM COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION***

In accordance with Resolution 98-001 and GC Section 7522.34, the following are excluded from Compensation Earnable for Legacy members and Pensionable Compensation for PEPRAs members including, but not limited to the following items, and others substantially similar to them.

Items Excluded from Compensation Earnable and Pensionable Compensation	
Compensation Earnable Legacy Members	Pensionable Compensation PEPRAs Members
Any compensation determined by the Board to have been paid to spike a member’s retirement benefit or is inconsistent with the requirements of OCERS Board Policies Compensation Earnable and Pensionable Compensation.	





## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

Items Excluded from Compensation Earnable and Pensionable Compensation	
Compensation Earnable Legacy Members	Pensionable Compensation PEPRA Members
True overtime <u>(not qualifying in 3[A], above)</u> <del>(amounts paid for working in excess of the time required and ordinarily worked by others in the same grade/class)</del>	Overtime other than as defined in Section 207(k) of Title 29 of the United States Code
Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.	
Payoffs or cash outs of vacation and sick leave and holiday pay, to the extent neither earned nor permitted to be cashed-out under the applicable MOU, regardless of when actually paid or cashed out	Payments for unused vacation, annual, leave, personal leave, sick leave or compensatory time off, however denominated, whether paid in lump sum or otherwise, regardless of when reported or paid.
Flexible benefits ("Cafeteria Plan") provided in kind and Flexible Benefits paid in cash	
Expense reimbursements and in-kind advantages (e.g. food, lodging, board, laundry, fuel)	
Fees, licences, memberships provide to member by employer	
Automobile allowance, if the automobile is provided for personal use and the allowance is not paid in cash, whether or not declared as income, for members whose Final Compensation Periods (as defined in Section 9(a) of the Compensation Earnable Policy) <b>do not</b> include time before January 1, 2001.	Automobile, uniform, or other allowances
Terminal "Final" pay, to the extent not included in Cash Out items	Severance or other termination pay that is received while employed
	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.



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

Items Excluded from Compensation Earnable and Pensionable Compensation	
Compensation Earnable Legacy Members	Pensionable Compensation PEPRA Members
	Any ad hoc or one-time pay of any sort

3. OCERS staff reviews each pay period that contains a pay item to determine whether the pay item is included in the approved list of pay items and is reported as pensionable. Staff then confirms that the member is eligible to receive the pay item by verifying the member’s job classification, bargaining unit and MOU that was applicable during the measuring period. Staff also validates that the pay item was reported and paid correctly according to the applicable MOU.

4. For Legacy members, to determine whether a cash out item should be included in Compensation Earnable, OCERS reviews all payroll records from the employer and any relevant documents the member may have. Then, using the MOU that was applicable during the measuring period, OCERS confirms that the item was earned, not taken as time off and cashable during a 12-month period for each year of the measuring period. Members cannot receive credit for time that was used for time off.

If payment for compensatory time for holidays has not been reported as a cash out item by the employer, the member may be required to provide supporting documentation, including pay stubs and timesheets to show that the holiday hours accrued were not used as time off and that the member either received payment for the holiday hours, or could have received payment for those hours within 12-months of the measuring period.

No cash out items are included in Pensionable Compensation for PEPRA members.

5. OCERS will research any item of compensation that may look inconsistent or appear to have been paid to spike a member’s retirement benefit.
6. OCERS may request additional documentation from the employer or member to verify what has been provided and reported.
7. If OCERS staff determines that one or more items of compensation were paid to inappropriately enhance a member’s retirement benefit, OCERS staff will send written notification to the member and the employer of its determination.
8. OCERS may conduct written or oral follow-up communication with the member and/or employer as appropriate in the exercise of reasonable diligence. Staff will document any such communications and when concluded, will issue a final notice of determination.
9. Once all pay items and applicable cash out items have been validated, staff adds each pay item and/or applicable cash out item to the base salary to compute the total Compensation Earnable or Pensionable Compensation.



## DRAFT OCERS Administrative Procedure (OAP) Final Average Salary Calculation

### 4. FAS Calculation

After completing the compensation review, OCERS calculates the Final Average Salary.

- For **Legacy members in Tier 1**, FAS is calculated by taking the sum of the member’s highest consecutive 12-months of Compensation Earnable and dividing it by 12.
- For **Legacy members in Tier 2**, FAS is calculated by taking the sum of the member’s highest 36-months of Compensation Earnable and dividing it by 36.
- For **PEPRA members**, FAS is calculated by taking the sum of the member’s highest 36-months of Pensionable Compensation and dividing it by 36.

FAS is limited to applicable IRS 401(a)17 and Social Security limits.

The FAS is then applied to the calculation of the member’s monthly retirement allowance.

#### *Part-Time or Full-Time Members with Less than One (1) Year (Tier 1) or Three (3) Years (Tier 2) of Service*

If a member is a part-time employee or a full-time employee with less than 1 year of service (Tier 1) or 3 years of service (Tier 2), then the FAS is calculated using the member’s Gross Salary. The member’s sum of Gross Salary is divided by the number of months of service credited in OCERS and multiplied by 12.

#### *Part-Time Members with Equivalent of Three (3) Years of Full-Time Service*

For part-time members, FAS is calculated by using the member’s Gross Salary over 6272 hours and dividing it by 36.