

Date: December 13, 2017
To: Board of Retirement
From: James Wilbanks, Retirement Administrator
Subject: Resolution 2017-08 Defining Pensionable Compensation Pursuant to Government Code §31461 for Members What Are Not Subject to Government Code §7522.34 (Non-PEPRA Members)

Mendocino County recently approved a new collective bargaining agreement with employees represented by the Mendocino County Management Association. The newly adopted agreement provides for salary increases based on longevity, similar to that received by other bargaining units. The longevity based salary increases for other bargaining units are all included in Pensionable Compensation.

Due to minor differences between language across MOUs, the county created a new pay code for the one of the Longevity pay items as shown in the attached draft resolution.

I recommend the Board adopt the attached resolution.

RESOLUTION 2017 - 08

**TO SUPERSEDE RESOLUTION 2017 – 05 DEFINING COMPENSATION EARNABLE
PURSUANT TO GOVERNMENT CODE §31461 FOR MEMBERS WHO ARE NOT SUBJECT TO
GOVERNMENT CODE §7522.34 (NON-PEPRA MEMBERS)**

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

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

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

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

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

RESOLVED that effective December 13, 2017, resolution number 2017 – 05 is superseded, and pursuant to Government Code §31461 as interpreted by the courts, the Board hereby makes the following determinations as to what is included in “compensation earnable” and items of remuneration that are not included as of November 1, 2017:

1. Compensation earnable shall include:

| Pay Code | Description |
|-----------------|----------------------------------------------------------------------------|
| 303 | Vacation Pay-Out Non Management |
| 304 | Vacation Pay-Out Management |
| 406 | Shift PM |
| 407 | Shift AM |
| 409 | Supervisor Shift |
| 417 | 10% Bilingual |
| 418 | 18.00 Bilingual |
| 422 | Confidential 5% |
| 424 | On Call 3.50 Per Hour |
| 427 | On Call 4.50 Weekends |
| 432 | Insurance Stipend |
| 434 | Clothing Allowance |
| 435 | Supplemental Pay to similarly situated members in the same grade or class. |

| | |
|-----|------------------------------------|
| 437 | Retroactive Longevity |
| 438 | 2.5% Longevity |
| 439 | 5% Longevity |
| 440 | On Call Regular |
| 441 | On Call Weekends/Holidays |
| 443 | 7.5% Longevity |
| 444 | 10% Longevity |
| 445 | Car Allowance |
| 452 | Retroactive Salary Adjustment |
| 456 | Board Of Supervisor Auto Allowance |
| 457 | BA Incentive |
| 481 | Longevity Yrs of Svc 1 |
| 482 | Longevity Yrs of Svc 3 |
| 506 | Shift PM – DSA \$2 |
| 514 | Standby Pay – Weekday |
| 515 | Animal Handler |
| 516 | Standby Pay – Weekend |
| 520 | Field/Specialized Training |
| 521 | Special Assignment |
| 523 | 5% Bilingual – Probation |
| 525 | Uniform Allowance |
| 528 | Housing |
| 529 | Resident Deputy Bonus |
| 530 | Officer In Charge |
| 531 | Officer In Charge Level 2 |
| 532 | Detective/Investigator Premium |
| 556 | AA/AS/Supv Incentive MCLEMA |
| 557 | Supv Incentive MCLEMA |
| 558 | 10% BA Cert Incentive – MCLEMA |
| 559 | 5% Regional |
| 561 | Hourly 5% Regional |
| 567 | 3% Bilingual |
| 581 | Longevity Yrs of Svc 2 |
| 926 | Uniform Non-Cash |

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

A. The following pay codes are not included:

| Pay Code | Description |
|-----------------|-----------------------------|
| 430 | MERP Txble Reimb - Inactive |

B. Pursuant to Government Code §31461(b) compensation earnable, shall not include in any case the following:

1. Any compensation determined by the Board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:
2. Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the

member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

3. Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.
4. Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.
5. Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.
6. Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
7. Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

3. Pursuant to Government Code §31641(c), the terms listed above in paragraph 2 are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003)110 Cal.App.4th 426.

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

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

The foregoing resolution introduced by, seconded by, and carried this 13th day of December, 2017, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

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

Dan Gjerde
Board of Retirement Chair

Attest: _____
James R. Wilbanks, Ph.D.
Retirement Administrator