

Date: September 18, 2019
To: Board of Retirement
From: James Wilbanks, Executive Director
Subject: Resolution 2019-02 Defining Pensionable Compensation Pursuant to Government Code §31461 for Members What Are Not Subject to Government Code §7522.34 (Non-PEPRA Members)

Mendocino County created a new Pay Code to accommodate the payment of differential pays, such as AM Shift/PM Shift, for a member that is on Police Leave with tax exempt pays. Per Workers' Compensation laws, the County is required to continue these premium pays while the member is on Police Leave.

This new code is 473 with a description of Police Leave Differential Pays. The nature of the pay is exactly the same as Pay Codes 406 and 407 in Resolution 2018-01.

In accordance with Government Code Section 31461, this pay items should be included in pensionable compensation. The attached resolution specifies an effective date of August 1, 2019 because these pay codes were used in August and contributions have been remitted on behalf of members related to this pay codes.

I recommend the following motion:

“Madam Chair, I move to adopt Resolution 2019-02 as presented.”

RESOLUTION ~~2018-2019~~ - ~~0102~~**TO SUPERSEDE RESOLUTION ~~2017-2018~~ – 01 DEFINING COMPENSATION EARNABLE
PURSUANT TO GOVERNMENT CODE §31461 FOR MEMBERS WHO ARE NOT SUBJECT TO
GOVERNMENT CODE §7522.34 (NON-PEPRA MEMBERS)**

WHEREAS, for those 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 September ~~1918~~, ~~2018~~2019, resolution number ~~2017-2018~~ – ~~08-01~~ is superseded, and pursuant to Government Code §31461 as interpreted by the courts, the Board hereby makes the following determinations as to what is included in "compensation earnable" and items of remuneration that are not included as of ~~July-August 1~~, ~~2018~~2019:

1. Compensation earnable shall include:

Pay Code	Description
303	Vacation Pay-Out Non Management
304	Vacation Pay-Out Management
330	3% NC Rtd
331	5% Cert Rtd
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
 473 [Police Leave Differential Pays](#)
 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 Mr. Knudsen, seconded by Ms. Harris, and carried this ~~19th~~ 18th day of September, ~~2018~~ 2019, by the following vote:

Ayes: ~~8~~

Noes: ~~0~~

Abstain: ~~0~~

Absent: ~~4~~

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



~~Dan Gjerde~~ Kathryn Cayness
Board of Retirement Chair

Attest:



James R. Wilbanks, Ph.D.
Executive Director