

Date: February 19, 2020  
To: Board of Retirement  
From: James Wilbanks, Executive Director  
Subject: Resolution 2020-01 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 in accordance with the new Memorandum of Understanding between the County and the Mendocino County Probation Employees' Association (MCPEA) bargaining group which created a new pay item. The new item is pay code 342 – Holiday Bank Paid. According to the notice from the County: “The use of Holiday Bank (340) may be used in the same manner as vacation leave hours, but a pay out of the unused Holiday Bank would be paid out using the new pay code 342. The new pay code will function in every other fashion as the Deputy Sheriff's Association (DSA) Pay Code 341, which is not subject to Pensionable Compensation or Compensation Earnable.”

In accordance with Government Code Section 31461, this pay item should not be included in pensionable compensation as it is payment for services provided outside of regular working hours.

Since we are proposing changes to the resolution, I asked staff to review the existing codes for consistency between our resolutions and the County system. The changes to the pay code descriptions in the draft resolution are a result of that effort.

I recommend the following motion:

“Madam Chair, I move to adopt Resolution 2020-01 as presented.”

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**RESOLUTION 202019 - 014****TO SUPERSEDE RESOLUTION 2019 – 042 DEFINING COMPENSATION EARNABLE  
PURSUANT TO GOVERNMENT CODE §31461 FOR MEMBERS WHO ARE NOT SUBJECT  
TO GOVERNMENT CODE §7522.34 (NON-PEPRA MEMBERS)**

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**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 February 19, 2020~~December 11, 2019~~, resolution number 2019 – 042 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 February 1, 2020~~December 1, 2019~~:

1. Compensation earnable shall include:

<b>Pay Code</b>	<b>Description</b>
100	Regular Pay
300	Vacation
303	Vacation Pay-Out Non Management
304	Vacation Pay-Out Management
310	Sick Leave
311	Sick: Family
312	Sick: Bereavement

<b>Pay Code</b>	<b>Description</b>
313	Sick: Industrial
316	Paid Administrative Leave
322	CTO/FTO Used
323	ATO Used-MCPAA
325	Personal Leave
330	3% NC Rtd-Courts
330	Catastrophic Leave
331	5% Cert Rtd
331	Union Mentor Time
332	Union Time Bank
340	Holiday Bank
345	Military Leave
350	Bereavement: County Paid
351	PSPS Paid Time Off
375	Police Leave
376	Police Leave Elected Official
380	Management Leave
406	Shift PM
407	Shift AM
409	Supervisor Shift
417	>10% Bilingual
418	<9% Bilingual
422	Confidential 5%
424	On Call 3.50 Per Hour-MCPEA
427	On Call 4.50 Weekends/Holidays-MCPEA
432	Insurance Stipend
434	Clothing Allowance
435	Supplemental Pay
437	Retroactive Longevity
438	2.5% Longevity
439	5% Longevity
440	On Call 3.50 Weekdays-SEIU
441	On Call 4.00 Weekends/Holidays-SEIU
443	7.5% Longevity
444	10% Longevity
445	Car Allowance
452	Retroactive Salary Adjustment
456	Board Of Supervisors Car Allowance
461	Retroactive Regional Pay
472	Salary Adjustment Negative
473	Police Leave Differential Pay
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

Pay Code	Description
521	Special Assignment
523	5% Bilingual-MCPEA/MCPAA/MCLEMA
528	Housing
529	Resident Deputy Bonus
530	Officer In Charge
531	Officer In Charge Level 2
532	Detective/Investigator Premium
556	<del>5% Edu/Longevity Incentive</del> AA/AS/Supv Incentive-MCLEMA
557	<del>2.5% Edu/Longevity Incentive</del> Supv Incentive-MCLEMA
558	10% <del>Edu/Longevity Incentive</del> BA Cert Incentive-MC-MCLEMA
559	5% Regional
561	Hourly 5% Regional
567	3% Bilingual-MCPEA/MCPAA/MCLEMA
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
200	Overtime
201	Overtime Premium
202	Overtime Straight Time
302	Vacation Term Pay
305	Excess Vacation Cash Non Ret
321	CTO: Paid
341	Holiday Bank: Paid
<del>342</del>	<del>Holiday Bank: Paid MCPEA</del>
346	Deceased Wages
405	Holiday Premium Pay-SEIU/JH
430	HI Txble Reimb-Non-Box 12
446	Car Accountable
447	Deferred Compensation Match Fixed Amount
448	3% Deferred Compensation Match
449	4% Deferred Compensation Match
450	Retroactive Salary Adj-OT
453	2% Deferred Compensation Match
454	Board of Supervisors Phone Allowance
458	Severance Pay
459	Military Adjustment <del>+/-</del>
460	SDI Adjustment
465	Work Comp Adjustment
467	Retention Pay
<del>469</del>	<del>Misc Ded: OT</del>
<del>470</del>	<del>Misc Adj +/- Not Subj Rtmt</del>
480	Call Back
485	Holiday Worked

Pay Code	Description
498	Non Taxable Adjustment
513	<a href="#">K9 Care-Taking Stipend</a> <del>Animal Care Taking Hours</del>
524	Uniform Separate Check
525	Uniform Allowance
827	Clothing Reimburse
834	Tool Reimburse
891	Moving Expense
892	Taxable Reimburse
894	Gym Membership Reimburse
<a href="#">953</a>	<a href="#">Taxable Benefit State</a>
<a href="#">954</a>	<a href="#">Taxable Benefit Federal</a>
<a href="#">966</a>	<a href="#">Taxable Benefit Fed+ /-State</a>
995	Taxable Fringe

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

1. Any compensation determined by the Board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:
2. Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.
3. Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.
4. Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.
5. Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.
6. Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
7. Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

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

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

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

The foregoing resolution introduced by, seconded by, and carried this ~~1944~~<sup>2020</sup><sup>19</sup>th day of ~~February~~<sup>December</sup>, 2020<sup>19</sup>, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

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

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Kathryn Cavness  
Board of Retirement Chair

Attest: \_\_\_\_\_  
James R. Wilbanks, Ph.D.  
Executive Director