



Date: July 15, 2020  
To: Board of Retirement  
From: Doris L. Rentschler, Executive Director  
Subject: Resolution 2020-06 Defining Compensation Earnable Pursuant to Government Code §31461 for Members Not Subject to Government Code §7522.34 (Non-PEPRA Members)

Recommended Action:

1. Adopt Resolution 2020-06 as presented

Mendocino County Superior Court created a new pay code in response to federal legislation. The code FML is used to pay employees directly or indirectly impacted by COVID-19.

In accordance with Government Code Section 31461, this pay item should be included in compensation earnable for non-PEPRA members.

Additionally, the resolution reflects a correction to the classification of pay code 525 for Uniform Allowance. In December 2019, existing components of Compensation Earnable were reviewed for consistency between the resolutions and the County system, and several pay codes not previously included were added for the sake of completeness. In resolutions 2019-04, 2020-01, and 2020-03, the earn code for Uniform Allowance (code 525) was erroneously included on the excluded compensation list. The Uniform Allowance has been and remains includible in Compensation Earnable for Non-PEPRA members. It is excludible for PEPRA members and is appropriately listed as such on resolutions 2019-05, 2020-02, and 2020-04.

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**RESOLUTION 2020 - ~~0306~~****TO SUPERSEDE RESOLUTION 2020 - ~~01-03~~ 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 ~~April~~ July 15, 2020, resolution number –2020-~~01-03~~ 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 ~~March 22~~ April 15, 2020:

1. Compensation earnable shall include:

| Pay Code | Description                     |
|----------|---------------------------------|
| 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               |
| 313      | Sick: Industrial                |
| 316      | Paid Administrative Leave       |
| 322      | CTO/FTO Used                    |

| <b>Pay Code</b> | <b>Description</b>                   |
|-----------------|--------------------------------------|
| 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                     |
| 390             | FFCRA Type 1,2,3                     |
| 391             | FFCRA Type 4,5,6                     |
| 393             | Advanced Sick 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                |

| <b>Pay Code</b> | <b>Description</b>                    |
|-----------------|---------------------------------------|
| 520             | Field/Specialized Training            |
| 521             | Special Assignment                    |
| 523             | 5% Bilingual-MCPEA/MCPAA/MCLEMA       |
| <u>525</u>      | <u>Uniform Allowance</u>              |
| 528             | Housing                               |
| 529             | Resident Deputy Bonus                 |
| 530             | Officer In Charge                     |
| 531             | Officer In Charge Level 2             |
| 532             | Detective/Investigator Premium        |
| 556             | 5% Edu/Longevity Incentive-MCLEMA     |
| 557             | 2.5% Edu/Longevity Incentive-MCLEMA   |
| 558             | 10% Edu/Longevity Incentive-MCLEMA    |
| 559             | 5% Regional                           |
| 561             | Hourly 5% Regional                    |
| 567             | 3% Bilingual-MCPEA/MCPAA/MCLEMA       |
| 581             | Longevity Yrs of Svc 2                |
| 926             | Uniform Non-Cash                      |
| <u>FML</u>      | <u>COVID-1- FMLA – Superior Court</u> |

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

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

| <b>Pay Code</b> | <b>Description</b>                       |
|-----------------|--|
| 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                       |
| 342             | Holiday Bank: Paid MCPEA                 |
| 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 -                    |
| 460             | SDI Adjustment                           |
| 465             | Work Comp Adjustment                     |
| 467             | Retention Pay                            |
| 469             | Misc Ded: OT                             |
| 470             | Misc Adj +/- Not Subj Rtmt               |

| Pay Code       | Description                  |
|----------------|------------------------------|
| 480            | Call Back                    |
| 485            | Holiday Worked               |
| 498            | Non Taxable Adjustment       |
| 513            | K9 Care-Taking Stipend       |
| 524            | Uniform Separate Check       |
| <del>525</del> | <del>Uniform Allowance</del> |
| 827            | Clothing Reimburse           |
| 834            | Tool Reimburse               |
| 891            | Moving Expense               |
| 892            | Taxable Reimburse            |
| 894            | Gym Membership Reimburse     |
| 953            | Taxable Benefit State        |
| 954            | Taxable Benefit Federal      |
| 966            | Taxable Benefit Fed+/-State  |
| 995            | Taxable Fringe               |

- B. Pursuant to Government Code §31461(b) compensation earnable, shall not include in any case the following:
1. Any compensation determined by the Board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:
  2. Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.
  3. Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.
  4. Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.
  5. Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.
  6. Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
  7. Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

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

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

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

The foregoing resolution introduced by \_\_\_\_\_, seconded by \_\_\_\_\_, and carried this 15th day of ~~April~~July, 2020, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

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

\_\_\_\_\_  
Kathryn Cavness  
Board of Retirement Chair

Attest: \_\_\_\_\_  
~~James R. Wilbanks~~Doris L. Rentschler, Ph.D.  
Executive Director