

CONTRA COSTA COUNTY EMPLOYEE'S RETIREMENT ASSOCIATION

**DETERMINING WHICH PAY ITEMS ARE "COMPENSATION"
FOR RETIREMENT PURPOSES**

Adopted: 12/05/97
Amended: 01/13/98
Amended: 03/10/10

PURPOSE:

The California Supreme Court decision in Ventura County Deputy Sheriff's Association v. Board of Retirement, 16 Cal.4th 483 (1997) changed a previously accepted construction of the statutory framework governing the compensation includible in the calculation of pensions under the 1937 Retirement Act.

In keeping with this ruling, the Retirement Board has re-examined the criteria it previously used to determine which pay items are compensation includible under Government Code Section 31460. The Board recognizes that any change in policy must not jeopardize the actuarial soundness of the retirement system.

Effective October 1, 1997, the following general principles will be applied in determining which pay items are subject to retirement contributions and included in pension calculations.

POLICY:

1. Compensation includes all payments for services performed.

All cash payments given as remuneration either for services rendered or for special skills or qualifications (ie. merit pay, longevity pay, standby pay, bilingual pay, holiday pay, educational incentive pay, etc.) are included in compensation.

2. Compensation does not include "the monetary value of other advantages furnished to a member," but does include cash payments in lieu of such other advantages.

In-kind benefits and reimbursements for job-related expenses are excluded.

With regard to cash payments in lieu of such advantages, the Board will evaluate how closely the pay item in question resembles, or functions as an effective substitute for salary.

Cash payments for items of "advantage" that the employee would otherwise purchase with salary are included.

3. “Overtime” compensation is not included in compensation earnable if it is in excess of what is considered normal working hours.

If the time worked is ordinarily expected to be worked, then it is included regardless of its formal characterization as overtime for pay purposes.

The fact that payments are made in a lump-sum will not prevent their inclusion within compensation earnable if they are accrued for time regularly worked, and simply withheld to a later date within the same year.

4. Remuneration paid in cash for time earned is considered “final compensation” and is limited by the following:

a. Annual “cash-out”

The value of accrued time, such as vacation, holiday or sick leave, that is sold back to the employer by the employee each year under a “cash-out” agreement, is includible in compensation earnable.

b. Lump sum at termination

Only the portion of accrued time (such as vacation, holiday or sick leave) that is paid in the form of a lump sum at termination, and that represents time earned during the final compensation period is includible in compensation.

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

**ADDENDUM TO POLICY FOR DETERMINING WHICH PAY ITEMS ARE
"COMPENSATION" FOR RETIREMENT PURPOSES**

PURPOSE:

This Addendum to the Policy for Determining Which Pay Items are "Compensation" for Retirement Purposes, adopted December 5, 1997, and amended January 13, 1998 ("Policy"), reflects the Retirement Board's re-examination of the Policy since its adoption and the Retirement Board's decision to revise certain aspects of the Policy with respect to persons who become members of the retirement system on and after January 1, 2011. This Addendum is made as of March 10, 2010 and shall be referenced in communications to affected members regarding the Policy following its adoption.

POLICY:

Notwithstanding anything to the contrary in the Policy, the following policies and procedures shall be effective as to the determination of "compensation," "compensation earnable" and "final compensation," as defined in the County Employees Retirement Law of 1937, Government Code sections 31450, et seq.

1. Remuneration paid in cash for time earned is considered "final compensation" and is limited by the following:

- a. Annual "cash out"
The value of accrued time, such as vacation, holiday, sick or administrative leave, that is both earned and sold back to the employer by the employee during the final compensation period under a "cash-out" agreement, is includable in compensation earnable.
- b. Lump sum at termination
Only the portion of accrued time (such as vacation, holiday, sick or administrative leave) that is paid in the form of a lump sum at termination, and that represents time both earned and cashable during the final compensation period, is includable in compensation earnable.

2. Additional examples of amounts that are not included in "compensation earnable"

- a. For each year of the final compensation period, leave amounts sold back during any twelve-month period that were accrued over two or more fiscal or calendar years,

and that exceed the amount that was both earned and cashable during service in that twelve-month period.

- c. Incentives, bonuses and other payments to the extent they may not be received in cash during service, but only upon termination or retirement.

- c. Conversion of in-kind benefits and other advantages to cash during the final compensation period.

3. Members affected

This Addendum shall be effective as to the calculation of retirement allowances for those members of CCCERA whose original date of membership in the retirement system is on or after January 1, 2011.