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Circular Letter

October 25, 2012

TO: **ALL CALPERS EMPLOYERS**

SUBJECT: **STATUTORY AND REGULATORY REQUIREMENTS FOR PUBLICLY AVAILABLE PAY SCHEDULES**

The purpose of this Circular Letter is to remind CalPERS employers that only those pay amounts that meet the definition of compensation earnable can be used when calculating retirement benefits.

Compensation earnable is defined in statute and further clarified by California Code of Regulations (CCR) Section 570.5. Specifically, this Circular Letter seeks to address the requirements related to publicly available pay schedules.

Compensation Earnable & The Requirement For Publicly Available Pay Schedules

The Public Employees' Retirement Law (PERL) Government Code Sections 20636 and 20636.1 define compensation earnable for State, School, and Public Agency members. In order to meet the definition of compensation earnable, an amount of pay must either constitute payrate or special compensation as defined in the statutes. Section 20636(d) further requires that payrate and special compensation schedules, ordinances, or similar documents be public records available for public scrutiny.

Section 20636(b)(1) (applicable to Public Agency members) and 20636.1(b)(1) (applicable to School members) require pay amounts to be paid pursuant to publicly available pay schedules. For example, section 20636 (b)(1) states:

“Payrate means the normal monthly rate or pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. “Payrate,” for a member who is not in a group or class, means the monthly rate of pay or base pay of the members, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).” (Emphasis added.)

CCR 570.5 was adopted April 13, 2011, with an effective date of August 10, 2011. CCR 570.5 sought to clarify the requirement of publicly available pay schedules.

After CCR 570.5 was adopted, CalPERS sent [Circular Letter #200-056-11](#) dated August 19, 2011, notifying all employers of the requirements of CCR 570.5.

Importance of Correct Reporting

Due to the importance of correct payroll reporting in administering the PERL and member benefits, CalPERS is sending this additional Circular Letter to remind all employers of the criteria for reporting compensation earnable.

CCR 570.5 outlines the required elements necessary to meet the definition for a publicly available pay schedule as follows:

- (a) For purposes of determining the amount of “compensation earnable” pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:
 - (1) Has been duly approved and adopted by the employer’s governing body in accordance with requirements of applicable public meeting laws;
 - (2) Identifies the position title for every employee position;
 - (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
 - (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
 - (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer’s internet website;
 - (6) Indicates an effective date and date of any revisions;
 - (7) Is retained by the employer and available for public inspection for not less than five years; and
 - (8) Does not reference another document in lieu of disclosing the payrate.

All eight (8) requirements must be met in one salary schedule for each member’s pay, in order for CalPERS to approve the pay amount as payrate and reportable compensation earnable.

No Applicable Pay Schedule

If an agency cannot provide a document meeting the requirements for a publicly available pay schedule, then CalPERS must determine that the pay amount fails to meet the definition of payrate. CCR 570.5 (b)(1)-(4) outlines the process by which

CalPERS may determine a member's payrate when there is no publicly available pay schedule provided.

CCR 570.5 (b) states:

- (b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:
- (1) Documents approved by the employer's governing body in accordance with requirements of public meeting laws and maintained by the employer;
 - (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
 - (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
 - (4) Last payrate for the member in a position that was held by the member that is listed on a pay schedule that conforms to the requirements of subdivision (a) of a former CalPERS employer.

It is important that all employers comply with the compensation earnable provisions and corresponding regulations of the PERL. Where employers fail to comply, pay amounts will be determined to not constitute payrate and accordingly CalPERS will be unable to use such pay amounts when calculating members' retirement benefits.

It is therefore critical that employers review their pay schedules to verify that all members' pay amounts are included within a publicly available pay schedule. For assistance or questions related to the development of a publicly available pay schedule, please direct your inquiries to the CalPERS Compensation and Employer Review Unit.

If you have any questions, please contact the CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

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