



## Special Compensation Circular Letter

California Public Employees' Retirement System  
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December 12, 2016

Circular Letter: 200-060-16  
Distribution: IV, V, VI, X, XII, XVI

**To: All CalPERS Employers**

**Subject: Reportable Compensation and Settlement Agreements**

The purpose of this Circular Letter is to clarify what types of compensation are reportable to CalPERS, and to emphasize that compensation awarded through a settlement agreement is not reportable to CalPERS.

### **Settlement Agreements**

A settlement agreement may include any of the following:

- Third-party arbitrator decisions
- Agreements between the employer and the employee, settled outside of arbitration
- Court orders
- Hearing Officer Decisions
- Stipulations or stipulated judgments

### **Compensation Reportable**

In order for compensation to be reportable to CalPERS, the compensation must meet the definition of "Compensation Earnable," as provided in the Public Employees' Retirement Law (PERL), Government Code (G.C.) section 20636, which is defined in relevant part as:

"(a) 'Compensation earnable' by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g)...

(b) (1) 'payrate' means the normal monthly rate of 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...

(c) (1) Special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions...

(g) (1) Notwithstanding subdivision (a), 'compensation earnable' for state members means the average monthly compensation, as determined by the board, **upon the basis of the average time put in by members** in the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. The computation for an absence of a member shall be based on the compensation earnable by him or her at the beginning of the absence and for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in that state service.

(2) Notwithstanding subdivision (b), 'payrate' for state members means the average monthly remuneration paid in cash out of funds paid by the employer to similarly situated members of the same group or class of employment, **in payment for the member's services** or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence..."

Compensation may only be reported to CalPERS if the member performed the duties required by the position during the period of time for which compensation is being reported. Retroactive salary adjustments or back pay for any period of time in which the member did not actually perform the duties of his or her position cannot be reported to CalPERS.

Apart from the exceptions noted below, retroactive compensation and service credit contained in a settlement agreement or any stipulation between an employer and a member is not reportable to CalPERS. The compensation awarded in an agreement or stipulation is not for a period of time in which the member performed the duties of his or her position, and therefore cannot be compensation earnable.

### **Exceptions**

There are three statutory exceptions to this rule. First, G.C. section 21198 provides that if a member retires from service following an involuntary termination and is subsequently reinstated to their former position pursuant to an administrative or judicial proceeding, retroactive compensation and service credit is reportable to CalPERS. G.C. section 21198 provides:

"A person who has been **retired under this system for service following an involuntary termination** of his or her employment, and who is **subsequently reinstated to that employment** pursuant to an administrative or judicial proceeding, shall be reinstated from retirement. The requirements of Section 21196 shall not apply to that reinstatement. Reinstatement shall be effective as of the date from which salary is awarded in the administrative or judicial proceedings, and his or her rights and obligations shall be as specified in this article..."

Second, G.C. section 20969.3 requires a member be reinstated, without regard to retirement status, who is involuntarily terminated on or after January 1, 2017, based on a subsequent reinstatement to that employer pursuant to an administrative, arbitral, or judicial proceeding<sup>1</sup>. G.C. section 20969.3 states:

“(a) A member who was **involuntarily terminated** and who is subsequently reinstated to that employment, pursuant to an administrative, arbitral, or judicial proceeding, shall be reinstated with all retirement benefits that the member otherwise would have accrued. Administrative proceedings also include proceedings before the governing board of a school district, a charter school, a county office of education, or a community college district.

(b) Reinstatement of benefits shall be effective as of the date from which salary is awarded in the administrative, arbitral, or judicial proceedings. Contributions shall be made for any period for which salary is awarded in the administrative, arbitral, or judicial proceedings in the amount that the member would have contributed had his or her employment not been terminated, and he or she shall receive credit as state service, as defined in Section 20069, for the period for which salary is awarded and contributions are received.

(c) This section shall apply to members who were subject to an involuntary termination **effective on or after January 1, 2017**.

(d) An employer of the member described in subdivision (a) shall notify the board of the final decision ordering the member’s reinstatement to employment within five days of the date the decision becomes final. The notification shall include the date of involuntary termination and the date on which the member was reinstated to employment after the decision.”

Third, for state members only, G.C. section 19584 provides that if there is a State Personnel Board (SPB) ruling to revoke or modify an adverse action and reinstate the state employee to his or her former position, the awarded compensation can be reported to CalPERS. G.C. section 19584 provides:

“Whenever the board revokes or modifies an adverse action **and orders that the employee be returned to his or her position, it shall direct the payment of salary and all interest accrued thereto, and the reinstatement of all benefits that otherwise would have normally accrued.** ‘Salary’ shall include salary, as defined in Section 18000, salary adjustments and shift differential, and other special salary compensations, if sufficiently predictable...”

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

Renee Ostrander, Chief  
Employer Account Management Division

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<sup>1</sup> G.C. section 20969.3 was approved on September 29, 2016 and will be published in the 2017 PERL.