



California Public Employees' Retirement System
P.O. Box 942709
Sacramento, CA 94229-2709
(888) CalPERS (or 888-225-7377)
TTY: (877) 249-7442
www.calpers.ca.gov

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Circular Letter

October 27, 2014

TO: **ALL CALPERS EMPLOYERS**

SUBJECT: **COMMON MISREPORTED ITEMS OF COMPENSATION**

The purpose of this Circular Letter is to proactively provide information on the most common misreported items of compensation in an effort to mitigate employer errors and provide guidance on how to correctly report special pay items on behalf of a CalPERS member.

Special compensation, a component of compensation earnable, is applicable for classic members and is defined by Government Code (GC) sections 20636 and 20636.1 and California Code of Regulations (CCR) 571. Pensionable compensation is applicable for new members, those typically hired on or after January 1, 2013, and must meet the requirements defined by GC section 7522.34(a). More information regarding these requirements can be found in Circular Letter No.: 200-062-12.

The following are some of the most common special compensation reporting errors found during reviews of classic and new member accounts.

Longevity Pay

The most common misreporting of Longevity Pay is when agencies combine this item with other criteria, such as employee performance. Longevity Pay, as defined in CCR 571(a), should not specify additional requirements other than the length of service with an employer or the length of time worked in a specified job classification that exceeds a minimum period of five years. In cases where additional criteria is required by an agency, the item would not meet the definition of special compensation as outlined in CCR 571(a) and will be excluded when calculating retirement benefits.

Holiday Pay

The most common misreporting of Holiday Pay is when agencies report this special compensation item for employees that are not scheduled to work without regard to holidays. Holiday Pay, as defined by CCR 571(a)(5), is a statutory item and reportable to CalPERS for the purpose of calculating retirement benefits.



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CCR 571(5) defines Holiday Pay, in relevant part, as the following:

“Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require staffing without regard to holidays. . . . For those employees with written labor agreements providing holiday credit and allowing employees to cash out accumulated holiday credit, the cash out must be done at least annually and reported in the period earned. . . . If an employee utilizes the cash out option only during his/her final compensation period, it will be considered final settlement pay and excluded from reportable compensation. If the cash out option is also utilized near his/her final compensation period, it may still be excluded. . . .”

Additionally, floating holidays and holiday pay that is paid to an employee that volunteers to work, bids for the option to work, or elects to work on a holiday does not meet the definition of Holiday Pay and therefore is not reportable to CalPERS. This item of compensation will be excluded when calculating retirement benefits.

Uniform Allowance

There are two common situations of misreporting Uniform Allowance. The first common reporting error is when agencies do not report the monetary value of uniforms provided. The monetary value of uniforms meets the definition of Uniform Allowance as outlined in CCR 571(a), and should therefore be reported to CalPERS. Additionally, the agency's written labor policy or agreement must indicate the conditions for payment and the monetary value of the uniform. The second common reporting error regarding Uniform Allowance is when agencies report this special compensation for unqualified items. As stated in CCR 571(a), Uniform Allowance “excludes items that are solely for personal health and safety such as protective vests, pistols, bullets, and safety shoes.” If an item is found to be used solely for personal health or safety, that portion of compensation will be excluded from calculating any retirement benefits.

* This item is not reportable for new members as defined by GC 7522.04(f).

Bonus

The most common misreporting of a Bonus is when agencies provide a bonus that is not available to a member's group or class or is based on criteria other than superior performance. Bonus, as defined by CCR 571(a)(1) is “compensation awarded to employees for ‘superior performance’ or ‘merit pay’”. Additionally, “a program or system must be in place to plan and identify performance goals and objectives”. If there is no clear plan in place, the compensation item would not meet the definition of Bonus and would be excluded in calculating a retirement benefit. If this pay is provided only during a member's final compensation period, it will be considered Final Settlement Pay, and excluded from the member's final compensation calculation.

* This item is not reportable for new members as defined by GC 7522.04(f).

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Temporary Upgrade Pay

The most common misreporting of Temporary Upgrade Pay is when agencies report this item for employees who are only taking on a portion of an upgraded position while continuing to do their current duties. Temporary Upgrade Pay, as defined by CCR 571(a)(3) is "compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration." When an employee maintains their current duties and takes on additional duties of an upgraded position, the additional duties meet the definition of overtime as outlined in GC 20635, and are not be reportable to CalPERS.

Final Settlement Pay

A common misreporting of compensation is when agencies report amounts in the form of severance packages or 'golden parachutes' that are typically paid in the member's final year of service prior to retirement. This compensation meets the definition of Final Settlement Pay. Final Settlement Pay in any form is not considered reportable to CalPERS in either pay rate or special compensation. Additionally, even if an employer's MOU specifically states that the compensation is not Final Settlement Pay, the compensation will still be excluded in calculating a retirement benefit.

Compensation Paid for Items not Listed in CCR 571

A common mistake is when agencies report items of compensation that are not included in the exclusive list of special compensation as outlined in CCR 571. Special compensation items listed in CCR 571(a) must meet all requirements listed in subsection (b), in order for the compensation to be reportable. Furthermore, CCR 571(c) states "Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b)." Any items reported to CalPERS that are not contained in the "exclusive list of specifically defined items of special compensation" do not meet the definition of compensation earnable and should therefore not be reported to CalPERS.

Publicly Available Pay Schedules

The California Code of Regulations (CCR) 570.5 as contained in the California Public Employees' Retirement Law (PERL) , provides the Requirement for a Publicly Available Pay Schedule. (a) For purposes of determining the amount of "compensation earnable" pursuant to GC sections 20630, 20636, and 20631.1, pay rate 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 pay rate 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;

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- (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 pay rate."

Whenever an agency does not provide a Publicly Available Pay Schedule as defined in CCR 570.5, CalPERS will determine that the pay amount reported fails to meet the definition of pay rate as provided in GC sections 20636 (b)(1), 20636.1(b)(1) and 7522.34(a), and will therefore be excluded when calculating a member's retirement benefit.

Impact on Final Compensation

Any compensation in question will not be used in a member's retirement calculation until all issues regarding that reported item of compensation have been resolved.

GC section 20160 requires CalPERS to correct errors made by an employer or by the system. Once an error is discovered, CalPERS must take action to correct it and pay only those benefits authorized under the PERL.

The Public Agency & Schools Reference Guide, which is located on **CalPERS On-Line**, contains additional information. If you have any questions, please call our CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

RENEE OSTRANDER
Acting Division Chief
Customer Account Services Division