

## **FINAL REGULATORY ACTION BY CalPERS**

Adoption of sections 569 and 573 and Amendment of section 571  
Noticed for Action: September 18, 1998

### Section 569. Employer Paid Member Contributions.

A contracting agency or school employer that pays all or a portion of normal member contributions based on compensation earnable, as Employer Paid Member Contributions (EPMC), must conform to the "group or class" requirements in Section 20691 of the Government Code and these regulations.

(a) Specifically, the payment of EPMC must be:

(1) Authorized in a written labor agreement;

(2) Based on earnings for normally-required duties;

(3) Based on earnings for normal hours of employment;

(4) Paid periodically, along with the earnings on which it is based;

(5) Based on earnings that are historically consistent; and

(6) Not final settlement pay.

However, the employer may qualify its payment of EPMC, by electing a cumulative "time-in-grade exception" which shall only apply to persons newly-hired into the pertinent group or class of employment.

(b) To be classified as "newly-hired," a member of the group or class must not have been previously hired or retained by the employer in any capacity whatsoever.

(c) To elect the time-in-grade exception, the employer's governing body must adopt an enabling resolution or ordinance in which it agrees to abide by the standards in this Section 569. The exception cannot take effect until after the resolution or ordinance has been reviewed and approved by CalPERS.

(d) The time-in-grade exception may be incremental, but it cannot exceed a total of five (5) years. For example, the employer may set a three-year threshold for paying fifty percent (50%), which increases by paying twenty-five percent (25%) each year, for up to two additional years of time-in-grade.

(e) Once a newly-hired employee has satisfied the time-in-grade exception, he or she shall be entitled to payment of EPMC on the same terms that apply to all other employees in the pertinent group or class.

The exception from paying EPMC pursuant to this Section 569 is separate and apart from the exception from paying and reporting the value of EPMC as an item of special compensation pursuant to Section 571(a). Both of these exceptions are

separate and apart from, nor do they apply to, the process for converting EPMC to payrate during the period of final compensation pursuant to Section 20692 of the Government Code.

Authority cited: Section 20636(e) and 20121, Government Code.

Reference: Section 20691, Government Code.

### Section 573. Optional Membership

Compensation and compensation earnable for members in the optional categories authorized in Section 20322) (referred to hereafter in this regulation as "optional members"), must be reported by contracting agency and school employers pursuant to the same statutory and regulatory requirements that apply to all other members.

(a) Specifically, said compensation shall conform to the "group or class" requirements that apply to payrate and items of special compensation, as shown below:

(1) Contained in a written labor agreement;

(2) Part of normally-required duties;

(3) Performed during normal hours of employment;

(4) Paid periodically as earned;

(5) Historically consistent with prior payments for the membership classifications;  
and

(6) Not final settlement pay.

(b) For persons who became optional members before July 1, 1994 by virtue of their position as a "city attorney" or "assistant city attorney" the following standards shall also apply:

(1) If compensation or compensation earnable (whether reported as payrate or special compensation) are set forth in a contract for legal services, then that contract shall be the equivalent of a written labor agreement.

(2) Compensation and compensation earnable shall be limited to payment for work performed by the optional member in his or her individual capacity as the city attorney or assistant city attorney, and shall not include payment for work performed by other persons (e.g., partner, associate, consultant) in the office of city attorney or a law firm that provides the services of a city attorney.

Authority cited: Sections 20636 and 20121, Government Code.

Reference: Sections 20322, 20630 and 20636, Government Code.

## Section 571. Definition of Special Compensation.

(a) The following list exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to CalPERS if they are contained in a written labor policy or agreement:

### (1) INCENTIVE PAY

Bonus - Compensation to Employees for superior performance such as "annual performance bonus" and "merit pay". If provided only during a member's final compensation period, it shall be excluded from final compensation as "final settlement" pay. A program or system must be in place to plan and identify performance goals and objectives.

Dictation/Shorthand/Typing Premium - Compensation to clerical employees for shorthand, dictation or typing at a specified speed.

Longevity Pay - Additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years.

Management Incentive Pay - Compensation granted to management employees in the form of additional time off or extra pay due to the unique nature of their job. Employees within the group cannot have the option to take time off or receive extra pay. This compensation must be reported periodically as earned and must be for duties performed during normal work hours. This compensation cannot be for overtime, nor in lieu of other benefits excluded under the statutes, nor for special compensation not otherwise listed in this Section 571.

Marksmanship Pay - Compensation to local police officers, county peace officers and school police or security officers who meet an established criterion such as "certification" as a marksperson.

Master Police Officer - Compensation to local police officers, county peace officers and school police or security officers who meet specified requirements, years of employment, performance standards, education, Peace Officer Standard Training (POST), and perform a specialty assignment.

Physical Fitness Program - Compensation to local safety members and school security officers who meet an established physical fitness criterion.

Value of Employer-Paid Member Contributions (EPMC) - The full monetary value of employer-paid member contributions (EPMC) paid to CalPERS and reported as an item of special compensation on behalf of all members in a group or class.

The value of EPMC is calculated on all "compensation earnable" excluding the special compensation of the monetary value of EPMC paid to CalPERS by the employer under Government Code section 20636(c)(4), thus eliminating a perpetual calculation.

(A) A resolution or ordinance of the governing body must be provided to CalPERS indicating the group or class, effective date, and the percent or amount of EPMC being paid and reported as an item of special compensation. The resolution or ordinance must be formally adopted by the employer's governing body, and submitted to CalPERS for review and approval.

(B) The resolution or ordinance must specify that the value of EPMC will be reported as an item of special compensation consistently, for all members in the affected group or class of employment -- except that the employer's governing body may elect a "time-in-grade exception" which shall only apply to persons newly-hired into the pertinent group or class of employment.

(C) To be classified as "newly-hired," a member of the group or class must not have been previously hired or retained by the employer in any capacity whatsoever.

(D) The time-in-grade exception must be elected in the same resolution or ordinance, or by amendment thereto, as adopted by the employer's governing body for the purpose of paying and reporting the value of EPMC, pursuant to this Section 571. The exception can only be used for the value of EPMC, and not for any other item of special compensation.

1. The time-in-grade exception must be applied consistently to all newly-hired employees in the pertinent group or class.

2. The time-in-grade requirement may be incremental, not to exceed a total of five (5) years. For example, the initial requirement may be three years for paying fifty percent (50%) with increases of twenty-five percent (25%) for each additional year of time-in-grade.

3. Once the initial time-in-grade requirement has been met by a newly-hired employee, the employer shall begin paying and reporting the value of EPMC for him or her to the same extent as for all others in the pertinent group or class.

(E) To implement the time-in-grade exception, the employer's governing body must acknowledge that it may experience an upward adjustment to its employer contribution rate. The acknowledgement must be included in the resolution or ordinance by which the employer's governing body elected to pay and report EPMC as an item of special compensation, by adoption or amendment thereto.

(F) The full terms of the resolution or ordinance by which the employer's governing body elects to pay and report the value of EPMC as an item of special compensation -- along with any time-in-grade exception for newly-hired employees -- must be incorporated into the written labor agreement that pertains to the affected group or class of employment.

The time-in-grade exception from paying and reporting the value of EPMC as an item of special compensation pursuant to this Section 571, is separate and apart from the time-in-grade exception from paying EPMC pursuant to Section 569 of these regulations. Both of these exceptions are separate and apart from, nor do they apply to, the process for converting EPMC to payrate during the period of final

compensation, pursuant to Section 20692 of the Government Code.

Off-Salary-Schedule Pay - Compensation in addition to base salary paid in similar lump-sum amounts to a group or class of employees. These payments are routinely negotiated through collective bargaining in lieu of increases to the salary schedule. These payments are based on a similar percent of scheduled salary not to exceed six percent (6%) **per fiscal year**. The contracting agency or school employer may adopt similar action for non-represented groups or classes of employment as were negotiated through collective bargaining.

(2) EDUCATIONAL PAY

(No amendment)

(3) PREMIUM PAY

(No amendment)

(4) SPECIAL ASSIGNMENT PAY

(No amendment)

(5) STATUTORY ITEMS

(No amendment)

(b) .....

(No amendment)

(c) .....

(No amendment)

(d) .....

(No amendment)

Authority Cited: Sections 20636(c)(5), and 20121, Government Code; Cal. Const. Art. XVI, sec. 17.

Reference: Sections 20630, 20636 and 20691, Government Code.

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