CalPERS

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Payroll

Circular Letter

October 30, 2019
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To: **All CalPERS Employers**
Subject: **Compensation for Settlement Agreements**

Purpose

The purpose of this Circular Letter is to inform all CalPERS contracted agencies of which types of compensation are reportable to CalPERS, and to emphasize that compensation awarded through a settlement agreement may or may not be reportable to CalPERS.

Settlement Agreement

A settlement agreement may include, but not be limited to, any of the following:

- Agreement between the agency and the member
- Court order
- Hearing Officer Decision
- Stipulation or stipulated judgement
- Third-party arbitrator decision

Reportable Compensation

For compensation to be reportable to CalPERS, the compensation must meet the definition of "compensation earnable" for Classic members and "pensionable compensation" for PEPRA members.

Compensation may only be reported to CalPERS if the member performed the duties required by the position during the period in which compensation was earned. Retroactive salary

adjustments or back pay for any period 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 member(s) is generally not reportable to CalPERS. The compensation awarded in an agreement or stipulation is not for a period in which the member performed the duties of his or her position, and therefore cannot be considered reportable compensation.

Reporting Retroactive Compensation for Settlements

There are **three statutory reportable scenarios** for backpay awards when a settlement agreement changes a member's employment status from involuntary termination or separation to a reinstatement. These sections have been applied based on the State Personnel Board's Appellate Decision[1] and the Precedential Decision of the CalPERS' Board of Administration adopting the Administrative Law Judge's Proposed Decision[2].

1. Government (Gov.) Code 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, arbitral, or judicial proceeding, retroactive compensation and service credit may be reportable to CalPERS.

2. Gov. Code 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 subsequent reinstatement to that employer pursuant to an administrative, arbitral, or judicial proceeding, retroactive compensation and service credit may be reportable to CalPERS.

3. For state members, Gov. Code section 19584 provides that if there is a State Personnel Board ruling to revoke or modify an adverse action from termination and **reinstate** the state member to his or her former position, the awarded compensation may be reportable to CalPERS.

It is the contracted agencies' responsibility to comply with all terms and conditions set forth in the contract with CalPERS and to ensure all reportable information is compliant with the Public Employees' Retirement Law.

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[1] Byrd, Plaintiff and Appellant, v. State Personnel Board et al, Defendants and Respondents. 36 Cal.App.5th 899.
[2] In the Matter of the Calculation of Final Compensation of KAREEMAH M. BRADFORD, Respondent, and CITY OF COMPTON, Respondent.

Questions

If you have any questions or concerns, contact the CalPERS Customer Contact Center at **888 CalPERS** (or **888**-225-7377), or email MOU_Review@Calpers.ca.gov.

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