California Public Employees' Retirement System
External Affairs Branch • Office of Public Affairs
(916) 795-3991 phone • (916) 795-3507 fax
www.calpers.ca.gov

FACT SHEET

Pensionable Compensation Regulations

WHAT IS PENSIONABLE COMPENSATION?

Pensionable compensation refers to employee pay that is factored into the calculation of the pension benefits for new members under the Public Employees' Pension Reform Act (PEPRA) when they retire from public service.

HOW WAS PENSIONABLE COMPENSATION IMPACTED BY THE PUBLIC EMPLOYEES' PENSION REFORM ACT (PEPRA) OF 2013?

Signed into law by Governor Brown in 2012 as part of AB 340, PEPRA created a definition of "pensionable compensation" for employees hired after January 1, 2013 who qualify as new members. The phrase is defined as "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."

PEPRA specifically excluded 13 types of pay that cannot be counted toward pensionable compensation, such as bonuses, vacation time, uniform allowances, overtime allowances, housing or transportation reimbursements, or any one-time or ad hoc payments. In addition, PEPRA put in place a hard cap on pensionable compensation of $113,700 for members who participate in Social Security and $136,440 for members who do not do so. Both limits are subject to increases in the Consumer Price Index.

DID PEPRA LIMIT PENSIONABLE COMPENSATION ONLY TO BASE PAY?

PEPRA did **not** limit pensionable compensation only to base pay. Although the Legislature had an opportunity to limit pensionable compensation to base pay when enacting PEPRA, it chose not to do so. Instead, the statutory language states that pensionable compensation is "normal monthly rate of pay or base pay," not one or the other. If the legislature had intended to limit it to base pay, it would not have been necessary to include a list of items excluded from pensionable compensation. For this reason, the regulations approved by the CalPERS Board of Administration on August 20, 2014, specify that pensionable compensation can be the "normal monthly rate of pay," which includes forms of pay in addition to "base pay." Additional forms of pay that employers typically provide include pay for special skills and certifications, educational degrees, and special assignments.

Additionally, we issued a "Circular Letter" to employers in December 2012 outlining our interpretation of the law that was widely distributed. We also encouraged the Governor and Legislature to amend the PEPRA if they disagreed with our interpretation. Clean-up legislation (SB 13) was used to add language to the Government Code on items that could be *excluded* from pensionable compensation, but it did not revisit the definition of "normal monthly rate of pay" or revise the language to limit pensionable compensation to "base pay" only. On August 15, 2014, the Governor sent CalPERS a letter saying that our proposed regulations "are largely consistent" with the purposes of the Pension Reform Act.

DID THE RECENT ACTION BY THE CALPERS BOARD ADD 99 ITEMS TO PENSIONABLE COMPENSATION?

No. The regulations are used to implement statues not to create or change the law. While certain pay items were excluded from pensionable compensation under PEPRA, the remaining 99 items that historically have been used by employers since 1993 were not excluded. The regulations bring clarity for employers and implementation for CalPERS. It should also be noted that compensation is bargained collectively between employers (state government and local contracting agencies) and their employees.

IS GOVERNOR BROWN OPPOSED TO CALPERS REGULATIONS DEALING WITH PENSIONABLE COMPENSATION?

The governor stated that the regulations are "largely consistent" with the purposes of PEPRA, and he wrote to us regarding <u>*only*</u> one of the items on the list of 99 – namely, "temporary upgrade pay." In his letter, the governor asserts pensions should be "based on normal monthly pay and not on short term, ad hoc pay increases." As such, the governor asked the Board to exclude "temporary upgrades from employee pension calculations."

Under PEPRA, "any one-time or ad hoc payments" made to employees cannot be counted as pensionable compensation. But the phrase "short term" is not found in the statute. Temporary upgrade pay is distinguishable from one-time payments in that it is not paid in a lump sum.. Temporary upgrade pay is when an employee is required by his or her employer or governing body to work in an upgraded position or classification for a certain period of time. These circumstances arise during extended medical leaves of absence, recruitments, or reorganizations.

In our consultations with stakeholders, we have found that many regard the additional pay provided during this period as normal monthly pay based on the fact that these assignments are at the control of the employer and the employee is receiving the normal rate of pay for the actual duties that employee has be assigned. As such, we consider the pay earned during this period as pensionable compensation.

WILL CALPERS REGULATIONS UNDERMINE THE ANTI-SPIKING PROVISIONS OF PEPRA?

No. Anti-spiking provisions of the new pension reform laws are not being changed. These include requiring pensions to be based on the average of an employee's last three years of compensation, a cap on final compensation used to calculate benefits, and prohibition against adding things such as vacation balances to final compensation. In addition, PEPRA prohibits any compensation that is paid to increase an employee's pension benefit.

DID CALPERS INCLUDE PENSIONABLE COMPENSATION IN ITS COST ANALYSIS?

Yes. We completed an actuarial analysis of PEPRA and estimated a savings between $42 billion and $55 billion over the next 30 years. The definition of pensionable compensation appeared to be modeled on the restrictions on pensionable earnings included in the Public Employees' Retirement Law over a decade ago. Therefore, our actuaries did not include or anticipate any savings from the definition of pensionable compensation.