

Oscar Hernandez - Mayor
Victor Bello - Vice Mayor
George Cole - Councilman
Teresa Jacobo - Councilwoman
George Mirabal - Councilman



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6330 Pine Avenue
Bell, California 90201
(323) 588-6211
(323) 771-9473 Fax

CITY OF BELL

October 2, 2006



Alinda Heringer
CalPERS - AESB Branch
Unit 115
400 'P' Street
Sacramento, CA. 94229

Re: City of Bell # 0069
Exception for Compensation Adjustments

Dear Ms. Heringer,

This letter is to request your consideration and approval for an Exception related to one-time compensation adjustments provided to the individuals of the Executive and Administrative Management classifications.

The City of Bell's recent audit by CalPERS has provided us with some "much needed" valuable education and understanding of the CalPERS Retirement system.

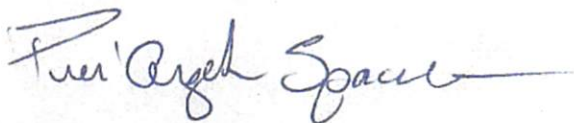
In July, 2005, the City Council initiated a comprehensive review of the City's overall performance since the current Chief Administrative Officer's (CAO) hire (1993). It was determined that the City's deficit General Fund balance of approximately \$6 million at the time of the CAO's hire had been replenished and has consistently continued to accumulate an excess of \$1 to \$2 million annually. As a result, the Chief Administrative Officer's annual compensation was adjusted to reflect his contributions to the City (see Attachment A). Further, the Assistant to the Chief Administrative Officer's position was reclassified from Administrative Management to Executive Management (see Attachments B and C) and similar compensation provided to reward her for her efforts and new responsibilities (see Attachment D). It should also be noted that the City Council, also members of the Executive Management classification were compensated accordingly for their contributions and efforts toward the City's dramatic financial recovery.

To summarize the annual compensation increases, the CAO received a 47% increase, the Assistant to the CAO received a 42% increase, and the City Council received 38%. Contracts reflecting the changes for the CAO and the Assistant to the CAO are enclosed (see Attachments E and F).

Additionally, a number of reviews conducted by independent counsel have recently identified a couple of items inadvertently reported incorrectly by the City. First, we were recently informed that our current medical reimbursement program, provided to the Executive and Administrative classifications should be taxable and reflected on the employees W-2s. To simplify matters, we would like to eliminate the program, and increase the affected individual's compensation by \$5,000 annually. The medical reimbursement program guidelines currently in effect are enclosed for your understanding (see Attachment G). Secondly, deferred compensation contributions for the Executive Management classification was not reported on payroll as part of the gross reportable salary of the employee. This reporting will be corrected on the payroll, effective January 1, 2006. Please advise if further corrective action is necessary to comply with CalPERS requirements.

Please review the enclosed information, and let me know if you need further information to support the request for an Exception. I look forward to your consideration of the above matters. I can be reached at (323) 923-2642.

Sincerely,



Pier' Angela Spaccia
Assistant to the Chief Administrative Officer

GENERAL FUND ANALYSIS
FISCAL YEARS 1987-1988 THRU 2004-2005

	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	TOTAL
Rev % change		-24.60%	10.93%	-23.16%	11.57%	9.46%	-6.66%	7.77%	4.38%	12.80%	-7.78%	17.14%	7.89%	5.50%	12.67%	5.89%	13.69%	4.93%	122.27%
Revenues	8,568,547	8,460,319	7,166,307	5,508,462	6,143,365	6,724,673	6,276,775	6,764,680	7,060,723	7,971,580	7,351,116	8,611,381	9,290,892	9,802,235	11,044,380	11,694,600	13,295,481	13,951,102	
Expenditures	9,558,246	8,383,089	7,377,752	5,870,000	6,513,853	6,595,938	6,200,062	5,728,615	5,526,994	5,782,541	6,239,339	6,323,367	7,174,431	7,820,933	8,400,479	10,166,326	10,751,357	12,079,398	
Exp % change		-12.29%	-11.99%	-20.44%	10.97%	1.26%	-6.00%	-7.60%	-3.52%	4.62%	7.90%	1.35%	13.46%	9.01%	7.41%	21.02%	5.75%	12.35%	94.83%
Net excess (deficit)	(939,699)	(1,922,770)	(211,445)	(363,538)	(370,488)	128,735	76,713	1,036,065	1,533,729	2,189,039	1,111,777	2,288,014	2,116,461	1,981,302	2,643,901	1,528,274	2,544,124	1,871,704	20,921,103

27.44%

	Actual Revenues 1993-94	Actual Expenditures 2004-05	Growth	Sum of 94 thru 05
Year	6,276,775	13,951,102	122.27%	113,114,945
Unaudited Fiscal year	6,200,062	12,079,398	94.83%	92,193,842
Growth above expenditures			27.44%	20,921,103

5,740,414.90

Net excess FY 1993-94 - 2004-05 20,921,103.00
 % of growth above expend 27.44%
 Total growth value \$ 5,740,414.90

Proposed % for salary adj 2.475%
 \$ 142,075.27

Rounded to the nearest thousand 142,000.00

Attachment A

GENERAL FUND ANALYSIS**Purpose:**

To provide information to the City Council to assess the financial performance of the General Fund and its correlation with the performance of the Chief Administrative Officer (CAO) since his first year of employment with the City.

Objective:

To determine the City's General Fund position during the periods prior and after the the employment of the present CAO. The analysis focuses on assessing the value-added to City's financial stability as a result of the CAO's financial and management strategy.

Sources used:

- Comprehensive Annual Financial Reports

Computation:

- Period: Fiscal years 1987-1988 through 2004-2005.
 - Financial data: General Fund audited revenues and expenditures for the period specified
1. Data was extracted from 2002-2003 CAFR page 13 for fiscal years 1987-88 through 2001-2002.
 2. Data was retrieved from 2004-2005 CAFR page 25 for fiscal years 2002-2003 through 2004-2005.
 3. The base year was 1993-1994, which is the first year of full-time employment of the CAO.
 4. Revenues for the years 1993 through 2005 were added to determine the total cumulative revenue for the selected period.
 5. Expenditures for the years 1993 through 2005 were added to determine the total cumulative expenditures for the selected period.
 6. The difference of revenues over expenditures (dollar value) was calculated to determine the cumulative net profit/(deficit) results obtained over the selected period.
 7. The difference of revenues over expenditures (percentage value) was calculated to determine the cumulative net profit/(deficit) results obtained over the selected period.
 8. The net profit amount (dollar value - step 6) was multiplied by the net profit percentage (percentage value - step 7) to determine the total growth value achieved over the selected period.
 9. Compensation increase was determined as 2.475% of total growth value amounting to \$142,075.27.
 10. The final amount was rounded to the nearest thousand yielding \$142,000.

Attachment B

RESOLUTION NO. 2003-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELL, CALIFORNIA DESIGNATING THE FOLLOWING FULL-TIME OFFICERS AND EMPLOYEES OF THE CITY TO BE UNREPRESENTED EMPLOYEES PURSUANT TO MUNICIPAL CODE SECTION 2.84.030(B) AND RESCINDING RESOLUTION NUMBERED 2002-41.

THE CITY COUNCIL OF THE CITY OF BELL DOES RESOLVE AS FOLLOWS:

SECTION 1. That Resolution Number 2002-41 is hereby rescinded.

SECTION 2. That pursuant to Bell Municipal Code Section 2.84.030(B) the following full-time officers and employees shall be designated unrepresented employees

EXECUTIVE MANAGEMENT

Chief Administrative Officer
City Council Members

ADMINISTRATIVE MANAGEMENT

Assistant to the Chief Administrative Officer
Chief of Police
Deputy Chief of Police
Deputy City Engineer
Director of Administrative Services
Director of Community Services
Director of General Services/Prosecutor

MANAGEMENT

Management Analyst
Office Coordinator
Senior Accountant

CONFIDENTIAL

Account Clerk
Office Assistant

MISCELLANEOUS

Business License Officer
Code Enforcement Officer
Community Services Technician
Customer Relations Representative
Filing Officer
Housing Coordinator
Housing Rehabilitation Technician
Housing Specialist
Parking Enforcement Officer
Police Dispatcher
Recreation Programmer
Recreation Supervisor
Senior Code Enforcement Officer
Senior Parking Enforcement Officer

RESOLUTION NO. 2004-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELL, CALIFORNIA DESIGNATING THE FOLLOWING FULL-TIME OFFICERS AND EMPLOYEES OF THE CITY TO BE UNREPRESENTED EMPLOYEES PURSUANT TO MUNICIPAL CODE SECTION 2.84.030(B) AND RESCINDING RESOLUTION NUMBERED 2003-31.

THE CITY COUNCIL OF THE CITY OF BELL DOES RESOLVE AS FOLLOWS:

SECTION 1. That Resolution Number 2003-31 is hereby rescinded.

SECTION 2. That pursuant to Bell Municipal Code Section 2.84.030(B) the following full-time officers and employees shall be designated unrepresented employees.

EXECUTIVE MANAGEMENT

City Council Members
Chief Administrative Officer
Assistant to the Chief Administrative Officer

ADMINISTRATIVE MANAGEMENT

Chief of Police
Deputy Chief of Police
Police Lieutenant
Deputy City Engineer
Director of Administrative Services
Director of Community Services
Director of General Services/Prosecutor

MANAGEMENT

Management Analyst
Office Coordinator
Senior Accountant


CONFIDENTIAL

Account Clerk
Office Assistant

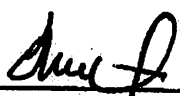
MISCELLANEOUS

Business License Officer
Code Enforcement Officer
Community Services Technician
Customer Relations Representative
Filing Officer
Housing Coordinator
Housing Rehabilitation Technician
Housing Specialist
Parking Enforcement Officer
Police Dispatcher
Recreation Programmer
Recreation Supervisor
Senior Code Enforcement Officer

SECTION 3. The City Clerk shall certify to the adoption of this Resolution.
PASSED AND APPROVED THIS 30th day of June 2003.


Teresa Jacobo
Mayor

ATTEST:


Theresa Diaz
City Clerk

I certify that the foregoing Resolution No. 2003-31 was adopted by the City Council of the City of Bell at a regular meeting held June 30, 2003, by the following vote.

AYES: Councilmember Bello, Hernandez, Mirabal, Mayor Pro Tem Cole,
Mayor Jacobo
NOES: None


ABSTAIN: None

ABSENT: None


Theresa Diaz
City Clerk

Senior Parking Enforcement Officer

SECTION 3. The City Clerk shall certify to the adoption of this Resolution.
PASSED AND APPROVED THIS 28th day of June 2004.


George Cole
Mayor

ATTEST:


Theresa Diaz
City Clerk

I certify that the foregoing Resolution No. 2004-24 was adopted by the City Council of the City of Bell at a regular meeting held June 28, 2004, by the following vote.

AYES: **COUNCILMEMBERS BELLO, JACOBO, MAYOR PRO TEM MIRABAL
AND MAYOR COLE**

NOES: **NONE**

ABSTAIN: **NONE**

ABSENT: **COUNCILMAN HERNANDEZ**


Theresa Diaz
City Clerk

Attachment D

GENERAL FUND ANALYSIS**Purpose:**

To provide information to the City Council to analyze the financial performance of the General Fund revenues and assess the contributing role of the Assistant to the Chief Administrative Officer (CAO) in the CAO's financial and management strategy since her first year of employment with the City.

Objective:

To determine the City's General Fund revenue position during the last three years. The analysis focuses on assessing the General Fund revenue growth in order to determine a salary adjustment percentage equitable for the position of the Assistant to the CAO in the Executive Management category.

Sources used:

- Comprehensive Annual Financial Reports

Computation:

- Period: Fiscal years 1987-1988 through 2004-2005.
 - Financial data: General Fund audited revenues and expenditures for the period specified
1. Data was extracted from 2002-2003 CAFR page 13 for fiscal years 1987-88 through 2001-2002.
 2. Data was retrieved from 2004-2005 CAFR page 25 for fiscal years 2002-2003 through 2004-2005.
 3. The base year was 2002-2003, which is the first year of full-time employment of the Assistant to the CAO.
 4. Revenues for the fiscal year 2004-2005 was divided by the fiscal year 2002-2003 to determine the percentage change from the base year to the most current fiscal year.
 5. The percentage change was divided by three to obtain an average three-year percentage change to be possibly use as the salary adjustment multiplying factor.
 6. Net excess for the fiscal year 2004-2005 was divided by the fiscal year 2002-2003 to determine the percentage change from the base year to the most current fiscal year.
 7. The percentage change was divided by three to obtain an average three-year percentage change to be possibly use as the salary adjustment multiplying factor.
 8. The smallest of the three-year revenue percentage change and the three-year net excess percentage change was selected as the salary adjustment multiplying factor.
 9. The net excess for the fiscal year 2004-2005 was multiplied by the three-year revenue percentage change.
 9. Compensation increase was determined as 6.43% of the 2004-2005 net excess value amounting to \$120,383.31
 10. The final amount obtained in step 9 was rounded to the nearest thousand yielding \$120,000, which was to be spread over the next four years.
 11. In order to have equitable salary adjustment percentages within the Executive Management group, the salary adjustment shall be as follows: fiscal year FY 2005-2006 \$55,000, FY 2006-2007 \$20,000, FY 2007-2008 \$25,000, and FY 2008-2009 \$20,000.

GENERAL FUND ANALYSIS

	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05
Rev % change		-24.60%	10.83%	-23.16%	11.57%	9.46%	-6.66%	7.77%	4.38%	12.80%	-7.78%	17.14%	7.89%	5.50%	12.67%	5.88%	13.68%	4.93%
Revenues	8,568,547	6,480,319	7,166,307	5,508,482	6,143,385	6,724,673	6,276,775	6,764,680	7,080,723	7,971,580	7,351,116	8,611,381	9,290,892	9,802,235	11,044,380	11,694,600	13,295,481	13,951,102
Expenditures	9,558,246	8,383,089	7,377,752	5,870,000	6,513,853	6,595,938	6,200,062	5,728,615	5,528,994	5,782,541	6,239,339	6,323,367	7,174,431	7,820,933	8,400,479	10,166,326	10,751,357	12,079,398
Exp % change		-12.29%	-11.98%	-20.44%	10.97%	1.26%	-6.00%	-7.60%	-3.52%	4.62%	7.90%	1.35%	13.46%	9.01%	7.41%	21.02%	5.75%	12.35%
Net excess (deficit)	989,699	(1,922,770)	(211,445)	(363,538)	(370,488)	128,735	76,713	1,036,065	1,533,729	2,189,039	1,111,777	2,288,014	2,116,481	1,981,302	2,643,901	1,528,274	2,544,124	1,871,704

	Base Year	Most recent	Total %	Average 3 yr %
	Revenues	audited FY	Change	Change
Base year 2002-03	11,694,600	13,951,102	19.30%	6.43%
Net Excess	1,528,274	1,871,704	22.47%	7.49%

Most recent Net Excess \$ 1,871,704.00
 Avg 3 yr % change 6.43%

120,383.31

Roundest to the nearest thousand 120,000.00
 (To be spread in the next 4 fiscal years)

Attachment 5

ADDENDUM NUMBER FIVE TO AGREEMENT

This FIFTH ADDENDUM TO AGREEMENT FOR EMPLOYMENT (hereinafter the "Fifth Addendum") is made this 1st day of July 2005, by and between the CITY OF BELL a general law city (the "City") and Robert A. Rizzo, an individual (the "Employee") pursuant to the following terms and conditions:

- A. The City is a general law city located in the County of Los Angeles, State of California: and
- B. City and Employee have entered into that certain Agreement for Employment dated September 1, 1996 and modified by Addendum Number One through Addendum Number Four (altogether the "Agreement"); and
- C. City desires to adjust the Agreement as provided in Section 6 of the Agreement.

NOW, THEREFORE, CITY AND EMPLOYEE agree to the following:

- 1. Section 6 of the Agreement is hereby modified to provide that the Basic Salary of Employee shall be adjusted as follows:
 - a) Effective July 1, 2005, \$17,000.00 per pay period.
 - b) Effective July 1, 2006, \$19,000.00 per pay period.
 - c) Effective July 1, 2007, \$21,000.00 per pay period.
 - d) Effective July 1, 2008, \$23,000.00 per pay period.

Each adjustment to the Basic Salary as provided in this Section shall be subject to the condition that the City's Audited Statement of the General Fund Balance for the immediate past fiscal year prior to the adjustment evidences a positive cash position. In the event said Fund Balance for such fiscal year results in a negative cash position, the salary adjustment provided herein shall not take effect and employee shall receive the previous amount of Basic Salary in effect prior to the adjustment as provided in the Agreement.

- 2. City and Employee hereby acknowledge and agree that except as expressly modified by this Fifth addendum, the Agreement is in full force and effect. All capitalized terms not specifically defined herein, shall have the same meaning ascribed to them in the Agreement.

IN WITNESS WHEREOF, the parties have caused this Fifth Addendum to Agreement for Employment to be executed as follows:

Page Two
Addendum 5-Rizzo

"City"
CITY OF BELL, CALIFORNIA

By: _____
George Mirabal, Mayor

Attest:

City Clerk

Approved as to Form:
City Attorney

By: _____
City Attorney

"Employee"

Robert A. Rizzo

ADDENDUM NUMBER TWO TO AGREEMENT

Attachment F

THIS SECOND ADDENDUM TO AGREEMENT FOR EMPLOYMENT, ("Agreement") is made this 1st day of July, 2005, by and between the CITY OF BELL, a general law city (the "City") and Pierangela Spaccia, an individual (the "Employee") pursuant to the following terms and conditions:

RECITALS

- A. The City is a general law city located in the County of Los Angeles, State of California; and
- B. The City desires the employment for services of Employee as the Assistant to the Chief Administrative Officer of City; and
- C. City desires to adjust the Agreement as provided in Section 5 of this Agreement.
- D. City desires to adjust the Agreement as provided in Section 6 of this Agreement.

NOW, THEREFORE, CITY AND EMPLOYEE agree to the following:

1. Basic Salary. Section 5 is hereby modified to provide that the Basic Salary of Employee shall be adjusted as follows:

- a. Effective July 1, 2005, \$7,115.40 per pay period.
- b. Effective July 1, 2006, \$7,884.65 per pay period.
- c. Effective July 1, 2007, \$8,846.16 per pay period.
- d. Effective July 1, 2008, \$9,615.40 per pay period.

Each adjustment to the Basic Salary as provided in this Section shall be subject to the condition that the City's Audited Statement of the General Fund Balance for the immediate past fiscal year prior to the adjustment evidences a positive cash position. In the event said Fund Balance for such fiscal year results in a negative cash position, the salary adjustment provided herein shall not take effect and Employee shall receive the previous amount of Basic Salary in effect prior to the adjustment as provided in the Agreement.

2. Employment Fringe Benefits. Section 6 is hereby modified to provide that the Employment Fringe Benefits of Employee shall be adjusted as follows:

- a. Employee shall, as of the effective date of this Agreement, accrue vacation leave as an unrepresented employee, in such amounts commensurate with the Employee's PERS service credit.

3. City and Employee hereby acknowledge and agree that except as expressly modified by this Second Addendum, the Agreement is in full force and effect. All capitalized terms not specifically defined herein, shall have the same meaning ascribed to them in the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement for Employment to be executed as follows:

("City")
CITY OF BELL, CALIFORNIA

By: _____
George Mirabal, Mayor

Attest:

By: _____
Rebecca Valdez, City Clerk

Approved as to Form:
City Attorney

By: _____

"Employee"

By: _____
Pierangela Spaccia

"G"

RESOLUTION NO 2003-29**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELL
IDENTIFYING THE EMPLOYEE COMPENSATION PLAN AND RESCINDING
RESOLUTIONS 2002-40, 2001-26, 2000-14, 98-42 and 97-01.**

Whereas, Resolution 2002-40, 2001-26, 2000-14, 98-42 and Resolution 97-01 have become obsolete and are hereby rescinded effective July 1, 2003; and

Whereas, the Civil Service Rules and Regulations, Article XVII Salaries, requires the City Council to adopt by resolution a basic compensation plan; and

Whereas, the compensation plan is to identify terms and conditions of employment for all unrepresented (non-safety) employees, and all other full-time employees of the City of Bell; however, in situations where any provision herein is in conflict with any applicable memorandum of understanding or employment agreement, the provision in the memorandum of understanding, or employment agreement shall prevail; and

Whereas, under California State law the City Council is granted the authority to designate the following classifications: Executive Management, Administrative Management, Management, Confidential, and Miscellaneous as Unrepresented, hereinafter referred to as Employees, and to acknowledge all other recognized employee representation units as of this date; and

Whereas, Part-time hourly employees shall not be eligible for any of the compensation plan terms and conditions, or any other rights not specifically granted them by the City of Bell Civil Service Rules and Regulations unless expressly required by City Contract, State Law, or Federal Law; and

Now, Therefore, the City Council of the City Of Bell does resolve as follows:

SECTION 1. COMPENSATION**A. OVERTIME PAY**

1. **Executive Management/Administrative Management, Management**
Employees who heretofore have been designated, pursuant to Resolution 2003-31, as "Executive Management", "Administrative Management" and "Management" are henceforth declared "exempt" in accordance with the Fair Labor Standards Act and will not receive compensation for working overtime.

2. **Other Employees**

All other employees shall be compensated for overtime in accordance with the Fair Labor Standards Act.

B. BILINGUAL PAY

1. **Confidential/Unrepresented (Non-Police Dispatch Personnel)**

The City shall pay one hundred dollars (\$100.00) per month effective July 1, 2002 increasing to one hundred fifty dollars (\$150.00) per month effective on the first pay period in July 2004 to any employee who has passed a proficiency test, to be conducted in a manner determined by the City. Such pay shall apply for speaking the Spanish language, or any other language approved by the City.

2. **Confidential/Unrepresented (Police Dispatch Personnel)**

The City shall pay one hundred sixteen and 67/100 dollars (\$116.67) per month effective July 1, 2002 increasing to one hundred fifty dollars (\$150.00) per month effective on the first pay period in July 2003, and then increasing to one hundred seventy five dollars (\$175.00) per month effective on the first pay period in July 2005 to any employee who has passed a proficiency test, to be conducted in a manner determined by the City. Such pay shall apply for speaking the Spanish language, or any other language approved by the City.

3. **Bilingual Pay Request**

Employee shall make a written request for bilingual pay to the Personnel Department, and shall be scheduled for a test within 90 day of receipt. If test has not been scheduled during this period, bilingual pay shall become effective.

4. **Employee reimbursed-costs for bilingual schooling**

The City shall reimburse the employee for bilingual schooling provided the employee receives prior approval in writing for the study program and passes the proficiency test.

C. SHIFT DIFFERENTIAL PAY

The City shall increase the base salary of those employees assigned to swing and graveyard shift of the Dispatch Department by five percent for any hours worked between 3 p.m. and 7 a.m. Such increase shall only apply for hours worked.

D. TRAINING DUTIES PAY

The City shall pay two thousand dollars (\$2,000) annually no later than the first pay period in May of each year to not more than two (2) dispatchers for training duties assigned by the Chief of Police. The Chief of Police may develop an annually training program for dispatchers and assignment of the Dispatchers shall take place by September 1st of each year. Appointed dispatchers must have a minimum of seven (7) years of service.

E. EXTRA TRAINING DUTIES PAY

The City shall increase the base salary of each full-time employee assigned to the Dispatch Department by ten percent (10%) when he/she is engaged in the training of a new employee. Such increase shall apply only while the assignment is in place.

F. SPECIAL ASSIGNMENT PAY

1. Management employees

Certain positions under this category may require special assigned duties. The City Council may assign special functions to the Management Analyst as deemed necessary in the course of business. In the event of such appointment the Management Analyst shall receive an additional compensation not to exceed five hundred eighty dollars (\$580.00) per month.

G. COURT PAY

The City shall pay each full-time employee assigned to the Dispatch Department the sum of one hundred twenty dollars (\$120.00) for each day the employee is required to appear and does appear in court. In addition, the employee shall receive seventy-five dollars (\$75.00) for each day of stand-by relating to such court appearance where the employee does not appear in court.

H. UNIFORM PAY/UNIFORMS PROVISION

1. Police Dispatch

Full-time employees assigned to the Dispatch Department shall receive an annual allowance of six hundred dollars (\$600.00) no later than the first pay period in September of each year to maintain or purchase their uniforms if necessary. Such allowance shall only be pay to those employees who are required to wear uniforms while on active duty in the employment of the City.

2. Police Records

Full-time employees assigned to the Records Department shall receive an annual allowance of five hundred dollars (\$500.00) no later than the first pay period in September of each year to maintain or purchase their uniforms if necessary. Such allowance shall only be pay to those employees who are required to wear uniforms while on active duty in the employment of the City.

3. Other Departments

The City shall provide uniforms to all other employees, who are required to wear uniforms while on active duty in the employment of the City and who do not fall in any of the groups prescribed in paragraphs (1) and (2) above.

I. JURY DUTY

Employees summoned to jury duty will receive their regular pay up to forty hours annually. In the event the employee receives any reimbursement from the pertaining judicial jurisdiction, court, and/or government agency, such reimbursement shall be reimburse to the City excluding mileage received for said jury duty.

J. MILEAGE REIMBURSEMENT

Employees who are requested to use their personal vehicles in the conduct of City business will be compensated for all miles traveled for business-related purposes at the effective standard mileage rate under the Internal Revenue Service Regulations (i.e. 2002 standard mileage rate is \$0.365).

K. TUITION REIMBURSEMENT

Non-safety employees, who successfully complete job-related classes, shall be reimbursed for tuition and supplies. Said reimbursement shall be paid subsequent to completion of the school term and not to exceed:

1. \$250 per school term or \$600 per year for a four-year college
2. \$100 per school term or \$250 per year for two-year college.
3. The Chief Administrative Officer may authorize additional reimbursement related to specifically job-related classes that would enhance or develop the current employee's position. Employee must request an interview with the Chief Administrative Officer to discuss the applicability and appropriateness of the classes. The interview and approval must occur prior to employee's enrollment in order to qualify for reimbursement.

L. PROFESSIONAL CERTIFICATION/LICENSING REIMBURSEMENT

Non-safety employees, who possess a professional certification or license related with their employment with the City of Bell, shall be reimbursed for the fees associated with the renewal of the aforementioned professional licensing. Some continuing education expenses may be reimbursed at the sole discretion of the Chief Administrative Officer; employee must request an interview with the Chief Administrative to obtain approval.

M. COMPENSATION FOR INJURY ON DUTY

Employees who are disabled by injury or illness arising during the course of employment will be entitled to benefits as provided under the Workers Compensation Law of the State of California.

N. ELECTED OFFICIAL PAY

1. City Clerk

The City Council of the City Bell shall rescind Resolution No 92-43 and establish a new compensation plan for the position of City Clerk for the City of Bell. Such position shall be compensated in the amount of one dollar (\$1.00) per month.

2. City Treasurer

The City Council of the City Bell shall rescind Resolution No 92-44 and establish a new compensation plan for the position of City Treasurer for the City of Bell. Such position shall be compensated in the amount of one dollar (\$1.00) per month.

SECTION 2. RETIREMENT

A. CONTRIBUTION

1. The City will pay the entire contribution for employees towards the Public Employees Retirement System (PERS) and the Supplemental Retirement Plan (SRP). The latter applies for those employees classified as non-safety only.

B. BENEFITS

1. Miscellaneous -3% at 55 Plan (2% from PERS and 1% from SRP)
2. Safety -3% at 50 Plan;
3. 1959 Survivor Benefit -Third Level (Safety only);
4. Sick Leave Conversion;
5. One year Final Compensation;
6. Military Service Credit.

SECTION 3. HOLIDAYS

A. NON-POLICE DISPATCH PERSONNEL

Employees will be entitled to a total of thirteen (13) holidays each fiscal year. This includes one (1) discretionary holiday. In order to maximize the hours of service to the community, and allow a total of thirteen holidays each fiscal year, the City Council will set a holiday schedule that will establish the holidays to be observed by the City during the corresponding fiscal year and its respective floating holidays, which shall total thirteen (13) days. Holidays may include the following:

New Years Day
Martin Luther King Day
Presidents Birthday
Memorial Day
Independence Day
Labor Day
Admission Day

Columbus Day
Veterans Day
Thanksgiving Day
Day After Thanksgiving
Christmas Day

B. POLICE DISPATCH PERSONNEL

The City recognizes that the police department functions every day of the year, twenty-four hours per day, and does not close for holidays. Police Dispatch Personnel are given certain paid holidays during the year on the day the City Hall is closed. Therefore, the first pay period (pay period shall mean the first full pay period in the corresponding month not the first pay date) in each November and June of every year, each employee assigned to the Dispatch Department shall be paid an additional amount for ten hours for each City-recognized holiday occurring in the prior six-month period. This shall be paid separate from regular payroll.

1. Observed Holidays. The following days shall be paid holidays:

To be paid the first pay period in June (70 hours)

Thanksgiving Day
The Day After Thanksgiving
Christmas Day
New Years Day
Martin Luther King Day
Washington's Birthday
Memorial Day

To be paid the first pay period in November (50 hours)

Fourth of July
Labor Day
Admissions Day
Columbus Day
Veteran's Day

2. Floating Holiday. In addition, each employee shall accrue one floating holiday per fiscal year. The said holiday shall be taken at the employee's discretion with the approval of the employee's supervisor. Permission to take the floating holiday will not be unreasonably withheld. The floating holiday must be taken prior to the ending of the applicable fiscal year; it may not be carried over to the following fiscal year.

SECTION 4. INSURANCE BENEFITS

Employees, as authorized in 2.840.030(B) of the Bell Municipal Code and designated in Resolution 2002-41 shall be eligible for the following insurance benefits according to the group category and the hire date:

A. PROVISIONS OF INSURANCE DURING EMPLOYMENT WITH THE CITY. The City shall make available medical, dental, vision and life insurance for all employees and their dependents based on their category and hire date. Coverage shall be as follows:

A.1. Executive Management

1. The City shall provide medical dental, vision, and life insurance to the employee and his/her dependants at no cost to the employee.
2. Employees identified under this category by Resolution 2003-31 shall be fully reimbursed for co-payments and deductible costs charged by their medical, dental and/or vision providers.

A.2. Administrative Management

1. The City shall provide medical dental, vision, and life insurance to the employee and his/her dependants at no cost to the employee.
2. Employees identified under this category by Resolution 2003-31 shall be reimbursed for co-payments and deductible costs charged by their medical, dental and/or vision providers, not to exceed five thousand dollars (\$5,000) per annum.

A.3. Management/Confidential/Miscellaneous

1. Employees hired after July 1, 2000 shall receive medical coverage for the employee and one dependant. Dental, vision, and life insurance coverage shall become effective after completion of initial probationary period and shall be paid entirely by the City.
2. Employees with a commencement date prior to June 30, 2000 shall have medical, dental, vision and life insurance coverage for the employee and their dependants at no cost to the employee.

A.4. Other elected officials

1. The position of City Clerk shall be a non-benefit position. The City of Bell shall provide no medical coverage for the incumbent and/or his/her dependants.
2. The position of City Treasurer shall be a non-benefit position. The City of Bell shall provide no medical coverage for the incumbent and/or his/her dependants.

B. PROVISIONS OF INSURANCE BENEFITS AFTER TERMINATION FROM CITY.

B.1. Qualifying employee

The City shall make available only medical coverage through PERS CARE for employees who were last employed with the City, have reached retirement age, have retired from the City of Bell, and have been vested in the PERS system prior to their retirement date.

B.2. Provision of Insurance benefits at no Cost

The City shall provide medical, dental, vision and life insurance for certain terminated employees and their dependents at no cost. The following employees shall be eligible for medical, dental, vision and life insurance:

1. Full- Time Employees (non-safety) who have terminated in good standing from the City after January 1, 1997, with not less than thirty (30) years of PERS service credit with the City of Bell.
2. Elected Officials whose first term of office was prior to January 1, 1995, and who have terminated from the City after January 1, 1997, with not less than twelve (12) years of service credit with the City of Bell. In addition to said insurance, recipient shall be fully reimbursed for medical, dental, and vision co- payments and deductibles.

B.3. Elected Officials whose term commenced after January 1, 1995.

Pursuant to State Laws the City shall make available insurance benefit coverage for Elected Officials who were first elected after January 1, 1995 as follows:

1. Less than five years of service shall be eligible to participate on a self-pay basis.
2. Five or more years service (vested in PERS) and not attained the minimum PERS retirement age shall be eligible to participate on a self-pay basis until reaching retirement age.

SECTION 5. VACATION/SICK LEAVE

A. VACATION LEAVE

Employees are eligible for vacation leave after completing one year of employment.

1. Accrual Rate

Years of Service	Accrued Vacation Hours biweekly
Less than 4	3.6960
4 and less than 6	4.6160
6 and less than 13	6.46.40
13 and less than 20	8.3040
More than 20	9.8480

2. Accumulation

- a. Employees hired after July 1, 1998 shall not accumulate any vacation leave in excess of 360 hours.
- b. Employees hired after July 1, 2000 shall not accumulate any vacation leave in excess of 280 hours.

3. Payment for Vacation Leave

- a. Unused accumulated vacation leave will be paid to each employee upon the date of separation from the City.

B. SICK LEAVE

1. Accrual

- a. Employees, who have passed initial probationary period, will accrue 0.0462 100% sick leave per hour yielding to 3.6960 biweekly while on employment with the City, or while on approved employee leave.
- b. During each five year increment of regular employment, employees will be entitled to 75% sick leave hours and 50% sick leave hours as follows:

<u>Years of Service</u>	<u>75% Hours</u>	<u>50% Hours</u>
1-5	112	112
5-10	224	336
10-15	448	616
15-20	448	896
20-25	448	1,456

2. Use

- a. An employee's accrued 100% sick leave will be used first, thereafter, 75% sick leave and 50% sick leave respectively.
- b. Three 100% sick leave days may be used each fiscal year for severe illness in the employee's immediate family.

3. Payoff

- a. Employees hired prior to June 30, 1998, Upon separation from service employee will be paid an amount equivalent to the remaining unused hours of sick leave at the time of separation, or, at retirement from the City of Bell all unused sick leave may credited toward PERS service credit.

- b. Employees hired after July 1, 1998, Upon separation from service employee will be compensated for any unused sick leave up to 100 hours, or at retirement from the City of Bell an unlimited amount of unused sick leave may be credited toward PERS service credit.

SECTION 6. OTHER LEAVES

A. LEAVES OF ABSENCE

1. Leave without pay

A conditional leave may be granted without pay not to exceed one month with the approval of the Chief Administrative Officer. The City Council may grant a conditional leave without pay not to exceed one year.

2. Family Care Leave

Shall be in accordance with all applicable State and Federal Regulations.

3. Pregnancy Disability Leave

Shall be in accordance with all applicable State and Federal Regulations.

B. BEREAVEMENT LEAVE

Employees will be entitle to three working days paid bereavement leave due to the death of the employee's spouse, parent, brother, sister, child, grandchild, grandparent, aunt or uncle, or any person related in such capacity to the employee's spouse with approval from his/her department head.

C. MILITARY LEAVE

Employees shall, for each day of the first ten (10) workdays lost because of such duty, be compensated in an amount equal to the difference between regular schedule work hours pay at the straight-time rate of pay and the amount earned for military service.

D. PERSONAL LEAVE

Employees may use three 100% sick leave days per fiscal year for personal business with prior supervisor's approval.

SECTION 7. PAYROLL PERIODS/DATES/DEDUCTIONS

A. PAY PERIODS, PAY DATE AND PAY METHOD

Employees will be paid every other Friday for a two-week period ending the preceding Sunday to the pay dates via Automatic Direct Deposit.

B. PAYROLL DEDUCTIONS

Deductions may be made from the salaries of employees for income tax; retirement, credit union, government bond purchases, deferred compensation, charitable contributions, dues, health insurance programs, and any other lawfully permitted purpose.

C. DEFERRED COMPENSATION

All employees will be eligible to participate in the City's Deferred Compensation Plans with no contribution by the City.

SECTION 8:


Should any provision herein conflict with any applicable memorandum of understanding, the provision in the memorandum of understanding, or employment agreement will prevail. In addition, the Chief Administrative Officer may modify any of the provisions stipulated herein as deemed necessary to address a unique and specific situation on an individual basis for any non-safety employee. In no case, the Chief Administrative Officer shall exercise this right to reduce any of the compensation or benefits herein unless a reduction in work force, disciplinary and/or termination action is required. All other and former salary resolutions contrary to or inconsistent with any provisions hereof are amended to conform herewith.

SECTION 9:

Effective date of this resolution shall be July 1, 2003.

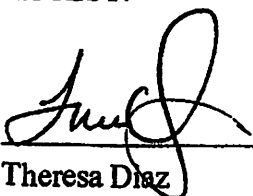
SECTION 10:

The City Clerk will certify to the adoption of this resolution. PASSED AND APPROVED THIS 30TH day of June 2003.



Teresa Jacobo
Mayor

ATTEST:



Theresa Diaz


I certify that the foregoing Resolution No.2003-29 was adopted by the City Council of the City of Bell at a regular meeting held June 30, 2003, by the following vote:

AYES: Councilmember Bello, Hernandez, Mirabal, Mayor Pro Tem Cole,
Mayor Jacobo

NOES: None

ABSTAIN: None

ABSENT: None



Theresa Diaz
City Clerk

City Council

11/2/1998	575.00		
7/5/1999	1,054.00	83.30%	
7/2/2001	1,293.00	22.68%	
7/1/2003	3,333.33	157.80%	
7/12/2004	3,750.44	12.51%	}
4/4/2005	4,409.04	17.56%	
7/11/2005	5,166.70	17.18%	
			37.76%



CITY OF BELL

EXECUTIVE MANAGEMENT ANNUAL COMPENSATION CHANGES FISCAL YEAR 2003-2005

Assistant to the Chief Executive Officer

	Eff Date	Monthly Comp	% change	Annual Comp	Annual Incr (decr)
Agreement	1-Jul-03	8,525.83		102,310.00	
Add # 1	1-Jul-04	10,833.33	27.06%	130,000.00	27,690.00
Add # 2	1-Jul-05	15,416.70	42.31%	185,000.40	55,000.40

Chief Executive Officer

	Eff Date	Monthly Comp	% change	Annual Comp	Annual Incr (decr)
Add # 4	9-Sep-02	20,833.35		250,000.14	
	8-Sep-03	22,916.68	10.00%	275,000.18	25,000.04
	6-Sep-04	25,000.02	9.09%	300,000.22	25,000.04
Add # 5	1-Jul-05	36,833.33	47.33%	442,000.00	141,999.78

City Council

	Eff Date	Monthly Comp	% change	Annual Comp	Annual Incr (decr)
	7/1/2003	3,333.33		39,999.96	
	7/12/2004	3,750.44	12.51%	45,005.28	5,005.32
	7/11/2005	5,166.70	37.76%	62,000.40	16,995.12

ASSUMPTIONS

Employee group

Employees within this category play key roles in the leadership and policy-making process of the organization.

Performance Evaluation

Employees within this group are evaluated individually by reviewing annual or long-term performance.

Compensation

Salary changes are determined by the employee's performance and the City's financial resources. Under favorable performance conditions, compensation changes are set commensurable to the employee's performance, economic trends, employment attraction and retention trends, City's financial position, and other agencies' salary ranges. Under no circumstances, compensation changes excludes certain employees or promotes disparity within the group.

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Circular Letter

California Public Employees' Retirement System
P.O. Box 942704
Sacramento, CA 94229-2704
(916) 326-3141
Telecommunications Device for
the Deaf - No Voice (916) 326-3240

Date: NOVEMBER 17, 1995

Reference No.:

Circular
Letter No.: 800-203
Distribution:

Special: VI, XII, XIX



TO: ALL CONTRACTING AGENCIES, COUNTY SUPERINTENDENTS OF SCHOOLS, STATE
DEPARTMENT OF PERSONNEL ADMINISTRATION AND EMPLOYEE REPRESENTATIVES

SUBJECT: SENATE BILL 53 PROVISIONS AND REGULATIONS RELATING TO COMPENSATION

The purpose of Senate Bill 53 (SB53) was to eliminate pension spiking and individual options/treatment in reporting compensation for PERS purposes. This Circular Letter provides a summary of the recent changes and clarifications that occurred in the Public Employees Retirement Law (PERL) and regulations relating to compensation and employer paid member contributions (EPMC) for contracting agencies and school employers. This update summarizes not only SB53 but also Senate Bill 159, chapter 830, statutes of 1995. We are also providing information on tax-related questions posed concerning EPMC.

The following provides a synopsis of the related Government Code Sections (Gov. Code Sec.) followed by the implementing regulations. As attachments, we have provided the sections of the California Code of Regulations relating to compensation and EPMC.

SUMMARY OF PUBLIC EMPLOYEES RETIREMENT LAW (PERL) PROVISIONS

COMPENSATION

20630
Compensation is broadly defined in Gov. Code Sec. 20022 as payment to employees for services performed during normal working hours or for time during which the employee is excused from work because of holidays, sick leave, industrial disability leave (during which benefits are paid under Sections 4800 and 4850 of the Labor Code), vacation, compensatory time off or leave of absence. The employer shall identify the pay period in which the compensation was "earned" regardless of when reported or paid.

20636
Compensation earnable in Gov. Code Sec. 28023 is payrate and special compensation. Payrate and special compensation schedules, ordinances or similar documents shall be public records available for public scrutiny. In other words, the statute stipulates payrate and special compensation for PERS purposes shall be in written labor policies or agreements. Labor policy or agreement is defined in the statute and summarized below.

PERS-ADM-69-HP (Rev. 6/91)

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Payrate is the normal monthly rate of pay or base pay 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. For those individuals not in a group or class, the payrate is payment in cash pursuant to publicly available pay schedules for services rendered on a full time basis during normal working hours. The definition, limitations and regulation relating to group or class is further set forth below.

Special compensation is defined in Gov. Code Sec. 20023(c) to include payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions. It is limited to compensation defined in a labor policy or agreement or otherwise required by state or federal law to similarly situated members of a group or class of employment. It, too, shall be for services rendered during normal working hours and shall be reported to PERS for the pay period in which the special compensation was "earned".

This section of the statute also directed PERS to promulgate regulations which specifically and exclusively delineate what constitutes special compensation. Section 571(a) of the California Code of Regulations includes this list of items. Subsection (b) provides the standards to which each item listed in subsection (a) and in written labor agreements (emphasis added) must conform. If the title or name of a special compensation item is not similar to an item listed, PERS will review the definition of a closely related item (if any), apply the standards and make a determination. See Summary of California Code of Regulations following these PERL summaries and California Code of Regulations Section 571 attached hereto.

Uniform allowance, holiday pay and premium pay for hours worked within the normally scheduled working hours that are in excess of the statutory maximum workweek or work period under the Fair Labor Standards Act shall be included as special compensation.

Compensation shall not include: the monetary value of any service or noncash advantage furnished by the employer unless otherwise specified in regulations, final settlement pay, payments for services rendered outside of normal working hours, any other payments the PERS Board of Administration has not affirmatively determined to be special compensation.

Final Settlement Pay in Gov. Code Sec. 20023(f) is defined as any pay or cash conversions of employee benefits in excess of compensation earnable granted or awarded in connection with or anticipation of a separation from employment. See Summary of California Code of Regulations following these PERL summaries and California Code of Regulation Section 570 attached hereto.

GROUP OR CLASS OF EMPLOYMENT

Gov. Code Sec. 20023(e) defines group or class of employment as a number of employees considered together because they share similarities in work location, collective bargaining unit, or other logical work related grouping. For PERS

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purposes, under no circumstances shall one employee be considered a group or class. If an agency believes they have an employee that does not fit a group or class of employment, PERS encourages employers to treat this type of employee for PERS purposes the same as employees in the most closely related group. For example, similar pay increases at similar times. Otherwise, increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period as well as two years immediately preceding the final compensation period to the average increase in compensation earnable during the same period for all employees in the same membership classification (miscellaneous or safety). Regulations were required which provide reasonable standards for granting exceptions. See Summary of California Code of Regulations following these PERL summaries and California Code of Regulations Section 572 attached hereto.

LABOR POLICY OR AGREEMENT

Gov. Code Sec. 20022.2 defines labor policy or agreement as any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing of the employer or other document used by employer to specify the payrate, special compensation and benefits of represented and unrepresented employees. As noted above, any compensation reported to PERS must be in labor policies or agreements and in compliance with statutes and regulations.

EMPLOYER PAID MEMBER CONTRIBUTIONS (EPMC)

Payment of Member Contributions by Employer

Gov. Code Sec. 20615 was amended to assure that if a member's contributions were to be paid by an employer, the (same) payment shall be for all members in the group or class of employment. If an individual is not part of a group or class, the payment shall be limited to the amount the Board determines is payable to similarly situated members in the closest related group or class. A resolution or other written labor agreement is required for the method of paying member contributions.

Reporting the Value of EPMC

Under Gov. Code Sec. 20023(c)(4), an employer has the option of reporting the value of employer paid member contributions (EPMC) to PERS. This provision must be adopted and applied equally to everyone in a group or class of employment. If an individual is not part of a group or class, the employer must pay and report the value of EPMC for the closest related group in order to pay and report the value of EPMC for the individual. The amount/percent of EPMC being "paid" by the employer is the same amount/percent (value) that "must" be reported as additional compensation. See Summary of California Code of Regulations following these PERL summaries and California Code of Regulations Section 566.1 attached hereto.

Determinations for "group of one" and closest related group are made on a case-by-case basis by the Member Services Division.

Converting RPMC to Payrate in the Final Compensation Period

An addition to the statutes in Gov. Code Sec. 20615.5 allows employers to stop paying those member contributions during the final compensation period under certain, specified circumstances. It is the ONLY "conversion" of a benefit allowed under the statutes, regulations or PERS policy.

The statute provides: "an employer may, pursuant to a labor policy or agreement, stop paying those contributions during the final compensation period applicable to the members, and instead, increase the payrate of the members by an amount equal to the normal contributions paid by the employer on behalf of the employees...". This provision requires two consecutive public meetings disclosing the nature of the benefit, the additional employer contributions and the funding therefor and an amendment to the employer's contract with PERS. For more information on the contract amendment process, please contact the Public Agency Contracts office at (916) 326-3420.

This provision, if adopted, must also equally apply to everyone in a group or class of employment. If an individual is not part of a group or class, the agency must adopt this provision for the closest related group in order to convert RPMC to payrate for the individual. Determinations for "group or class" and closest related group are made on a case-by-case basis by the Member Services Division.

See Summary of California Code of Regulations following these PERL summaries and California Code of Regulations Section 566.1 attached hereto.

For sample Resolutions and additional information, please refer to your CalPERS Procedures Manual, Payroll Reporting Procedures recently updated by the Employer Services Division, Training & Assistance Unit.

NOTE TO SCHOOL DISTRICTS: Since this provision requires a amendment to the contract with the County Office of Education, all districts under the County Office of Education must agree to the provision by passing Resolutions in their respective districts.

SUMMARY OF CALIFORNIA CODE OF REGULATIONS

COMPENSATION

Special Compensation is further defined in Section 571(a) of the regulations. Subsection (a) exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to PERS if they are contained in a written labor policy or agreement. The broad categories are (1) incentive pays; (2) educational pays; (3) premium pays; (4) special assignment pays; and (5) statutory items.

Section 571(b) sets forth the standards/criteria which all items of special compensation must meet. All items of special compensation reported to PERS will be subject to review for continued conformity with the definitions listed in subsection (a) and all the standards listed in subsection (b). If any item of special compensation is not listed in subsection (a) or is not in compliance with

all of the standards in subsection (b) it shall not be used to calculate final compensation for any member.

Final Settlement Pay is defined in Section 570 of the regulations similar to the statutory definition. Examples are given that it may consist of severance pay, "golden parachutes", accruals over a period of prior service, generally, but not always, paid during the period of final compensation. Final settlement pay may take the form of any item of special compensation not listed in Section 571 of the regulations and/or it may take the form of a bonus, retroactive adjustment to payrate, conversion of special compensation to payrate, or any other method of payroll reported to PERS. It can also take the form of any payrate increase or special compensation only given to and reported for an individual in the final compensation period. Each potential final settlement pay issue will be reviewed on a case-by-case basis.

Group or Class of Employment is clarified in Section 572 by setting forth an "exception" from the "average increase" limits in the final compensation procedures within the meaning of the PERL for an employee who is not in a group or class of employment.

EMPLOYER PAID MEMBER CONTRIBUTIONS. (EPMC)

Section 566.1 sets forth the parameters for reporting the value of EPMC as additional compensation or converting EPMC to payrate during the period of final compensation. Again, either provision can only be provided to an individual if the most closely related group also has the same EPMC provision.

The regulation provides the following standards for the contract amendment to convert EPMC to payrate:

- Final compensation period must be the 12 months or 36 months immediately preceding effective date of retirement;
- The provision must be fully funded for the group or class of employees;
- The provision must conform to federal Internal Revenue Code standards for "qualified plan status";
- The provision must be contained in current written labor agreements and adopted resolutions;
- Conversion of EPMC to compensation earnable is an increase in payrate for all purposes;
- If an employee does not provide 12 or 36 months notice of retirement, the employer shall make necessary corrections to the payrate and report adjustments to PERS; and
- If an employee cancels his/her retirement date, this provision shall be applied to his/her new final compensation period.

Subsection (b) provides procedures for a contracting agency, school employer (County Office of Education), or recognized employee organization to request a review by PERS of the additional employer contributions required to fund this provision. Subsection (c) provides an avenue for an employer or recognized employee organization to petition the Board to adopt a different rate for fully funding the conversion of EPMC to payrate during employees' final compensation periods.

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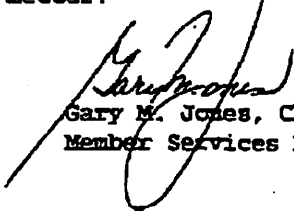
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TAX IMPLICATION QUESTIONS TO EPMC

Many of you asked questions about the tax implications of EPMC. Since it is beyond the jurisdiction of PERS to provide any tax related-ruling, we suggest any employer with concerns in these areas may want to consult their own tax counsel, the Internal Revenue Service or Franchise Tax Board. However, PERS did pose some of your questions to an outside tax counsel and can provide the following guidelines:

- Q: Are employer paid member contributions considered wages for Social Security and Medicare tax purposes?
- A: EPMC is not subject to state and federal income taxes. EPMC appears not to be wages for Social Security and Medicare purposes. However, there is no case or ruling directly on this point, therefore, affected employers may want to consider seeking a ruling on this issue. There is no distinction for these employer paid contributions whether used as compensation for PERS purposes or not.
- Q: Would a contract amendment to convert EPMC to payrate in the final compensation period under Gov. Code Sec 20615.5 violate Internal Revenue Code Section 414(h)(2) pick-up rules?
- A: The conversion of EPMC through the contract amendment does not violate Section 414(h)(2) of the Internal Revenue Code (IRC).
- Q: If an agency elects the contract amendment provision to convert EPMC in the final compensation period, can it pick-up member contributions paid in the final year?
- A: Yes, as a routine "pick up" so long as the employer has implemented that procedure under IRC 414(h)(2).

If you have any questions or would like a determination on any items of compensation you pay employees, please do not hesitate to contact Member Services Division, Compensation Review Section, P.O. Box 942704, Sacramento, CA 94229-2704 or call the analyst assigned to your agency (by employer code). The analysts, their direct telephone numbers and assigned agencies are also included as an addendum to this Circular Letter.


Gary M. Jones, Chief
Member Services Division

EXPRESS TERMS OF THE ADOPTED REGULATIONS

Title 2. California Public Employees' Retirement System

GC
20692

§566.1. Employer-Paid Member Contributions (EPMC) Conversions.

(a) A contracting agency or school employer may report the value of all or part of the normal contributions required to be paid by a member, for an individual or "group or class" of employees.

A contracting agency may also, by contract amendment(s), convert Employer-Paid Member Contributions (EPMC) to compensation earnable for a group or class of employees, only during the period of final compensation. A school employer may also, by contract amendment(s), convert EPMC to compensation earnable if all districts under the County Office of Education pass Resolutions for same.

Either provision: (1) reporting the value of EPMC as compensation; or (2) converting EPMC to compensation earnable, can only be provided to an individual if the most closely related group also has the same EPMC provision.

The contract amendment(s) to convert, must conform with the following standards as well as other applicable provisions of law:

(1) The period of final compensation must be the 12 months or 36 months immediately preceding the effective date of retirement.

(2) The provision must be fully funded for the group or class of employees, based on PERS' actuarial assumptions with the right of review set forth in subsection (b).

(3) The provision must conform to federal Internal Revenue Code standards for "qualified plan status" of the System in Section 401(a), including "non-discrimination testing".

(4) The provision must be contained in applicable current written labor agreements as well as in adopted resolutions.

(5) The conversion of EPMC to compensation earnable is an increase in payrate for all purposes.

(6) If an employee does not provide 12 months or 36 months notice of retirement, the employer shall make necessary corrections to the payrate and report adjustments to PERS.

(7) If an employee cancels his/her retirement date, this provision shall be applied to his/her new final compensation period.

(b) A contracting agency, school employer or recognized employee organization may request a review by PERS of the additional employer contributions required to fund the contract amendment provision to convert EPMC described in subsection (a). The request must comply with the following procedures:

(1) PERS will provide written notice of the rate increase to the employer by certified mail. The employer will send a copy of PERS' written notice within ten days of its receipt to all affected employee organizations, by certified mail.

(2) The request must be submitted in writing to PERS within 30 days of the date of certified receipt of the rate increase. The request should be addressed and submitted to the Actuarial Office, Public Employees' Retirement System, P.O. Box 942709, Sacramento, California, 94229-2709.

(3) A request made by an employer must be accompanied by an ordinance or resolution adopted by the governing body stating the rationale and factual basis and a copy of the receipt of certified mail and proof of service that a written notice of the rate change was sent to specified employee organization(s). A request made by an employee group must be accompanied by a signed statement of an officer of the employee organization who is authorized to contractually bind the organization, setting forth the rationale and factual basis.

(4) The request must contain actuarial evidence, prepared by a certified actuary independent of PERS, sufficient to demonstrate why a different rate may be justified to fund the contract amendment. All economic and non-economic assumptions relied upon by the independent actuary must be submitted to PERS along with the request.

PERS will acknowledge the request in writing within 15 calendar days of its receipt. PERS will issue a substantive determination to grant or deny the request for a different rate within 45 days from the date of acknowledgement. PERS will specify the reason(s) for its grant or denial, and will give the requestor a copy of all actuarial evidence and any other factual data relied upon in making its determination.

(c) An employer or recognized employee organization directly affected by the PERS determination may petition the Board of Administration to adopt a different rate for fully funding the conversion of EPMC during final compensation, based on the administrative record established during the review. The Board will not conduct an administrative hearing in accordance with the Administrative Procedure Act, but will respond to the petition in open session at one of its regularly scheduled meetings.

Both the petitioner and PERS may submit a written statement to the Board in support of its position, in advance of the meeting. This statement must not be longer than three pages, single spaced. It must be received by the Executive Office, Public Employees' Retirement System, P.O. Box 942701, Sacramento, CA 94229-2701, at least 15 days prior to the scheduled meeting.

NOTE: Authority cited: Sections 20120, 20615, 20615.5(g), and 21760, Government Code. Reference: Sections 11500, 20010, 20011, 20011.1, 20023(c), 20615, 20615.5, Government Code; Calif. Const. Art. XVI, sec. 17(e).

Research Note: See Internal Revenue Code secs. 401 and 415; Oden v. Public Employees' Retirement System (1994) 23 Cal.App.4th 194 [28 Cal.Rptr. 388]; City of Sacramento v. Public Employees' Retirement System (1991) 229 Cal.App.3d 1470 [280 Cal.Rptr. 847].

\$570. Final Settlement Pay.

"Final settlement pay" means any pay or cash conversions of employee benefits in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. Final settlement pay is excluded from payroll reporting to PERS, in either payrate or compensation earnable. ✓

For example, final settlement pay may consist of severance pay or so-called "golden parachutes". It may be based on accruals over a period of prior service. It is generally, but not always, paid during the period of final compensation. It may be paid in either lump-sum, or periodic payments.

Final settlement pay may take the form of any item of special compensation not listed in Section 571. It may also take the form of a bonus, retroactive adjustment to payrate, conversion of special compensation to payrate, or any other method of payroll reported to PERS.

NOTE: Authority cited: Sections 20023, 20023(f) and 20120, Government Code; Calif. Const. Art. XVI, sec. 17. Reference: Section 20023, Government Code.

Research Note: See Oden v. Public Employees' Retirement System (1994) 23 Cal.App.4th 194 [28 Cal.Rptr.2d 388]; City of Sacramento v. Public Employees' Retirement System (1991) 229 Cal.App.3d 1470 [280 Cal.Rptr. 847]; Santa Monica P.O.A. v. Bd. of Admin. Public Employees' Retirement System (1978) 69 Cal.App.3d 96 [137 Cal.Rptr. 771].

§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 PERS 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 section 571 of these regulations.

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 PERS and reported as compensation on behalf of all members in a group or class. A resolution or ordinance of the governing body must be provided to PERS indicating the group or class, effective date, and percent of EPMC being paid and reported as compensation. This provision must also be included in the written labor agreement for the group or class of employees.

The value of EPMC is calculated on all "compensation earnable" excluding the special compensation of the monetary value of EPMC paid to PERS by the employer under Government Code Section 20023(c)(4) thus eliminating a perpetual calculation.

(2) EDUCATIONAL PAY

The items of special compensation outlined below do not include reimbursement to an employee for the cost of an application or test, books, tuition or travel.

Applicator's Differential

Compensation to employees who are required to maintain a Qualified Pesticide Applicator's Certificate.

Certified Public Accountant Incentive

Compensation to miscellaneous employees passing an exam and receiving a license as a Certified Public Accountant.

Educational Incentive

Compensation to employees for completing educational courses, certificates and degrees which enhance their ability to do their job. A program or system must be in place to evaluate and approve acceptable courses. The cost of education that is required for the employee's current job classification is not included in this item of special compensation.

Emergency Medical Technician Pay

Compensation to safety employees who obtain and maintain an emergency medical technical (EMT) certification.

Engineering Registration Premium

Compensation to engineers who have taken and passed a California engineering proficiency exam and are registered with the State of California.

Government Agency Required Licenses

Compensation to employees receiving and maintaining a license required by government or regulatory agencies to perform their duties.

International Conference of Building Officials (ICBO) Certificate

Compensation to building inspectors who obtain and maintain an International Conference of Building Officials (ICBO) certificate in one or more certified areas.

Mechanic Premium (Brake Adjustment License, SMOG Inspector License)

Compensation to employees who obtain and maintain state-required mechanic licenses.

National Institute of Automotive Service Excellence (NIASE) Certificate

Compensation to mechanics who obtain and maintain a National Institute of Automotive Service Excellence (NIASE) certificate.

Notary Pay

Compensation to clerical employees who obtain and maintain a notary public certificate from the State of California or are deputized by an agency's chief administrative officer to sign legal or financial documents for the agency.

Paramedic Pay

Compensation to employees who obtain and maintain certification in auxiliary medical techniques.

Peace Officer Standard Training (POST) Certificate Pay

Compensation to local police officers, county peace officers and school police or security officers who obtain Peace Officer Standard Training (POST) certification.

Reading Specialist Premium

Compensation to certificated employees who have obtained special training and provide literacy instruction as part of their teaching duties.

Recertification Bonus

Compensation to local firefighters who obtain and maintain a fire safety and prevention certificate for a specified period of time.

Special Class Driver's License Pay

Compensation to school bus drivers or street maintenance employees who are required to obtain and maintain a special class driver's license to perform their duties.

Undergraduate/Graduate/Doctoral Credit

Compensation to school district employees who are required to obtain a specified degree.

(3) PREMIUM PAY

Temporary Upgrade Pay

Compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration.

(4) SPECIAL ASSIGNMENT PAY

Accountant Premium

Compensation to rank and file employees who are routinely and consistently responsible for developing the employer's budget.

Administrative Secretary Premium

Compensation to an administrative secretary responsible for coordinating meetings, plans and other specialized activities for the governing body of the contracting agency or school employer.

Aircraft/Helicopter Pilot Premium

Compensation to safety employees who are routinely and consistently assigned as aircraft/helicopter pilots.

Asphalt Work Premium

Compensation to miscellaneous employees who are routinely and consistently assigned to mix, transport and/or apply a tar-like substance for sidewalks, roads, roofs and/or parking lots.

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Audio Visual Premium

Compensation to miscellaneous employees who are routinely and consistently responsible for operating audio visual equipment.

Auditorium Preparation Premium

Compensation to school employees who are routinely and consistently assigned to prepare auditorium(s), i.e. setting up stages, lighting, props and chairs for performing arts purposes.

Bilingual Premium

Compensation to employees who are routinely and consistently assigned to positions requiring communication skills in languages other than English.

Branch Assignment Premium

Compensation to employees who are routinely and consistently assigned to a branch office or work site that is identified as "rural" or "remote" in the written labor agreement.

Canine Officer/Animal Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to handle, train and board a canine or horse. Compensation shall not include veterinarian fees, feed or other reimbursable expenses for upkeep of the animal.

Cement Finisher Premium

Compensation to miscellaneous employees who are routinely and consistently assigned to finish cement work, e.g. watering, brushing and surfacing.

Circulation Librarian Premium

Compensation to library staff who are routinely and consistently assigned to the circulation desk of the library.

Computer Operations Premium

Compensation to employees who have special knowledge of computer processes and applications.

Confidential Premium

Compensation to rank and file employees who are routinely and consistently assigned to sensitive positions requiring trust and discretion.

Contract Administrator Coordinator Premium

Compensation to school employees who routinely and consistently coordinate administrative contracts for instruction or facility maintenance.

Crime Scene Investigator Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to analyze and explore a crime scene.

Critical Care Differential Premium

Compensation to nursing staff who are routinely and consistently assigned to critical and intensive medical or psychological care areas.

D.A.R.E. Premium

Compensation to local police officers, county peace officers and school police or security officers who routinely and consistently provide training to students on drug abuse resistance.

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Detective Division Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to a detective or investigative division or intelligence duties.

Detention Services Premium

Compensation to employees who are routinely and consistently assigned to areas where criminally charged persons are confined and nursing staff who are routinely and consistently assigned to an adult facility where criminally charged persons are confined.

DUI Traffic Officer Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce Driving Under the Influence (DUI) of alcohol or drug laws.

Extradition Officer Premium

Compensation to local police officers and county peace officers who are routinely and consistently assigned to return a person to the custody of another jurisdiction.

Fire Inspector Premium

Compensation to "fire inspector" personnel who are routinely and consistently assigned to inspect buildings and other permanent structures for compliance with governmental safety standards.

Fire Investigator Premium

Compensation to "fire investigation" personnel who are routinely and consistently assigned to investigate causes of destructive burning.

Fire Prevention Assignment Premium

Compensation to rank and file local firefighters who are routinely and consistently assigned to specific fire inspections and investigative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Fire Staff Premium

Compensation to rank and file local firefighters who are routinely and consistently assigned to administrative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Flight Time Premium

Compensation to safety employees for time spent as co-pilot or crew on work-related air missions.

Float Differential Premium

Compensation for nurses not specifically assigned to a specific station.

Front Desk Assignment (Jail)

Compensation to employees staffing a jail who are routinely and consistently assigned the duty of responding to questions from the public.

Fugitive Officer Premium

Compensation to local police officers and county peace officers who are routinely and consistently assigned to pursue persons who are fleeing from justice.

(c) Reported increased compensation must not constitute "final settlement pay" within the meaning of Section 570 of these regulations and Section 20023 of the Government Code. It must conform with federal Internal Revenue Code standards in Section 415 for maintaining "qualified plan status" of the system, and in Section 401, including "non-discrimination testing".

If the request is denied, the employee or employer may appeal PERS' decision to the Board by the procedure set forth in Sections 555.1-555.4, and Section 20133 of the Government Code.

NOTE: Authority Cited: Sections 20023(e) and 20120, Government Code. Reference: Section 20023, Government Code.

Research Note: See Internal Revenue Code secs. 401 and 415; 2001-11 "Public Employees' Retirement System" (1994) 23 Cal.App.4th

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Research Note: See Internal Revenue Code
Oden v. Public Employees' Retirement System
194 [28 Cal.Rptr.2d 388]; City of Sacramento v. Public
Employees' Retirement System (1991) 229 Cal.App.3d 1470 [280
Cal.Rptr. 847]; Santa Monica P.O.A. v. Bd. of Admin. Public
Employees' Retirement System (1978) 69 Cal.App.3d 96 [137
Cal.Rptr. 771].

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Detective Division Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to a detective or investigative division or intelligence duties.

Detention Services Premium

Compensation to employees who are routinely and consistently assigned to areas where criminally charged persons are confined and nursing staff who are routinely and consistently assigned to an adult facility where criminally charged persons are confined.

DUI Traffic Officer Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce Driving Under the Influence (DUI) of alcohol or drug laws.

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Fire Investigator Premium

Compensation to "fire investigation" personnel who are routinely and consistently assigned to investigate causes of destructive burning.

Fire Prevention Assignment Premium

Compensation to rank and file local firefighters who are routinely and consistently assigned to specific fire inspections and investigative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Fire Staff Premium

Compensation to rank and file local firefighters who are routinely and consistently assigned to administrative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Flight Time Premium

Compensation to safety employees for time spent as co-pilot or crew on work related air missions.

Float Differential Premium

Compensation for nurses not specifically assigned to a specific station.

Front Desk Assignment (Jail)

Compensation to employees staffing a jail who are routinely and consistently assigned the duty of responding to questions from the public.

Fugitive Officer Premium

Compensation to local police officers and county peace officers who are routinely and consistently assigned to pursue persons who are fleeing from justice.

Gang Detail Assignment Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce laws relating to a group of individuals banded together for unlawful activities.

Grading Assignment Premium

Compensation to employees who are routinely and consistently assigned to inspect the degree of rise or descent of a sloping surface.

Hazard Premium

Compensation to employees who are routinely and consistently exposed to toxic, radioactive, explosive or other hazardous substances or perform hazardous activities to implement health or safety procedures.

Heavy/Special Equipment Operator

Compensation to employees who are routinely and consistently assigned to operate heavy equipment or specialized equipment.

Height Premium

Compensation to employees who are routinely and consistently required to work on ladders or mechanical devices at heights over 40 feet.

Housing Specialist Premium

Compensation to city housing specialists who are routinely and consistently assigned to perform administrative functions of the housing division.

Juvenile Officer Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce laws that restrict the activities of juveniles.

Lead Worker/Supervisor Premium

Compensation to employees who are routinely and consistently assigned to a lead or supervisory position over other employees, subordinate classifications, or agency-sponsored program participants.

Library Reference Desk Premium

Compensation to library staff who are routinely and consistently assigned to provide direction or resources to library patrons.

Maintenance Premiums:

Gas Maintenance Premium

Compensation to maintenance employees who are routinely and consistently assigned to inspect gas construction, repair instruments or perform pipeline welder duties.

Plumber Irrigation System Premium

Compensation to plumbers who are routinely and consistently assigned as irrigation systems plumbing specialists.

Refuse Collector Premium

Compensation to maintenance employees who are routinely and consistently assigned to collect refuse.

Street Lamp Replacement Premium

Compensation to maintenance employees who are routinely and consistently assigned to replace street lamps from an aerial bucket.

MCO Instructor Premium

Compensation to miscellaneous employees who are routinely and consistently assigned to train Motor Coach Operators, i.e. bus drivers.

Motorcycle Patrol Premium

Compensation to local police officers and county peace officers who are routinely and consistently assigned to operate and/or patrol on motorcycle.

Mounted Patrol Premium

Compensation to local police officers and county peace officers who are routinely and consistently assigned to patrol on horseback.

Narcotic Division Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to drug enforcement.

Paramedic Coordinator Premium

Compensation to paramedics who are routinely and consistently assigned to coordinate training activities in auxiliary medical techniques.

Park Construction Premium

Compensation to groundskeepers who are routinely and consistently assigned to build park equipment.

Park Maintenance/Equipment Manager Premium

Compensation to park maintenance employees who are routinely and consistently assigned to equipment management and other administrative duties.

Parking Citation Premium

Compensation to employees who are routinely and consistently assigned to read parking meters and cite drivers who have violated parking laws.

Patrol Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to patrol detail.

Police Administrative Officer

Compensation to rank and file police officers, county peace officers and school police or security officers who are routinely and consistently assigned to police administration to provide support for the police chief and command staff in the operation of the police department.

Police Investigator Premium

Compensation to rank and file local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to analyze crimes or investigate accidents.

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Police Liaison Premium

Compensation to rank and file local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to function as a liaison between special persons, groups or courts and the police/sheriff department.

Police Polygraph Officer

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to administer and interpret polygraph exams.

Police Records Assignment Premium

Compensation to employees who are routinely and consistently assigned to the police records division.

Rangemaster Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to supervise the target range facilities and all related activities.

Refugee Arrival Cleanup Premium

Compensation to employees who are routinely and consistently assigned to cleanup from activities directly related to refugee arrival flights.

Safety Officer Training/Coordinator Premium

Compensation to employees who are routinely and consistently assigned to instruct personnel in safety procedures.

Sandblasting Premium

Compensation to miscellaneous employees who are routinely and consistently assigned to operate sandblasting equipment.

School Yard Premium

Compensation to part-time school district employees who are routinely and consistently assigned to supervise students during recreation.

Search Pay Premium

Compensation to employees who are routinely and consistently assigned to search and process prisoners in the induction area of jails.

Severely Disabled Premium

Compensation to school instructional aides who are routinely and consistently assigned to work with severely disabled students.

Sewer Crew Premium

Compensation to laborers who are routinely and consistently assigned to repair and maintain sewer systems.

Shift Differential

Compensation to employees who are routinely and consistently scheduled to work other than a standard "daytime" shift, e.g. graveyard shift, swing shift, shift change, rotating shift, split shift or weekends.

Solo Patrol Premium

Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to patrol alone in vehicles.

Sprinkler and Backflow Premium

Compensation to groundskeepers who are routinely and consistently assigned to repair large sprinkler head controllers, valves and backflow prevention devices.

Tiller Premium

Compensation to local firefighters who are routinely and consistently assigned to operate the tiller on an aerial ladder.

Tire Technician Premium

Compensation to equipment attendants who are routinely and consistently assigned to work on heavy duty tires, e.g. for buses and large construction equipment.

Traffic Detail Premium

Compensation to employees who are routinely and consistently assigned to direct traffic.

Training Premium

Compensation to employees who are routinely and consistently assigned to train employees.

Tree Crew Premium

Compensation to maintenance workers who are routinely and consistently assigned to remove, prune, or otherwise care for trees.

Utility Meter Premium

Compensation to miscellaneous employees who are routinely and consistently assigned to re-read utility meters, repair or set and install meters.

Utilities Systems Operation Premium

Compensation to maintenance or carpenter employees who are routinely and consistently assigned to planner duties in the maintenance division.

Water Certification Premium

Compensation to miscellaneous employees who are routinely and consistently assigned to test local water quality for compliance with governmental health standards.

(5) STATUTORY ITEMS

Fair Labor Standards Act (FLSA)

Compensation paid for normal full-time work schedule including premium pay required by FLSA. For example, a firefighter's normal work schedule is 56 hours per week. FLSA states premium pay must be paid on all hours worked above 53 hours per week up to what is considered normal for employees on a full-time basis. In this example, the firefighter works 56 hours in a normal work week. Therefore compensation would be reported for 53 hours per week and FLSA premium pay would be reported for 3 hours per week. Any work performed above 56 hours per week would be considered overtime and would not be reported to PERS.

Holiday Pay

Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to PERS.

For those employers 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 a written labor agreement allows an employee to accumulate holiday credit beyond the year in which it is earned and an employee later elects to cash out accumulated holiday credit, it is not compensation for PERS purposes.

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 based upon a review of the contracting agency or school employer's experience relating to: the number of employees in the group with this option; the number of employees who exercise this option; the frequency with which employees exercise this option; whether or not the cash out is paid periodically, and in a manner that is historically consistent; and whether or not the cash out would create an unfunded liability over and above PERS' actuarial assumptions. This review will be conducted by PERS on a case-by-case basis.

Uniform Allowance

Compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain. This excludes items that are for personal health and safety such as protective vests, pistols, bullets, and safety shoes.

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

- (1) Contained in a written labor policy or agreement;
- (2) Available to all members in the group or class;
- (3) Part of normally required duties;
- (4) Performed during normal hours of employment;
- (5) Paid periodically as earned;
- (6) Historically consistent with prior payments for the job classification;
- (7) Not paid exclusively in the final compensation period;
- (8) Not final settlement pay; and
- (9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

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(c) 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).

(d) If an item of special compensation is not listed in subsection (a) or is out of compliance with any of the standards in subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual.

NOTE: Authority cited: Sections 20023(c)(5) and 20120, Government Code; Calif. Const. Art. XVI, sec. 17.
Reference: Section 20023, Government Code.

Research Note: See Oden v. Public Employees' Retirement System (1994) 23 Cal.App.4th 194 [28 Cal.Rptr.2d 388]; City of Sacramento v. Public Employees' Retirement System (1991) 237 Cal.App.3d 1470 [280 Cal.Rptr. 847]; City of Fremont v. Board of Administration (1989) 219 Cal.App.3d 1026 [263 Cal.Rptr. 164]; Guelfi v. Marin County Employees' Retirement Association (1983) 145 Cal.App.3d 297 [193 Cal.Rptr. 343]; Rose v. City of Hayward (1981) 126 Cal.App.3d 926 [179 Cal.Rptr. 287]; Santa Monica P.O.A. v. Bd. of Admin. Public Employees' Retirement System (1978) 69 Cal.App.3d 96 [137 Cal.Rptr. 771].

§572. Employees Not in a Group or Class of Employment.

An employee who is not in a "group or class of employment" within the meaning of the Public Employees' Retirement Law, may request an exception from the "average increase" procedure set forth in Section 20023(e). The local employer may request this exception on the employee's behalf.

The request must be submitted in writing, no later than 30 days after the employee first received PERS' estimate of benefits payable. If the estimate is mailed, the deadline is thirty-five calendar days after the postmark date. The request must be submitted to the Member Services Division, Public Employees' Retirement System, P.O. Box 942704, Sacramento, CA 94229-2704.

PERS will acknowledge the request in writing within 15 calendar days of its receipt. PERS will grant or deny the request, and specify its reasons in writing, within 45 days from the date of acknowledgement. PERS' decision to grant or deny the request will be based on a comparison between increased compensation earnable, as reported for the employee during his or her period of final compensation and compensation earnable reported for the group or class of employees in his or her same membership classification.

PERS will review the full history of payroll reporting for the employee, and all relevant payroll reporting for the membership classification, as to both payrate and special compensation. In no case will an exception be granted if PERS determines that the comparative increase in compensation earnable by the employee fails to conform with the following standards set forth in subsections (a) and (b) below, as well as other applicable provisions of law:

(a) If reported in payrate, the increased compensation must be:

- (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 classification; and
- (6) Not final settlement pay.

(b) If reported in special compensation, the increased compensation must be:

- (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 classification;
- (6) Listed as special compensation in Section 571; and
- (7) Not final settlement pay.

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(c) Reported increased compensation must not constitute "final settlement pay" within the meaning of Section 570 of these regulations and Section 20023 of the Government Code. It must conform with federal Internal Revenue Code standards in Section 415 for maintaining "qualified plan status" of the System, and in Section 401, including "non-discrimination testing".

If the request is denied, the employee or employer may appeal PERS' decision to the Board by the procedure set forth in Sections 555.1-555.4, and Section 20133 of the Government Code.

NOTE: Authority Cited: Sections 20023(e) and 20120, Government Code. Reference: Section 20023, Government Code.

Research Note: See Internal Revenue Code secs. 401 and 415; Oden v. Public Employees' Retirement System (1994) 23 Cal.App.4th 194 [28 Cal.Rptr.2d 388]; City of Sacramento v. Public Employees' Retirement System (1991) 229 Cal.App.3d 1470 [280 Cal.Rptr. 847]; Santa Monica P.O.A. v. Bd. of Admin. Public Employees' Retirement System (1978) 69 Cal.App.3d 96 [137 Cal.Rptr. 771].

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