

Office of Audit Services



Public Agency Review

City of Newport Beach

Employer Code: 0060
CalPERS ID: 1545983430
Job Number: P13-034

September 2014



California Public Employees' Retirement System
Office of Audit Services
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September 19, 2014

Employer Code: 0060
CalPERS ID: 1545983430
Job Number: P13-034

Dan Matusiewicz, Finance Director
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Dear Mr. Matusiewicz:

Enclosed is our final report on the results of the public agency review completed for the City of Newport Beach (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Findings 2A, 2C, 3, and 4. We appreciate the additional information provided in your response related to these findings; however, after consideration of this information, our recommendation remains as stated in the report.

In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your Agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Phyllis Miller
PHYLLIS MILLER, Acting Chief
Office of Audit Services

Enclosure

cc: Members of the City Council, City of Newport Beach
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Assistant Chief, CASD, CalPERS

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RESULT IN BRIEF

The primary objective of our review was to determine whether City of Newport Beach (Agency) complied with applicable sections of the California Government Code, California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page two of this report.

- Payrate did not agree with the Agency's Board approved pay schedule.
- Special compensation was not reported as required by CCR Section 571.
- Member contributions were incorrectly reported.
- Eligible temporary/part-time employees were not enrolled into membership.
- Unused sick leave balance was incorrectly reported.

OAS recommends the Agency comply with applicable sections of the California Government Code, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

SCOPE

The Agency contracted with CalPERS effective April 27, 1945 to provide retirement benefits for local fire fighters, police officers, ocean beach lifeguards, and miscellaneous members. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the Board approved plan for fiscal year 2013-14, the OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from July 1, 2010 through June 30, 2013. The employees selected were not subject to the Public Employees' Pension Reform Act of 2013. The on-site fieldwork for this review was conducted from September 30 through October 4, 2013. The review objectives and a summary of the procedures performed are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency reported a payrate that did not agree with the Agency's pay schedule.

Condition:

The monthly payrate reported for an employee did not agree with the Board approved pay schedule. Specifically, the Agency reported a monthly payrate of \$1,132.94 for a Council member in the pay period ending May 31, 2013. However, the Agency's Board approved pay schedule for this Council member indicated a monthly payrate of \$1,227.35. As a result, payrate was under reported for the Council member. Payrate is an important factor in computing a member's retirement allowance because service credit and final compensation are directly related to the payrate and earnings reported for a member.

Recommendation:

The Agency should ensure payrates are reported in accordance with Board approved pay schedules.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 570.5

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2: The Agency did not report special compensation as required by the CCR.

Condition:

- A. The Agency incorrectly reported Holiday Pay for an employee as special compensation. Specifically, the Agency reported \$384.06 as Holiday Pay for an employee who worked on a holiday but the employee held a position that did not require scheduled staffing without regard to holidays. As a result, the compensation is not reportable. Holiday Pay is defined as additional compensation for employees who are normally required to work on an approved holiday because their positions require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly pay rate for approved holidays, the additional compensation is classified as Holiday Pay and reportable to CalPERS as special compensation. Additionally, Holiday Pay is considered overtime if employees work in positions that do not require scheduled staffing for holidays.
- B. The Agency incorrectly reported Uniform Allowance for six employees for the period ending May 31, 2013. OAS identified that the reported Uniform Allowance included safety items such as safety shoes. Pursuant to the CCR, compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing excludes items that are solely for personal health and safety such as protective vests, pistols, bullets and safety shoes.
- C. The Agency incorrectly reported the value of Employer Paid Member Contributions (EPMC) in the pay period ending May 31, 2013 for a part-time employee. Although statutorily allowed, the Agency eliminated the provision from its Board approved labor policy on January 22, 2013. Therefore, the value of EPMC in the amount of \$35.71 was not reportable to CalPERS.

Reportable special compensation is exclusively listed and defined in CCR Section 571. Reportable special compensation is required to be contained in a written labor policy or agreement, available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, historically consistent with prior payments for the job classification, not paid exclusively in the final compensation period, and not final settlement pay.

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Recommendation:

The Agency should ensure only items that meet the definition of special compensation and are contained in a written labor policy or agreement are reported to CalPERS as required by the CCR.

The Agency should ensure that errors resulting from the incorrect reporting of special compensation are corrected.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636(a), § 20636(c), § 20636(d), § 20691
CCR: § 571

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3: The Agency incorrectly reported member contributions.

Condition:

The Agency incorrectly reported contributions for miscellaneous employees in the pay period ending May 31, 2013. Specifically, the Agency had a provision for employee cost sharing. In the Agency's contract with CalPERS, miscellaneous employees entering membership on or prior to November 23, 2012 were required to share in the employer's contribution costs at a rate of 2.42 percent. The Agency allocated this percentage as EPMC instead of the Tax Deferred Member Paid Contributions as required. Additionally, the Agency had a resolution to pay and report the value of EPMC for two employees at a rate of two percent. However, the Agency applied the two percent to the members' Taxed Deferred Member Paid Contribution.

Recommendation:

The Agency should correctly report contributions to CalPERS.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 20516

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4: The Agency did not enroll eligible temporary/part-time employees.

Condition:

The Agency did not enroll temporary/part-time employees who met the 1,000 hour membership eligibility requirement in both fiscal years 2011-12 and 2012-13. Specifically, OAS identified a temporary/part-time employee who completed 1,000 hours of compensated time in the pay period ending May 31, 2012 and another employee who completed 1,000 hours of compensated time in the pay period ending June 29, 2012. OAS also identified a temporary/part-time employee who completed 1,000 hours of compensated time in the pay period ending June 14, 2013. Government Code Section 20305 requires employees who complete 1,000 hours within a fiscal year to be enrolled into membership effective not later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed.

Recommendation:

The Agency should monitor the hours worked by temporary/part-time employees and ensure employees are enrolled when membership eligibility requirements are met.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20044, § 20160, § 20305

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5: The Agency reported incorrect unused sick leave balances.

Condition:

The Agency did not certify the correct number of sick leave days for one retiree. The Agency certified a balance of 100 hours of unused sick leave which was the correct number of hours; however, the Agency did not convert the employee's balance of 100 hours to days. As a result, the employee's unused sick leave credit was overstated by 87.5 days. Retiring members are eligible for additional service credit for unused sick leave accrued by the member during the normal course of employment. The total number of unused sick leave hours at retirement is converted to days to determine the additional service credit.

Recommendation:

The Agency should ensure the correct amount of unused sick leave for retiring members is reported to CalPERS.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20965

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CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix A. OAS limited the test of transactions to employee samples selected from the Agency's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, California Code of Regulations.

Respectfully submitted,

Original signed by Phyllis Miller

PHYLLIS MILLER, CPA, CIA

Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief

Alan Feblowitz, CFE, Manager

Jodi Brunner, CGAP, Auditor

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APPENDIX A

OBJECTIVES

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OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the Agency complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the CCR.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2010 through June 30, 2013.

SUMMARY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

- ✓ Reviewed:
 - Provisions of the contract and contract amendments between the Agency and CalPERS
 - Correspondence files maintained at CalPERS
 - Agency Board minutes and Agency Board resolutions
 - Agency written labor policies and agreements
 - Agency salary, wage and benefit agreements including applicable resolutions
 - Agency personnel records and employee hours worked records
 - Agency payroll information including Contribution Detail Transaction History reports
 - Other documents used to specify payrate, special compensation, and benefits for employees
 - Various other documents as necessary
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meeting laws.
- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.

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- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

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APPENDIX B

AGENCY WRITTEN RESPONSE



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FINANCE DEPARTMENT

July 25, 2014

Margaret Junker, Chief
Office of Audit Services
CalPERS
P.O. Box 942701
Sacramento, CA 94229-2701

Dear Ms. Junker:

Enclosed please find the City of Newport Beach response to the Public Agency Audit conducted October 2013. Should you have any questions, please contact me at (949) 644-3126.

We look forward to receipt of the final report.

Sincerely,


Dan Matusiewicz
Finance Director

**City of Newport Beach
Employer Code #0060
CalPERS ID #1545983430
Responses to PERS Audit, Job Number P13-034**

FINDING 1: Payrate reported that did not agree with the Agency's pay schedule

CITY RESPONSE: The City agrees that reported rates should agree with our published payrate. The finding relates only to our Council members and is due to our misunderstanding of the required reporting for monthly contributions.

FINDING 2: Special Compensation not reported as required by the CCR

Condition A: Holiday pay reported as special compensation

CITY RESPONSE: The City's holiday compensation program for the safety departments does not exclude the few staff members who are in positions in which working a holiday may be required. The City of Newport Beach's heavy tourism industry requires high public safety engagement during many holidays (ie: 4th of July, New Year's Eve) and key positions may be required to work without regard to the holiday, including the Police Chief. The City believes continuing reporting of the holiday pay for this position is appropriate and consistent with the spirit of CCR 571.

Condition B: Uniform allowance includes safety items.

CITY RESPONSE: The City agrees that pursuant to the CCR, the monetary value of required clothing should exclude items that are solely for personal health and safety.

Condition C: Value of EPMC reported after EPMC provision eliminated.

CITY RESPONSE: The City made changes to paying and reporting the Employer Paid Member Contribution to numerous bargaining units in 2013 to equalize contributions among the groups. Changes to reporting the value of EPMC occurred throughout 2013 and corrections were made to the reporting for part-time employees during that time. The City has not been reporting EPMC for part-time staff and believes it is in compliance with the requirements.

FINDING 3: Incorrectly reported member contributions

CITY RESPONSE: The City adopted resolutions in 2013 to modify the reporting of the Employer Paid Member Contribution based on agreements reached in Memoranda of Understanding with the City's Miscellaneous bargaining units. Due

to confusion over the City's cost-share provision with the employees in the 2.5% @ 55 formula, the resolutions were inconsistent with the labor agreements. The City worked with PERS Contract Services representatives and has on file revised Resolutions to indicate the City will a pay portion of the member contribution for employees in certain units (but not report the value of EPMC). We believe that this matter has been remedied and no further action is necessary.

FINDING 4: Eligible temporary/part-time employees not enrolled

CITY RESPONSE: Our payroll system is not attendance-based meaning it does not track hours worked per day. Our Human Resources Department runs a report that tracks the total part-time hours paid during a pay period. Upon completion of 1,000 *paid* during a fiscal year (irrespective of the particular days worked), part-time employees are enrolled into PERS. The City believes that our process is a fair and consistent methodology of enrolling part-time employees into PERS and meets the intent of the law. This issue of isolating the particular days worked within a pay period was discussed during our 2003 PERS audit and PERS staff agreed that as long as we apply our methodology consistently, we meet the intent of the law. Payroll data and our biweekly reports that track part-time hours paid is available if needed.

FINDING 5: Reported incorrect unused sick leave balance.

CITY RESPONSE: The City agrees with this finding. We believe this to be an isolated occurrence. We have reviewed the sick leave certification forms for all employees who have retired since July 1, 2010, and have found no other incorrect reports.