

MEETING DATE

APR 10 2013

AGENDA ITEM

#7

Legislative Changes to the County Employees Retirement Law of 1937

(AB 197)

Presented by:

Contra Costa County Employees'
Retirement Association

Legislative Changes to the County Employees Retirement Law of 1937

Assembly Bill 197

In September 2012, the legislature passed and the Governor signed into law AB 197, legislation amending the County Employees Retirement Law of 1937 ("CERL") or ("'37 Act") (Government Code Sections 31450, *et seq.*)

AB 197

Amended the CERL definition of
"compensation earnable."

(Government Code Section 31461)

Background (Leave cash outs)

- On October 30, 2012, the CCCERA Retirement Board determined that the inclusion of leave cash outs (payments for accrued unused leave, such as vacation, sick leave, etc.) in compensation for retirement purposes will be limited effective 1/1/2013 pursuant to AB 197.
- A lawsuit was filed and is currently pending regarding the constitutionality of AB 197.
- A stay order is in place, requiring CCCERA to hold off implementation of AB 197 until after the lawsuit is resolved.

Standby/On-Call Pay

- Meanwhile, the CCCERA Board of Retirement is continuing to study all aspects of implementation of AB 197
- The purpose: although implementation is stayed, CCCERA would like to provide its members and stakeholders ample information
- The key item at issue is: pay for “additional services rendered outside of normal working hours”
E.g.: Standby/on-call pay, call back pay

AB 197 amended Sec. 31461 of the Govt. Code by adding:

b) "Compensation earnable" does not include, in any case, the following:

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(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

c) The terms of subdivision (b) are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003) 110 Cal.App.4th 426.

Standby/On-Call Pay and AB 197

- Currently, CCCERA implements the Retirement Board's policy on "Determining Which Pay Items Are 'Compensation' For Retirement Purposes." Under the policy, "standby" pay is **included** in compensation for retirement purposes
- **Standby/On-call pay** is generally additional pay provided by the employer to employees who are off duty but "on call" and must stand ready to report for duty.
- Compensation for off-duty "on call" assignment varies from, for example, \$300 per week to a monthly pay differential of 5% of their base pay.
- **Call back pay** is generally additional pay provided by the employer to employees who are called back for work performed outside their regular work schedule.
- Compensation for call back work can be at the rate of 1.5 times the employee's regular hourly rate for time worked.

AB 197 – Effective 1/1/2013

- AB 197 amended the definition of “compensation earnable” to **exclude** “payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.” I.e., standby, on-call, and call back pay must be excluded. See *City of Pleasanton v. Board of Administration of CalPERS*, 211 Cal.App.4th 522 (2012) (holding that “standby pay” is pay for being available to work on a standby basis outside of normal working hours).
 - AB 197 took effect on January 1, 2013
 - Pending litigation in another ‘37 Act county calls into question the constitutionality of the exclusion of standby pay for “classic” members under AB 197 - *Marin Association of Public Employees, et al. v. Marin County Employees’ Retirement Association*
 - **CCCERA will not be implementing any changes mandated by AB 197 so long as the stay order is in place in the pending lawsuit.**
- Note: The statutory changes to “compensation earnable” do not appear to apply to anyone **already in retirement status**

AB 197 – Next Steps

- Next steps:
- Retirement Board is to determine whether standby, on-call, and call back pay are to be **excluded** from compensation for retirement purposes for “classic” members
- Again, no changes mandated by AB 197 will be implemented so long as the stay order is in place in the pending lawsuit.
- **Important:** Notice to CCCERA “classic” members

AB 197 also added to GC Sec. 31461 :

b) "Compensation earnable" does not include, in any case, the following:

.....

(1) Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system.

Examples include, but are not limited to:

- Auto allowance received during final average salary period but previously received in kind as use of automobile
- Cash for waiving health insurance during FAS period but previously received in kind as health coverage

Exclusion of Compensation Paid to Enhance Retirement Benefit

- There must be a determination made by the Board of Retirement that the item of compensation was paid to enhance the member's retirement benefit
- CCCERA Policy Regarding Assessment and Determination of Compensation Enhancements adopted on January 9, 2013 – mandates review of final compensation by staff, with possible pension "**enhancements**" to be brought before the Retirement Board for the Board's determination of whether the item was paid to enhance the member's retirement benefit and therefore should be excluded

Disclaimer

This presentation was developed as a discussion draft to communicate statutory changes to the County Employees Retirement Law of 1937 enacted as AB 197. Every effort has been made to ensure the accuracy of the information provided; however, the information may be updated as warranted. If there is any discrepancy between what is contained in this presentation and the law, the law will govern.