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Circular Letter

November 4, 2016

TO: **ALL CALPERS EMPLOYERS**

SUBJECT: **STATUTORY AND REGULATORY REQUIREMENTS FOR COMPENSATION
EARNABLE AND PUBLICLY AVAILABLE PAY SCHEDULES**

Accurate Payroll reporting is crucial for providing accurate member benefits. The purpose of this letter is to remind employers of the requirements for compensation earnable and publicly available pay schedules.

Compensation Earnable

Only those pay amounts that meet the definition of compensation earnable are used when calculating retirement benefits. For more information about compensation earnable, please refer to the Public Employees' Retirement Law (PERL) Government Code (GC) sections 20636 and 20636.1 which define compensation earnable for State, School, and Public Agency members. Compensation earnable is further clarified by California Code of Regulations (CCR) Section 570.5.

All employers must comply with the compensation earnable provisions and corresponding regulations of the PERL. Where employers fail to comply, pay amounts will be determined to not constitute payrate, and accordingly, CalPERS will be unable to use such pay amounts when calculating members' retirement benefits.

Requirement for Publicly Available Pay Schedules

To meet the definition of compensation earnable, an amount of pay must either constitute payrate or special compensation as defined in the statutes. GC section 20636(d) further requires that payrate and special compensation schedules, ordinances, or similar documents are public records.

Employers must review their pay schedules to verify that all members' pay amounts are included within a publicly available pay schedule.

Compensation Earnable Government Codes

GC section 20636(b)(1) (applicable to Public Agency members) and 20636.1(b)(1) (applicable to School members) require pay amounts to be paid pursuant to publicly available pay schedules. For example, GC section 20636 (b)(1) states:

“Payrate means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. “Payrate,” for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).”

CCR 570.5 specifies the required elements necessary to meet the definition of a publicly available pay schedule as follows:

- (a) For purposes of determining the amount of “compensation earnable” pursuant to GC sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:
 - (1) Has been duly approved and adopted by the employer’s governing body in accordance with requirements of applicable public meetings laws;
 - (2) Identifies the position title for every employee position;
 - (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
 - (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
 - (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer’s internet website;
 - (6) Indicates an effective date and date of any revisions;
 - (7) Is retained by the employer and available for public inspection for not less than five years; and
 - (8) Does not reference another document in lieu of disclosing the payrate.

All eight (8) requirements must be met in one salary schedule for each member’s pay, in order for CalPERS to approve the pay amount as payrate and reportable compensation earnable.

Publicly Available Pay Schedules Government Code

If an agency cannot provide a document meeting the requirements for a publicly available pay schedule, then CalPERS must determine that the pay amount fails to meet the definition of payrate. CCR 570.5 (b)(1)-(4) outlines the process by which CalPERS may determine a member's payrate when there is no publicly available pay schedule provided.

CCR 570.5 (b) states:

- (b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:
 - (1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
 - (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
 - (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
 - (4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

For assistance or questions, please direct your inquiries to the CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

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