

RESOLUTION NO. ICERS-2020-2

**RESOLUTION TO APPROVE PAY CODES OF EMPLOYEES
COMPENSATION INCLUDED IN COMPENSATION EARNABLE
(FOR TIER 1 and 2 MEMBERS) AND PENSIONABLE
COMPENSATION (FOR TIER 3 MEMBERS)**

WHEREAS, the Imperial County Employees Retirement System (“ICERS”) Board of Retirement (“BOARD”) is required by Government Code sections 31461 and 31452 to determine Compensation Earnable for Tier 1 and 2 members and by Government Code section 7522.34 to determine Pensionable Compensation for Tier 3 members;

WHEREAS, on July 30, 2020, the California Supreme Court filed its decision in *Alameda County Deputy Sheriff’s Assn. v. Alameda County Employees’ Retirement Assn.*, Cal. Supreme Court Case No. S247095 (“Alameda Decision”), which, pursuant to Supreme Court Rule 8.532, was final on August 30, 2020. The *Alameda* Decision overturns certain legal and equitable determinations of the First DCA and concludes that all amendments to the definition of Compensation Earnable in Government Code section 31461, enacted as a result of the Public Employees’ Pension Reform Act of 2013 and related statutory changes to CERL (“PEPRA”), effective January 1, 2013 are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. The *Alameda* Decision further determines that CERL retirement boards may not include items in compensation earnable that section 31461 requires them to exclude;

WHEREAS, the *Alameda* Decision also held that that CERL boards have no discretion to include pay items in Compensation Earnable that are excluded under CERL, PEPRA, or other applicable statutes, disapproving of statement to the contrary in footnote no. 6 of *Guelfi v. Marin County Employees’ Retirement Assn.* (1983) 145 Cal.App.3d 297 (“*Guelfi* footnote 6”);

WHEREAS, the BOARD hereby determines that the *Alameda* Decision and other applicable law require it to change its determinations of Compensation Earnable and Pensionable Compensation; and,

WHEREAS, this Resolution and all actions taken in accordance with this Resolution

are intended to comply with the requirements of the Internal Revenue Code of 1986, as amended or replaced from time to time, regulations and other guidance issued thereunder (“Code”) as applicable.

THEREFORE, BE IT RESOLVED BY THE ICERS BOARD AS FOLLOWS:

1. Effective July 30, 2020, items of terminal pay (vacation, comp-holiday, and administrative leave cash-outs) shall no longer be included by ICERS in Compensation Earnable in the calculation of retirement allowances for Tier 1 and 2 active members;
2. The BOARD shall ratify revised pay code exclusions from Compensation Earnable for terminal pay in compliance with the *Alameda* Decision;
3. The BOARD shall communicate to ICERS participating employers and members that member contributions are no longer to be taken on pay codes for terminal pay, effective July 30, 2020.
4. Unless otherwise directed by future court ruling or upon advice of tax counsel, regarding the application of the Code, the exclusion of terminal pay from Compensation Earnable shall be prospective from July 30, 2020, and not retroactive in application;
5. Unless otherwise directed by future court ruling or upon advice of tax counsel regarding the application of the Code, collection of the overpayment of benefits and/or the refund of member contributions with respect to terminal pay shall not be made to active Tier 1 and 2 members;
6. Items of on-call duty pay that are “mandatory” as scheduled by management pursuant to an MOU or to an employment resolution, in which all members working in the same grade or class of positions are scheduled approximately the same number of on-call hours in a set period of time, shall not be excluded from compensation earnable or pensionable compensation;
7. The BOARD will review all on-call duty pay items, from January 1, 2013 to the present and determine whether any on-call duty items are “voluntary” in that the member volunteers for on-call duty and whether the number of the member’s on-call duty hours is significantly different from what other similarly situated employees in a grade or class of positions are scheduled, and any such pay items shall be excluded from Compensation Earnable or Pensionable Compensation;
8. With regard to “voluntary” on-call duty pay items excluded from Compensation Earnable or Pensionable Compensation from January 1, 2013 to the present, if any, the BOARD will take further steps on the advice of tax counsel regarding the manner of correcting any identified overpayment of retirement benefits or over-collected member contributions errors in accordance with requirements under the Code, and will provide appropriate communication with ICERS participating employers and members regarding any such “voluntary” on-call duty pay items identified; and,

9. This Resolution shall be effective on the date of its adoption and shall supersede any previous resolutions for employer pay codes of employee compensation.

ADOPTED AND APPROVED by the Board of Retirement of the Imperial County Employees System on September 16, 2020.



Chairman of the Board



Secretary