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MENDOCINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION
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Date: May 18, 2016
To: Board of Retirement
From: James Wilbanks, Retirement Administrator
Subject: Resolution 2016 – 01, Defining Compensation Earnable Pursuant to Government Code §31461 for Members who are not subject to Government Code §7522.34 (Non-PEPRA Members)

Attached you will find a proposed Resolution 2016 – 01, Defining Compensation Earnable Pursuant to Government Code §31461 for Members who are not subject to Government Code §7522.34 (Non-PEPRA Members) for your consideration. The presented resolution is in mark-up from the Board of Retirement Resolution 2014 – 05 for your convenience.

There are three broad categories of proposed changes to the Resolution and I will address each in turn. The first category of changes in the proposed Resolution is the addition of newly created pay codes. Included in this category are pay codes 424, 427, and 434. These three pay codes apply specifically to Probation employees and were recently created as a result of a new collective bargaining agreement between Probation employees and the County. These pay codes are included in compensation earnable in order to be consistent across agreements and bargaining units. Specifically, pay codes 424 and 427 are similar to included pay codes 440 and 441; and pay code 434 is similar to included pay code 525.

I am advised that there has been discussion regarding on call pay items when the Board adopted a previous version of the Compensation Earnable Resolution and I thought it prudent to review the issue. The reason MCERA and many other systems continue to include on call pay in Compensation Earnable is based, in significant part, on the 1997 California Supreme Court Ventura decision, which concluded that all compensation paid in cash is Compensation Earnable. Upon the implementation of the Ventura decision, arguably, there is a vested right to continuing that practice for legacy members.

Following their implementation of PEPRA, the Marin and Contra Costa retirement systems excluded on call pay from Compensation Earnable for legacy members. Both of those systems were subsequently sued and are currently still involved in litigation on this and related issues. A court decision is expected in the next six months or so, which will hopefully provide some guidance. For purposes of MCERA's proposed Resolution, we are simply continuing to treat these pay code decisions consistently, unless and until the courts give other direction.

The second category of changes in the proposed Resolution is merely clarifications. Included in this category are the changes to pay codes 440 and 441.

The final category of changes in the proposed Resolution is including pay codes that have existed for some time, and should be included in the Resolution. Included in this category are pay codes 437, 452, and 557. Pay code 557 is incentive pay for non-supervisory members of MCLEMA who work a shift in a supervisory role. Pay code 557 is rarely used which may explain why it was not included in the past and it is comparable to pay code 556, thus it should be added to our Resolution accordingly.

Pay codes 437 and 452 relate to retroactive adjustments in longevity and salary. These pay codes are used when an adjustment is made for a prior pay period, or pay periods. The adjustment cannot be included in either Salary or Longevity as those items are regulated by other controlling authorities such as collective bargaining agreements and the County's published salary schedule. Thus, the adjustments are paid using these pay codes. Had the items paid under pay codes 437 and 452 been paid in the appropriate pay periods, the items would have been included in Compensation Earnable. Including these pay codes in the Resolution clarifies this.

I recommend the Board adopt the Resolution as presented.

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
RESOLUTION ~~2014-05~~2016-01

TO SUPERSEDE RESOLUTION ~~2014-05~~ ~~2012-06~~ DEFINING COMPENSATION EARNABLE PURSUANT TO GOVERNMENT CODE §31461 FOR MEMBERS WHO ARE NOT SUBJECT TO GOVERNMENT CODE §7522.34 (NON-PEPRA MEMBERS)

WHEREAS, for those current members who became active members prior to January 1, 2013, and those members who became active members on or after January 1, 2013, but who are not subject to Government Code §7522.34 of the California Public Employees' Pension Reform Act, the determination of compensation earnable for remuneration earned by those members is governed by Government Code §31461; and

WHEREAS, Government Code §31461 provides that compensation earnable by a member means the average compensation as determined by the Board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay; and

WHEREAS, Government Code §31461 provides that this Board determine which items of remuneration earned by members shall constitute "compensation earnable"; and

WHEREAS, the Board has reviewed the current pay items and has determined which of those items are to be included in "compensation earnable" and which items are not to be included; and

WHEREAS, it is necessary for this Board from time to time to amend its determinations of compensation earnable due to changes in the compensation schedules of MCERA employers or changes in the law; Therefore be it

RESOLVED that effective ~~September 17, 2014~~May 18, 2016, resolution number ~~2012-06~~2014-05 is superseded, and pursuant to Government Code §31461 as interpreted by the courts, the Board hereby makes the following determinations as to what is included in "compensation earnable" and items of remuneration that are not included:

1. Compensation earnable shall include:

Pay Code	Description
303	Vacation Pay-Out Non Management
304	Vacation Pay-Out Management
406	Shift PM
407	Shift AM
409	Supervisor Shift
417	32.50 Bilingual
418	18.00 Bilingual
422	Confidential 5%
<u>424</u>	<u>On Call Regular – Probation</u>
<u>427</u>	<u>On Call Weekend/Holiday – Probation</u>
<u>434</u>	<u>Clothing Allowance - Probation</u>
435	Supplemental Pay to similarly situated members in the same grade or class.
<u>437</u>	<u>Retroactive Longevity</u>

Pay Code	Description
438	2.5% Longevity
439	5% Longevity
440	On Call Regular – <u>SEIU</u>
441	On Call Prior PP <u>Weekend/Holiday – SEIU</u>
443	7.5% Longevity
444	10% Longevity
445	Car Allowance
<u>452</u>	<u>Retroactive Salary Adjustment</u>
456	Board Of Supervisor Auto Allowance
457	BA Incentive
514	Standby Pay
515	Animal Handler
520	Field/Specialized Training
523	Bilingual 5% MCLEMA
525	Uniform Allowance
528	Covelo Housing
529	Covelo Bonus
530	Officer In Charge
531	Officer In Charge Level 2
532	Detective/Investigator Premium
556	AA/AS/Supv Incentive MCLEMA
<u>557</u>	<u>Supv Incentive MCLEMA</u>
558	10% B/A Incent
559	AA/AS DSA 3%
567	Bilingual 3% MCLEMA
926	Uniform Non-Cash

2. Pursuant to Government Code §31461(b) compensation earnable, shall not include in any case the following:

A. Any compensation determined by the Board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(1) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(2) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(3) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

B. Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds

that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

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

D. Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

3. Pursuant to Government Code §31641(c), the terms listed above in paragraph 2 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.

FURTHER RESOLVED that the above listed determinations by the Board of what is included or not included in compensation earnable, shall be in effect until such time as action taken by the Board or action by the Legislature or the Courts as a matter of law requires a different determination.

The foregoing resolution introduced by Board Member _____, seconded by Board member _____, and carried this ~~17th-18th~~ day of ~~September~~May, ~~2014~~2016, by the following vote:

ayes:
noes:
absent:

WHEREUPON, The Chair declared said Resolution adopted, and SO ORDERED.

~~Shari Schapmire~~Randy Goodman

Board of Retirement Chair

~~Jim Andersen~~James Wilbanks

~~Interim~~ Retirement Administrator