

**SAN MATEO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

**RESOLUTION 2020-07**

**RESOLUTION DEFINING COMPENSATION EARNABLE  
PURSUANT TO GOVERNMENT CODE §31461 FOR SAN MATEO COUNTY  
MOSQUITO AND VECTOR CONTROL DISTRICT MEMBERS  
WHO ARE NOT SUBJECT TO GOVERNMENT CODE §7522.34.**

**WHEREAS**, for those current San Mateo County Mosquito and Vector Control District (“District”) 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 District 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 SamCERA employers or changes in the law; therefore, be it

**RESOLVED** that effective April 28, 2020, resolution number 12-13-13 is rescinded, and pursuant to Government Code §31461 as interpreted by the courts, the Board hereby makes the following determinations to be effective April 1, 2020, for District members as to what is included in “compensation earnable” and items of remuneration that are not included:

1. Compensation Earnable shall include:

Regular hours worked
Sick leave with pay
Vacation with pay
Personal leave with pay
Comp time hours used as straight time

Emergency FMLA Paid
Emergency Sick Leave

2. Compensation earnable, at a minimum, shall not include, in any case, the following pay items.

A. The following pay items are not included:

Overtime paid
Accrued comp earned at time and one-half (OT)
Leave without pay
Accrued sick time paid out upon termination
Accrued vacation time paid out upon termination
Accrued comp time paid out upon termination
Emergency FMLA Unpaid

B. Payments associated with the provision of insurance benefits, or other third party payments such as professional membership dues, that are not received in cash by a member.

C. Payments by a SamCERA employer of member-required contributions to the retirement system under Government Code sections 31581.1, 31630, 31639.85 or under a memorandum of understanding (MOU) between members (or their representatives) and the SamCERA employer.

3. 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.

4. Pursuant to Government Code §31641(c), the determinations listed above 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.

\* \* \* \* \*

Regularly passed and adopted, by the San Mateo County Employees' Retirement Association, Board of Retirement, on April 28, 2020.

Ayes, Trustees: Arnott, Battey, David, Hackleman, Hoefler, O'Malley, Raw and Tashman

Noes, Trustees:

Absent, Trustees: Bowler

Abstain, Trustees:



Robert Raw, Board Secretary  
SamCERA