

SAN MATEO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT PROCEDURE FOR FELONY FORFEITURES

I. PURPOSE

Under the California Public Employees' Pension Reform Act of 2013 (PEPRA), members (also referred to as employees herein) who have been convicted on or after January 1, 2013, by a state or federal trial court of any felony under the law for conduct arising out of or in the performance of his or her official duties, must forfeit all accrued rights and benefits in any public retirement system in which they are a member at the time the felony is committed, retroactive to the first commission date of the crime and shall not accrue further benefits in that public retirement system, effective on the date of the conviction. (Govt. Code sections 7522.72 and 7522.74.) These statutes require the forfeiture after the conviction of any felony crime for conduct:

- Arising out of or in the performance of his or her official duties, or
- In pursuit of the office or appointment, or
- In connection with obtaining salary, disability retirement, service retirement, or other benefits.
- Elected public officers convicted of certain felonies may be subject to a felony forfeiture based on different conduct.

The employee and the prosecuting agency are required by law to notify the employer within 60 days of the felony conviction. The employer is required by law to notify SamCERA within 90 days of an employee's conviction.

II. FELONY FORFEITURE PROCESS

A. Notifying SamCERA of Felony Conviction and Providing Information.

The employer is required by law to notify SamCERA within 90 days of an employee's conviction. (Govt. Code sections 7522.72(f) and 7522.74(f).) Upon notifying SamCERA of the felony conviction, the employer will need to provide the following information, with a copy sent to the member:

1. Name of Member and Social Security number and/or employee ID.
2. Date of conviction which is the date that the member pleads guilty, or when the judge (or jury) decides the case.
3. Date of the earliest of the commission of the felony as reflected in the court proceeding.
4. Name of the court(s) in which the case was heard.

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5. Name and contact information for the prosecuting attorney.
6. Description of the felony charges for which the member was convicted.
7. Copy of court documents related to member's conviction/guilty plea.
8. Information relating to whether the felony offense for which the conviction was entered was committed during the conduct or performance of the member's job duties.

B. Review of Information.

Staff will review the charges and determine what additional information is needed from the employer, the member and or the prosecuting agency to make the required determinations. Staff is not limited to the criminal record in gathering the information it believes is appropriate. Staff may request the Board to exercise its subpoena power under Govt. Code section 31535.

C. Notice of Initial Determination.

After staff's initial review, staff will send a Notice of Initial Determination to the member and the employer as to the applicability of the felony forfeiture law to the facts. The Notice will include:

1. A copy of this Procedure.
2. A statement on applicability of the felony forfeiture law and, if applicable, a statement of the impact of the forfeiture on the member's benefits and the applicable proposed actions as set forth in below:
3. For those members who are retired:
 - (a) The Notice will state that the amount of member contributions to be refunded to the member without interest. If there has been an overpayment, the contribution refund, without interest, will be an offset to the overpayment and the refund amount will only be those the contributions exceed the amount of the overpayment (see Govt. Code section 7522.72(d)(1).) For purposes of this Procedure, "overpayment" includes compounded interest on the principal amount of any such overpayment at SamCERA's actuarial assumed rate(s) of interest in effect during the forfeiture period.
 - (b) Staff will review the member's account to determine the member's service credits and final average salary ("FAS") as if the

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member deferred as of the date of the first commission of the subject felony. Staff will then determine whether the member had sufficient service credit to retire as of the date of first commission of the subject felony.

- (i) If the member did not have sufficient service credit to retire as of the date of first commission of the subject felony, the Notice will state that the retirement will be rescinded, and the member placed into a deferred status until the member has sufficient eligible service to qualify for retirement.
- (ii) If the member did have sufficient eligible service credit to retire as of the date of first commission of the felony, the Notice will state the recalculated retirement allowance reflecting the changes to service credits, age factor and final average salary.

4. For those members who are active or deferred:

- (a) Staff will determine the amount of contributions paid, interest accrued on said contributions and service credit earned from the date of first commission of the subject felony to the date of conviction.
- (b) The Notice will list the amount of service credit and funds to be removed from the member's account and the amount of interest on those contributions to be forfeited.
- (c) The Notice will state that for non-forfeited funds remaining in the account, interest will continue to accrue.
- (d) The Notice will list the date that the member will be deemed to be a deferred member for all purposes, including but not limited to retirement eligibility. This date will be the date of first commission of the subject felony.

5. The Notice of Initial Determination shall list the deadline to respond which shall be no less than three weeks from the date of the Notice.

D. Response to Initial Determination

Prior to the deadline stated in the Notice of the Initial Determination, both the member and the employer may provide additional input regarding the applicability to the felony

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forfeiture provisions and/or the impact of the forfeiture as described in the Notice. Such additional information from the member or employer shall be shared by SamCERA with the employer or member, as applicable. After the member and or employer have submitted any additional information or comments, staff's initial determination may be amended or not. Staff will notify the member and the employer if the Initial Determination will be amended or not. Any amended Initial Determination will be sent to the employee and employer for information only. The Initial Determination and all supporting documents will be given to the Chief Executive Officer for review.

E. Chief Executive Officer Determination

After the review of the materials, the Chief Executive Officer or the Chief Executive Officer's designee, will send a written decision to the member and the employer that will, among other items, state his or her determination on the following:

1. Whether or not the felony conviction arose out of or in the performance of official duties, or in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, or was otherwise subject to forfeiture. If the determination is that the member's account is subject to forfeiture, the Notice will state:
2. The first date of commission of the felony and date of conviction.
3. The amount of service credit, contributions and interest to be forfeited by the active, retired or deferred member.
4. For a retired member, the amount of any overpayments, the monthly adjustment going forward and the manner and time in which SamCERA will recover any overpaid benefits due from the member and the effective date of the changes.
5. Any additional proposed actions to be taken as set forth in Section C (3) and (4) above.
6. Ability to challenge the Chief Executive Officer's determination by bringing the matter to the Board of Retirement and the deadline to submit that written challenge.

F. Challenging the Chief Executive Officer's Determination

The member may challenge the Chief Executive Officer's decision by submitting a written challenge no later than 30 days from the date of the Chief Executive Officer's Notice of Determination.

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1. If the Chief Executive Officer's decision is not timely challenged, it will be deemed final and binding.
2. A timely challenge will be heard by the Board of Retirement. Notice of the date and time of the hearing by the Board of Retirement will be provided to the member along with any instructions regarding the submission of documents and other evidence as necessary.
3. The matter will be placed on the Board of Retirement's regular public agenda for its review, findings and decision. In making its determination, the Board may appoint a hearing officer to make findings and recommendations in accordance with Govt. Code section 31533.

G. Appeal of the Action of the Board.

If the member is dissatisfied with the Board's action, the member may obtain judicial review by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure within 90 days of the date of the written notice of the Board's action. If a petition for writ of mandate is not timely filed, the Board's action shall be deemed final and binding.

III. ACTIONS TAKEN AFTER A DECISION TO FORFEIT IS FINAL

SamCERA will notify the Court and District Attorney at least three business days prior to the release of the forfeited funds to the member. (Govt. Code sections 7522.72(d)(2) and 7522.74(d)(2).)

The corresponding employer contributions will stay in the employer's advance reserve account and will be taken into consideration at the end of the fiscal year as part of the reconciliation process used for employer contributions.

If there is a reversal of the conviction by an appellate court decision, the member has the option to redeposit the contributions from the forfeited period. (Govt. Code sections 7522.72(h) and 7522.74(h).)