

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

BUSINESS MEETING

May 20, 2013

ADDENDUM AGENDA

PLACE: Ventura County Employees' Retirement Association
Second Floor Boardroom
1190 South Victoria Avenue
Ventura, CA 93003

TIME: 9:00 a.m.

ACTION ON AGENDA: When Deemed to be Appropriate, the Board of Retirement May Take Action on Any and All Items Listed Under Any Category of This Agenda, Including "Correspondence" and "Informational."

ITEM:

VI. OLD BUSINESS

- A. Pensionable Compensation: Review of the County of Ventura CEO Letter and Review of What Consists of Pensionable Compensation. (REPLACED) 255 - 259

ATTACHMENT A

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

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May 20, 2013

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

SUBJECT: PENSIONABLE COMPENSATION: REVIEW OF THE COUNTY OF VENTURA CEO LETTER AND REVIEW OF WHAT CONSISTS OF PENSIONABLE COMPENSATION

Dear Board Members:

Background

This matter was brought to the Board on December 3, 2012, and after hearing comment from interested parties and having Board discussion, the item was tabled to December 17, 2012. At the December 17, 2012 meeting, the Board tentatively adopted Board Counsel interpretation option 2 pending a sixty (60) day waiting period. Option 2 is an interpretation of Government Code (GC) Section 7522.34 that includes skills-based and service-based pay items, on top of base pay, that are not specifically excluded per subdivision (c) of GC Section 7522.34. On February 25, 2013, the Board extended the implementation of the Board's interpretation another 60 days with the acknowledgement of the letter of assurance provided by Ventura County's County Counsel that it would make corrections to pensionable compensation calculations and contributions, if necessary. The waiting period and extension were utilized to allow time for CalPERS to issue a position, or regulations, on the interpretation of the term "pensionable compensation" as a potential guidepost of legislative intent, and to allow the County more time to review its pay codes to determine which pay items could be rolled into base pay, and to evaluate its various options. *On April 15, 2013 the Board continued the item to the May 20, 2013 Business meeting in order to allow interested parties time to review the letter VCERA received from the County of Ventura CEO dated April 15, 2013 in which it reconfirmed the County's interpretation of pensionable compensation and the Board directed that Staff clearly identify the agenda item as, "Pensionable Compensation: Review of the County of Ventura CEO Letter and Review of What Consists of Pensionable Compensation."* Given that the Board did not take action to extend its interpretation, the tentative interpretation became effective April 26, 2013.

Discussion

At present, Ventura County views option 1, base pay only, as the proper legal interpretation, which is more narrow and limited than the interpretation adopted by the Board. (Please see the attached letter from the CEO's office.)

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To date, there has been no further published CalPERS movement on the subject, and no urgency legislation. We have the benefit of a letter of assurance allowing us the time to wait and see what CalPERS issues in the form of regulations (interpretations) of the law.

Staff recommends waiting for CalPERS because it has been closely involved with the drafters of the reform legislation and it is the largest of the pension systems being reformed. Further, the nineteen other 1937 Act systems have not consistently implemented a single interpretation, with some adopting option 1 and some adopting option 2 (with variations). The one consistency they have exhibited is that their counties have agreed with their interpretations. Our current lack of agreement is the one area in which VCERA is unique.

As part of a review of what consists of pensionable compensation, the following criteria come from the recent Manatt Fiduciary Forum:

Pensionable compensation” for PEPRA members’ service after January 1, 2013 is:

“[T]he 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.” Gov. Code Sec. 7522.34, subdiv. (a)

“Pensionable compensation” is not:

- (1) compensation paid to increase retirement benefits;
 - (2) conversion of in-kind benefits;
 - (3) one-time or ad hoc payments;
 - (4) severance payments, even if paid during employment;
 - (5) payments of unused leave;
 - (6) payments for additional services rendered outside of normal working hours;
 - (7) allowances and reimbursements;
 - (8) overtime (unless FLSA for fire protection or law enforcement);
 - (9) employer contributions to deferred compensation or defined contribution plans; and
 - (10) bonuses that do not meet the criteria of Gov. Code Sec. 7522.34, subdivision (a).
- Gov. Code Sec. 7522.34, subdiv. (c)

“Pensionable compensation” is also not:

“Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).” Gov. Code Sec. 7522.34, subdiv. (c)(11)

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Thus, under both subdivision (a) and subdivision (c)(11) of Section 7522.34, pensionable compensation must be all of the following:

1. Part of the “normal monthly rate of pay” or “base pay” of a member (rather than an increase not normally paid on at least a monthly basis);
2. Paid “in cash to similarly situated members of the same group or class of employment” (rather than a payment that other members in the same group or class do not normally receive in their monthly pay);
3. Paid for “services rendered on a full-time basis” (rather than for services rendered only episodically);
4. Paid for services rendered during “normal working hours” (not outside of normal working hours); and
5. Included in “publicly available pay schedules” (detailed in a “schedule”).

The questions on the following page were presented at the Manatt Fiduciary Forum. Staff has placed answers and responses to them. Please bring any additional questions that you might have.

Pensionable Compensation Challenges:

1. How is VCERA managing compliance with Section 7522.34 by employers?

Staff has communicated VCERA’s interpretation of pensionable compensation to plan sponsors and is currently engaging the County. Staff will bring forth a Compensation Review Policy at a July Board meeting outlining how it will check for unlawful enhancements to pensionable compensation. Staff and Board Counsel will bring forth a pensionable compensation resolution providing guidelines on what is included, and excluded, from pensionable compensation. Depending on the timing of the guidelines by CalPERS, this could be heard as early as an October or November Board meeting or as late as 2014. Staff would then endeavor to obtain, or verify, compliance by the plan sponsors.

2. How is your system addressing new pay codes as they are created?

Staff recommends including a provision in the pensionable compensation resolution that plan sponsors shall present any new pay code to the Board of Retirement prior to implementation. Staff encourages plan sponsors to bring proposed pay codes to VCERA staff as soon as known or pondered (usually during salary negotiations) for an initial assessment, minimizing the chance that a code’s pensionability gets later overturned.

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3. Do different employers use the same pay codes to describe different work?

–Bilingual premium pay?

–Shift differentials?

Possibly; however, VRSD is the only employer with a separate list of pay codes. However, Ventura County uses some of the same pay codes differently for different bargaining units causing potential problems with one interpretation per pay code. (Please see staff's initial analysis of VRSD's pay codes attached.)

4. How do you define "same group or class of employment"?

Staff does not have a definition, and asks for Board Counsel to provide a proposed definition at this Board meeting, or a subsequent one, and staff requests the Board's approval or modification of the definition/interpretation.

5. How are you communicating pensionability determinations?

No specific pensionable compensation pensionability determinations have been communicated to date. Primary communication will be made when the pensionable compensation resolution is adopted and communicated to plan sponsors, and subsequently when notifications result from a compensation review. Additional determinations will be made on a pay code by pay code basis as new codes are brought before the Board.

6. What are your biggest challenges in this area?

Systems in attendance indicated the biggest challenge was determining what constitutes base pay and the inconsistent interpretations across systems. VCERA's difference of interpretation from the County is a challenge. Since VCERA believes that supplemental items of pay are also pensionable, Board Counsel and staff will need to compile a pay code table and gather additional data (as to how pay codes are applied from one bargaining unit to another) on its own with limited or no assistance from the County. CalPERS has discovered, itself, how difficult it will be to draft guidelines that apply to its 3,000+ employers and tens of thousands of pay codes. Another challenge will be developing a system (VCERIS) that captures pay detail, and having sponsors be able to provide that pay detail, in a way that VCERA can monitor compliance effectively.

(Please see the attached Manatt presentation on implementing AB 340 and AB 197 for more information.)

**PENSIONABLE COMPENSATION: REVIEW OF THE COUNTY OF VENTURA CEO
LETTER AND REVIEW OF WHAT CONSISTS OF PENSIONABLE COMPENSATION**

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As indicated under the pensionable compensation challenges, staff will be bringing to the Board a policy on unlawful enhancements to pensionable compensation in July. In addition, it will take two to four months from the date of issuance of CalPERS guidelines in order to prepare a pensionable compensation resolution that takes into account the analysis of over 400 County pay codes applied to over a dozen labor agreements. Staff recommends postponing direction to develop guidelines until after CalPERS issues its guidelines.

Staff looks forward to Board discussion on the CEO's letter and what constitutes pensionable compensation and any direction that results.

I would be happy to answer any questions you may have.

Sincerely,



Donald C. Kendig, CPA
Retirement Administrator

Attachments (3)