

AMENDED IN SENATE JULY 14, 2021

AMENDED IN SENATE JUNE 22, 2021

AMENDED IN SENATE JUNE 21, 2021

AMENDED IN ASSEMBLY APRIL 19, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 826**

**Introduced by Assembly Member Irwin**

February 16, 2021

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An act to amend Section 31461 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 826, as amended, Irwin. County Employees Retirement Law of 1937: compensation earnable.

The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions for the purpose of providing pension, disability, and other benefits to county and district employees. CERL defines compensation earnable for purposes of its provisions, with particular application to the calculation of final compensation and the determination of pension amounts and other benefits. Existing law, the Public Employees' Pension Reform Act of 2013, prescribes various limitations on public employees, employers, and retirement systems concerning, among other things, the types of remuneration that may be included in compensation that is applied to pensions.

This bill would prescribe, for CERL, a definition of compensation earnable that would include any form of remuneration, whether paid in

cash or as in-kind benefits, if specified requirements are met. The bill would state that these provisions are declarative of existing law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 31461 of the Government Code is  
2 amended to read:

3 31461. (a) “Compensation earnable” by a member means the  
4 average compensation, as determined by the board, for the period  
5 under consideration upon the basis of the average number of days  
6 ordinarily worked by persons in the same grade or class of positions  
7 during the period, and at the same rate of pay. The computation  
8 for any absence shall be based on the compensation of the position  
9 held by the member at the beginning of the absence. Compensation,  
10 as defined in Section 31460, that has been deferred shall be deemed  
11 “compensation earnable” when earned, rather than when paid.

12 (b) Except as provided in subdivision (c), “compensation  
13 earnable” does not include, in any case, the following:

14 (1) Any compensation determined by the board to have been  
15 paid to enhance a member’s retirement benefit under that system.  
16 That compensation may include:

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

23 (B) Any one-time or ad hoc payment made to a member, but  
24 not to all similarly situated members in the member’s grade or  
25 class.

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

31 (2) Payments for unused vacation, annual leave, personal leave,  
32 sick leave, or compensatory time off, however denominated,  
33 whether paid in a lump sum or otherwise, in an amount that exceeds

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

4 (3) Payments for additional services rendered outside of normal  
5 working hours, whether paid in a lump sum or otherwise.

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

10 (c) (1) Notwithstanding subdivision (b) and Section 31460,  
11 “compensation earnable” means any form of remuneration, whether  
12 paid in cash or as in-kind benefits, if all of the following  
13 requirements are met:

14 (A) The remuneration is made available to any person in the  
15 same grade or class of positions. For purposes of this subdivision,  
16 “grade or class of positions” means a number of employees  
17 considered together because they share similarities in job duties,  
18 work location, collective bargaining unit, or other logical,  
19 work-related grouping. A single employee shall not be considered  
20 a grade or class of positions.

21 (B) The remuneration is not expressly excluded from  
22 “compensation earnable” pursuant to paragraphs (2) to (4),  
23 inclusive, of subdivision (b).

24 (C) ~~With regard to~~ *The remuneration is paid between on or after*  
25 *January 1, 2013, and July 30, 2020;* ~~the remuneration was is~~  
26 included in compensation earnable, and the employer and employee  
27 paid contributions to the retirement system based on the  
28 remuneration.

29 (D) On the date that the act adding this subdivision becomes  
30 operative, the board of retirement has not completed a formal  
31 action to reverse a prior determination that a form of remuneration,  
32 to which this subdivision would otherwise apply, is compensation  
33 earnable.

34 (2) This subdivision is declarative of existing law.

35 (d) The terms of subdivision (b) are intended to be consistent  
36 with and not in conflict with the holdings in *Salus v. San Diego*  
37 *County Employees Retirement Association* (2004) 117 Cal.App.4th

1 734 and In re Retirement Cases ~~(2003) 110~~ (2003) 110 Cal.App.4th  
2 426.

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