

## **Alameda Decision Frequently Asked Questions**

*(Please review the Glossary to become familiar with the terminology used in this document.)*

### **Alameda Decision Background**

**Q: Which county retirement systems are affected by the Alameda Decision?**

A: The California Supreme Court’s decision applied to all 20 county retirement systems that operate under the County Employees’ Retirement Law of 1937 (CERL), but not all systems were equally affected.

**Q: How did the Alameda Decision come about?**

A: The California legislature passed the California Public Employees’ Pension Reform Act of 2013 (“PEPRA”), effective 1/1/2013. Among other changes, PEPRA excluded certain types of pay from “compensation earnable” for Legacy members. To comply with the law, many CERL retirement systems deemed the affected pay codes as non-pensionable, but four retirement systems were sued by labor groups. Legal challenges to certain PEPRA provisions made their way through the courts—three of the four cases (involving Alameda, Contra Costa and Merced Counties) were consolidated into the *Alameda* case—culminating in the California Supreme Court issuing the Alameda Decision on 7/30/2020.

**Q: In summary, what did the Court rule in the Alameda Decision?**

A: The Alameda Decision concluded that all amendments to the definition of compensation earnable in Government Code section 31461, enacted as a result of PEPRA, were constitutional. The Court stated that CERL retirement boards were *not* contractually bound by previous settlement agreements from implementing those amendments. And the Court held that CERL retirement boards had *no* discretion to include pay items in compensation earnable that were excluded under CERL or PEPRA.

### **Duties of Board of Retirement and VCERA**

**Q: Who determines which pay types are included in a VCERA member’s retirement earnings (final average compensation)?**

A: The VCERA Board of Retirement is required by Government Code<sup>1</sup> sections 31461 and 31542 to determine “compensation earnable” for Legacy members. The Board is required by section 7522.34 to determine “pensionable compensation” for PEPRA members. The Board must comply with the law where it explicitly identifies certain pay types as pensionable.

---

<sup>1</sup> All statutory references are to the California Government Code, unless otherwise noted.

**Q: Does the VCERA Board have any latitude to deem certain pay items in compensation earnable “pensionable” that were deemed “non-pensionable” by the Court?**

A: No. The Court stated that retirement systems must follow the statute and do not have the authority to disobey the statute once it became law.

**Q: In complying with the Alameda Decision, is VCERA violating its duty to pay the retirement benefits “promised” to its members?**

A: No. Although VCERA has a fiduciary duty to administer the benefits “promised” to members, its duty to pay such benefits is conditioned on members being legally eligible for the benefits. VCERA cannot pay a benefit that is contrary to the law, even if the employer agreed to offer it. The Court ruled that PEPRA was valid law and that it superseded previous settlement agreements. Additionally, the Internal Revenue Service requires that VCERA follow its governing laws and adjust overpaid/underpaid benefits to avoid the risk of losing its tax-qualified status.

**Q: Why did VCERA previously include certain pay items in compensation earnable that are now deemed non-pensionable by the Court?**

A: The constitutionality of several provisions in PEPRA was challenged when it became law in 2013. Because of the legal challenges, the VCERA Board of Retirement, like the Boards of other county retirement systems, elected to continue to include certain pay items in compensation earnable until the issues were settled in the courts. Other pay items, such as “in-kind” benefits, had been provided pursuant to authority conferred by case law that was overturned by Alameda, and are no longer pensionable as of the date of Alameda.

**Q: Why did the VCERA Board wait until 4/17/2023 to implement the Alameda Decision, which was issued on 7/30/2020?**

A: The Board took action on 10/12/2020 to implement the “PEPRA Exclusions” portion of the Alameda Decision. The County urged the Board not to implement the “Alameda Exclusions” until the issue of flex credit could be addressed by court decision or legislation. Rather than implement the “Alameda Exclusions” at that time, which would have removed flex credit from compensation earnable, the Board chose to wait for Assembly Bill 826 to progress through the California legislature in 2021 and 2022. After AB 826 was vetoed by the governor on 9/29/2022, the Board, at the request of the County and unions, delayed a decision on flex credit until April 2023 to give the parties time to negotiate alternative benefits. On 4/17/2023, the Board passed a resolution implementing the Alameda Exclusions.

**Q: How will VCERA keep its members updated on its Alameda Decision implementation?**

A: General updates will be posted at [www.vcera.org/alameda](http://www.vcera.org/alameda). Sign up at [www.vcera.org/pod/notifications](http://www.vcera.org/pod/notifications) to receive notification whenever the Alameda webpage is updated. VCERA will also mail targeted correspondence to members regarding issues and calculations impacting them individually.

## Non-Pensionable Pay Items (“Exclusions”)

### **Q: Which pay types were deemed non-pensionable by the Alameda Decision?**

A: There were two categories of pay that the Court explicitly excluded from members’ retirement earnings. VCERA refers to these as “PEPRA Exclusions” and “Alameda Exclusions.”

### **Q: What are “PEPRA Exclusions”?**

A: PEPRA Exclusions are payments for 1) services rendered outside of normal working hours, such as standby pay, call-back pay and shift differentials on overtime; and 2) leave redemptions (vacation buydowns) in excess of what is both earned and payable in each 12-month period (i.e., “leave straddling”). PEPRA Exclusions became effective on 1/1/2013, the date that PEPRA took effect.

### **Q: Would payment for “services rendered outside of normal working hours” be included in retirement earnings if a work schedule is mandatory, not voluntary?**

A: No. PEPRA, as upheld by the California Supreme Court, excluded several pay types, including payments for “additional services rendered outside normal working hours” without regard for whether the additional services were mandatory or voluntary. However, “scheduled overtime” remains included in retirement earnings for both Legacy and PEPRA members.

### **Q: What is “leave straddling”?**

A: “Leave straddling” refers to leave redemptions in excess of what is both earned and payable in each 12-month period (i.e., calendar year). “Earned” refers to the number of leave hours the employee is able to accrue. “Payable” refers to the maximum redeemable hours permitted by each union’s Memorandum of Agreement (MOA). Prior to the *Alameda Decision*, VCERA included in compensation earnable leave redemptions equal to the annual leave accrued in the measurement period (up to what was earned in each 12-month period) less the number of annual leave hours an employee was required to take before requesting a leave redemption. What was payable in each 12-month period was not taken into account, which allowed employees to include multiple leave redemptions in a 12-month period that exceeded the annual limits by “straddling” their redemptions across two calendar years. The Superior Court has upheld VCERA’s implementation of the leave straddling rules and the ruling is currently being appealed by two labor groups.

### **Q: What are “Alameda Exclusions”?**

A: Alameda Exclusions are in-kind benefits that the employee is not able to elect to receive directly in cash, such as 1) leave donations and 2) flex credits in excess of amounts that the employee can receive in unrestricted cash. Alameda Exclusions became effective on 7/30/2020, the date of the Alameda Decision.

### **Q: What is an “in-kind benefit”?**

A: An in-kind benefit is any non-cash benefit provided by the employer that an employee cannot elect to receive as cash. Rather, the employee receives the benefit “in kind.” One

example is the non-cashable portion of the County's flex benefit allowance that the employer requires be applied to an employer-sponsored healthcare plan or returned to the employer in the form of an opt out fee. Another example is a leave donation to another employee that is not received by the donating member in cash. The Court ruled that such pay items are non-pensionable.

**Q: Which portion of the County's Flexible Benefits Program is included in retirement earnings (i.e., pensionable)?**

A: Only the "cashable" portion (i.e., the amount that could be received in cash) is deemed pensionable. The "maximum cashable amount" under the Flexible Benefits Program's old structure and new structure differs. The maximum cashable amount is pensionable for Legacy members, but no portion of flex credit is pensionable for PEPRA members because PEPRA excludes from "pensionable compensation" all employer-provided allowances.

**Q: How is the maximum cashable amount determined under the Flexible Benefits Program's old structure?**

A: Under the old structure, all employees received a flex credit allowance, and those who opted out were charged an opt-out fee. The maximum cashable amount of the flex credit allowance was equal to the "employee-only" or "flat" flex credit allowance minus the lesser of the opt-out fee or lowest-priced medical plan. The maximum cashable amount was the same for all members of the same bargaining unit. This methodology applied until 2023, when bargaining units began adopting the County's new Flexible Benefits Program structure. (For more information, see the Flex Credit Estimated Impact Charts at [www.vcera.org/post/pensionability-pay-codes-updated-622023](http://www.vcera.org/post/pensionability-pay-codes-updated-622023).)

**Q: How is the maximum cashable amount determined under the Flexible Benefits Program's new structure?**

A: Under the new structure, employees receive either the flex credit allowance or the "opt-out allowance." (There is no longer an opt-out fee.) The maximum cashable amount is equal to the opt-out allowance and is the same for all members of the same bargaining unit. (For more information, see the Flex Credit Estimated Impact Charts at [www.vcera.org/post/pensionability-pay-codes-updated-622023](http://www.vcera.org/post/pensionability-pay-codes-updated-622023).)

**Q: Which bargaining units have adopted the new Flexible Benefits Program structure?**

A: For a current list, see the Flex Credit Estimated Impact Charts at [www.vcera.org/post/pensionability-pay-codes-updated-622023](http://www.vcera.org/post/pensionability-pay-codes-updated-622023).

**Q: Is there a single source to see which pay items/codes are now pensionable?**

A: Multiple charts listing the pensionability of all pay codes are posted at [www.vcera.org/post/pensionability-pay-codes-updated-622023](http://www.vcera.org/post/pensionability-pay-codes-updated-622023).

## Impacted Member Populations

**Q: Who is not impacted by the Alameda Decision?**

A: Members who retired before 1/1/2013 will NOT be impacted by the Alameda Decision.

**Q: What impact did the Alameda Decision have on PEPRA members?**

A: Very few PEPRA members will be impacted because their PEPRA Exclusion and Alameda Exclusion pays were already coded as non-pensionable prior to the Alameda Decision. A limited group of PEPRA members may be impacted if they received payment for services rendered outside of normal working hours on or after 1/1/2013.

**Q: What impact did the Alameda Decision have on Legacy members?**

A: Legacy members who retired before 1/1/2013 are NOT impacted by the Alameda Decision. Legacy members who already retired or will retire on or after 1/1/2013 may be impacted due to the improper inclusion of PEPRA Exclusions in their retirement earnings. Legacy members who already retired or will retire on or after 7/30/2020 may be or have been impacted due to the improper inclusion of Alameda Exclusions, such as flex credit, in their retirement earnings. The inclusion of these earnings may have increased retirees' final average compensation (FAC) and therefore their monthly retirement benefits. It also may have increased their retirement contributions on those pay items. In either case, overpayments to the member and/or VCERA were made.

## Corrections Process

**Q: Is VCERA required to make corrections based on the Alameda Decision?**

A: Yes. All retirement systems that included pay items that the Court deemed non-pensionable must make corrections to comply with the law. The Internal Revenue Service requires that VCERA follow its governing laws and adjust overpaid/underpaid benefits to avoid the risk of losing its tax-qualified status.

**Q: Does VCERA have discretion to apply Alameda corrections only to those who retire after the April 17, 2023, adoption of Alameda implementation Resolutions?**

A: No, Alameda corrections must be applied as of the effective date of the law that made pay items non pensionable. Alameda requires that benefit calculations comply with the law in effect at time of retirement. PEPRA exclusions must be corrected for FAC calculations as of 1/1/13, the effective date of the PEPRA legislation. Alameda exclusions must be corrected for FAC calculations as of 7/30/20, the date of the Alameda decision. Further, the Internal Revenue Service employer plan correction procedures require a full correction of overpaid benefits. However, under the circumstances present with VCERA retirees, the Board does have some limited discretion to forego collection of overpaid retirement benefits directly from impacted retirees and is exercising that discretion.

**Q: What kind of corrections must VCERA make to affected members?**

A: For retired Legacy members, VCERA must 1) remove applicable PEPRAs Exclusions and Alameda Exclusions from their retirement earnings, 2) recalculate final average compensation and reduce their monthly retirement benefits, 3) calculate the excess member contributions they made on those excluded pay items, 4) calculate the net overpayment by comparing the overpaid benefits to the overpaid contributions, and then 5) refund any overpaid contributions. (This process also applies to a small group of retired PEPRAs members whose retirement earnings included certain PEPRAs Exclusions.) *VCERA will not collect overpaid retirement benefits.* For active and deferred Legacy and PEPRAs members, VCERA must calculate the excess member contributions they made on PEPRAs Exclusions and Alameda Exclusions, and then issue refunds.

**Q: Were there excess or overpaid member contributions related to “leave straddling” that will be refunded?**

A: No. All leave redemptions by Legacy members are included in compensation earnable. However, at retirement, the FAC cannot include more than what was earned and payable in the 12-month or 36-month measurement period.

**Q: When will VCERA be able to complete its corrections process?**

A: Implementation of the Alameda Decision is expected to take about two years, as the corrections process involves calculations for thousands of active, deferred and retired members who received excluded pay items in their compensation earnable.

**Q: When will VCERA notify affected members about their corrections?**

A: A precise timeline is uncertain at this time. VCERA will perform its corrections in phases/membership groups. After the calculations in a phase are completed, VCERA will begin the corrections process in which all affected members in that phase will be notified in writing regarding their individual corrections, benefit reduction (if applicable), and potential refund.

### Impact on Retired Members

**Q: Are any retirees not affected by the Alameda Decision?**

A: Members who retired before 1/1/2013 will NOT be impacted and will NOT have their monthly benefits reduced. Members who retired after 1/1/2013 and prior to 7/30/20 may not have their monthly benefits reduced if they did not have PEPRAs exclusions in their final average compensation calculation.

**Q: Which calculations will VCERA perform for affected retirees?**

A: Calculations will be performed as follows:

*Members who retired between 1/1/2013 and 7/29/2020:*

If members received any PEPRA Exclusion pay items, VCERA will 1) recalculate the monthly benefit with the corrected final average compensation; 2) calculate any overpaid benefits with interest; 3) calculate the overpaid member contributions back to 2013 with interest; and 4) refund any overpaid contributions that exceed overpaid benefits. If overpaid benefits exceed overpaid contributions, VCERA will NOT pursue collection and no refund will be issued. If overpaid retirement contributions exceed overpaid retirement benefits, VCERA will remit to the retiree the difference between those amounts, with interest, via refund or eligible rollover.

*Members who retired on or after 7/30/2020:*

For any PEPRA or Alameda Exclusion pay items, VCERA will 1) recalculate the monthly benefit with the corrected final average compensation; 2) calculate any overpaid benefits with interest; 3) calculate the overpaid member contributions with interest (back to 2013 for PEPRA Exclusions, and back to the VCERA membership date for Alameda Exclusions); and 4) refund any overpaid contributions that exceed overpaid benefits. If overpaid benefits exceed overpaid contributions, VCERA will NOT pursue collection. If overpaid retirement contributions exceed overpaid retirement benefits, VCERA will remit to the retiree the difference between those amounts, with interest, via refund or eligible rollover.

**Q: Has VCERA “implemented” PEPRA Exclusions or Alameda Exclusions for new retirees?**

A: Yes. For Legacy members, VCERA stopped including the following pay items in FAC: employee assistance donations and leave redemptions in excess of what is both earned and payable in each 12-month period in August 2020, standby pay and call-back pay in August 2020, and situational pay codes in October 2021 and May 2023. In May 2023, VCERA began limiting flex credit in Legacy members’ FAC to the “maximum cashable amount,” which at that time was the flat or employee-only rate minus the lesser of the opt-out fee or lowest cost employer-sponsored healthcare plan. After the Flexible Benefit Program changes made by the County in June 2023, the “maximum cashable amount” for most bargaining units is equal to the opt-out allowance. (There are some remaining situational pay codes that VCERA is unable to implement for new retirees until historical corrections are received from the County and posted to member accounts.)

**Q: What interest rate will be credited on overpayments and refunds?**

A: On 3/27/2023, the Board selected an interest rate of 7.9%, credited semiannually on overpaid retirement benefits remitted to retirees and overpaid retirement contributions paid to VCERA. This rate represented the pension plan’s “since-inception” investment rate of return as of 12/31/2022.

**Q: If VCERA will not collect net overpaid retirement benefits from any retirees, how will the pension plan be “made whole”?**

A: Uncollected, overpaid retirement benefits (net of overpaid contribution offsets) will be included in VCERA’s unfunded actuarial accrued liability (UAAL), which will be paid off by plan sponsors/employers over time. The UAAL is the sole responsibility of the employer.

**Q: When will VCERA reduce monthly retirement benefits for current retirees?**

A: A comprehensive implementation plan, including a timeline, is being developed by VCERA staff and will be published at [www.vcera.org/alameda](http://www.vcera.org/alameda) when it is finalized. Due to the immense volume of calculations and the complexity of certain member accounts, the corrections process will take some time. Benefit reductions will begin as soon as administratively feasible, but each affected member will first be notified in writing regarding their specific calculation(s) and benefit adjustment.

**Q: When PEPRA Exclusions and/or Alameda Exclusions are deducted from a retiree’s past retirement earnings, will their final average compensation (FAC) measurement period(s) change?**

A: Possibly. After all non-pensionable pay items are removed from FAC, the FAC period could shift to a different 12-month or 36-month period, or it could remain the same. As occurred when the member retired, VCERA will identify each retiree’s highest-earning FAC period when recalculating their monthly benefits.

**Q: How will the monthly retirement benefits of “new retirees” be affected?**

A: The retirement benefits of retirees who were placed on retiree payroll in May 2023 or later will already have their FAC calculated in compliance with the Alameda Decision, with the exception of situational pay codes (for services rendered outside normal working hours) which may need to be adjusted later once corrected data is received from the County. Once VCERA implements these pay code exclusions and recalculates FACs, affected retirees may see a reduction in their monthly retirement benefits. But VCERA would first notify each affected retiree of their specific calculation(s) and benefit adjustment.

**Q: Will employers be providing any additional benefits to mitigate the impact of excluding the in-kind portion of flex credit?**

A: It is up to each employer to determine the compensation and benefits to be paid to their employees. The County is in the process of implementing a post-retirement health savings account reimbursement plan for those who retired on/after 7/30/20. Please contact your employer, former employer or labor organization for more information.

**Q: Will there be contribution refunds related to PEPRA exclusions, other than straddling, for contributions paid prior to 1/1/13?**

A: No, prior to 1/1/13, contributions taken on pay items that were later excluded effective 1/1/13 (PEPRA exclusions) were taken in compliance with the law in effect at that time, so no corrections are necessary or appropriate.



## Impact on Active and Deferred Members

**Q: Does the Alameda Decision affect an active member's ability to work outside a normal schedule and to receive corresponding compensation?**

A: No. The Alameda Decision does not prevent members from working outside their normal schedule or receiving additional compensation for that work. Employers will continue to pay their employees pursuant to their contracts. However, pay items classified as PEPRA Exclusions will not be included in retirement earnings, which could lower expected retirement benefits in the future. On the other hand, active members will no longer pay retirement contributions on excluded pay items, resulting in more take-home pay.

**Q: Has VCERA "implemented" PEPRA Exclusions or Alameda Exclusions for contributions made by active members?**

A: Yes. VCERA stopped collecting contributions on the following pay items for County employees: employee assistance donations (County programmed on 8/21/2022), standby pay and call-back pay (County programmed on 10/18/2020), situational pay codes (County programmed on 9/19/2021 and 5/28/2023), and non-cashable flex credits (County programmed on 6/25/2023). In October 2020, the Ventura Regional Sanitation District (VRSD) stopped taking contributions on excluded pay codes.

**Q: Which calculations will be performed for active and deferred members?**

A: Overpaid member contributions made on PEPRA Exclusions (back to 1/1/2013) and Alameda Exclusions (back to membership date) will be calculated for each affected pay period. The total contributions overpaid to VCERA will be remitted to members, with interest, as a "corrective distribution" via refund or eligible rollover.

**Q: What interest rate will be credited on contribution overpayments?**

A: On 3/27/2023, the Board selected an interest rate of 7.9%, credited semiannually on overpaid retirement contributions paid to VCERA. This rate represented the pension plan's "since-inception" investment rate of return as of 12/31/2022.

**Q: If a contribution refund is due, what are members' rollover options?**

A: Rollover options will be announced in VCERA's implementation plan and offered in correspondence to affected members. For more information on rollover options and applicable rules, see VCERA's "Special Tax Notice" at [www.vcera.org/publication/special-tax-notice-regarding-plan-payments-and-federal-income-tax](http://www.vcera.org/publication/special-tax-notice-regarding-plan-payments-and-federal-income-tax).

**Q: How will the Alameda Decision affect service credit purchases?**

A: Members may continue to purchase service credit; they will not be charged as much for past service periods that contain pay items deemed non-pensionable by the Court. If a member overpaid contributions because his/her previous service credit purchase included pay items later deemed non-pensionable, VCERA will calculate the overpayment and issue a refund with interest.

**Q: Once the Alameda corrections are made, how can active and deferred members view their revised account balances?**

A: After the Alameda corrections are made, active and deferred members can view their retirement account information using VCERA's Member Portal. Members can register for a Member Portal account at [www.vcera.org](http://www.vcera.org). Annual benefit statements will also include updated account information.

**Q: Before all Alameda corrections are made, how can active and deferred members obtain a retirement benefit estimate?**

A: PEPRAs members can run benefit estimates using VCERA's Member Portal or the PEPRAs Pension Calculator at [www.vcera.org/pension-calculators](http://www.vcera.org/pension-calculators). Members can register for a Member Portal account at [www.vcera.org](http://www.vcera.org). Legacy members cannot run benefit estimates in their Member Portal accounts until their historical data is corrected. However, they can use the Legacy Pension Calculator at [www.vcera.org/pension-calculators](http://www.vcera.org/pension-calculators). To input an accurate Final Average Monthly Compensation amount in the "Compensation" field, the member should find the Retirement Earnings Final amount on their paystub, multiple it by 26 (to get an annual total), and then divide the total by 12 (to get a monthly average). Any active or deferred member planning to retire within the next three years is encouraged to submit a Benefit Estimate Request Form to obtain an official benefit estimate.

### Administrative Appeals

**Q: What is the appeals process for a member who disagrees with VCERA's recalculation determination(s)?**

A: Members may file an administrative appeal to the Retirement Administrator. Learn more about the administrative appeals process at [www.vcera.org/sites/main/files/alameda\\_admin\\_appeal\\_policy.pdf](http://www.vcera.org/sites/main/files/alameda_admin_appeal_policy.pdf).