

**BEFORE THE BOARD OF RETIREMENT  
KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
RESOLUTION No. 2020-01**

**In the matter of:**

**EMPLOYER PAY CODES OF EMPLOYEE COMPENSATION INCLUDED IN  
COMPENSATION EARNABLE AND PENSIONABLE COMPENSATION IN  
COMPLIANCE WITH CALIFORNIA SUPREME COURT'S *ALAMEDA* DECISION**

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**Ayes:** Couch, Dodgin, Gonzalez, Kratt, Skidmore, Whitezell, Nunneley (Alt), Seibly (Alt)

**Noes:** Robinson

**Absent:** Franey, Kaufman

**Dominic D. Brown,**  
Secretary to the Board of Retirement,  
Kern County Employees' Retirement Association



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**RESOLUTION**

Section 1. WHEREAS:

(a) The Kern County Employees' Retirement Association ("KCERA") Board of Retirement ("Board") is required by Government Code sections 31461 and 31542, to determine *compensation earnable* for those KCERA members ("legacy members") who are not "new members" under the Government Code section 7522.04, subd. (f) ("PEPRA Members"), and is required by Government Code section 7522.34, to determine *pensionable compensation* for those individuals who are PEPRA members.

(b) The Board adopted Resolution No. 12-05, that initially sought to comply with Assembly Bill 197 (2012-2013), as it amended section 31461, in the context of KCERA's pre-existing settlement agreement relating to the pensionability of certain pay codes for legacy members ("post-*Ventura* settlement agreement"). The Board also adopted Resolution No. 12-06 relating to the inclusion of pay codes in pensionable compensation, some of which appear also to have been included in the context of provisions of the post-*Ventura* settlement agreement for PEPRA members.

(c) On July 30, 2020, the California Supreme Court filed its decision in *Alameda*, which, pursuant to Supreme Court Rule 8.532, is expected to be final thirty days later (the "*Alameda* Decision"). The *Alameda* Decision concludes that all amendments to the definition of compensation earnable in Government Code section 31461, enacted as a result of the Public Employees' Pension Reform Act of 2013 and related statutory changes to CERL ("PEPRA"), effective January 1, 2013 are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. The *Alameda* Decision further determines that CERL retirement boards may not include items in retirement allowance calculations, either compensation earnable under section 31461, as amended, or pensionable compensation under section 7522.34, that the applicable statutes require them to exclude ("PEPRA Exclusions").

(d) The *Alameda* Decision also held that CERL retirement boards have no discretion to include pay items in retirement allowance calculations that are excluded under CERL, PEPRA, or other applicable statutes even without the enactment of PEPRA ("*Alameda* Decision").

Exclusions), disapproving of statements to the contrary in footnote no. 6 of *Guelfi v. Marin County Employees' Retirement Assn.* (1983) 145 Cal.App.3d 297 (“*Guelfi* footnote 6”).

(e) The Board hereby determines that the *Alameda* Decision and other applicable law require it to change its determinations of certain pay codes for either compensation earnable, pensionable compensation, or both, as resolved below.

(f) This Resolution is intended to comply with the requirements of the Internal Revenue Code of 1986, as amended or replaced from time to time and the regulations issued thereunder (the “Code”) as applicable.

Section 2. NOW, THEREFORE BE IT RESOLVED, by the Board of Retirement of Kern County Employees' Retirement Association as follows:

Effective as of August 24, 2020, the following actions are authorized and required of KCERA:

1) Comply with *Alameda's* directives regarding mandatorily excluded pay items, which includes the PEPRA Exclusions, and apply that directive to all retiree payroll for individuals who retire on or after January 1, 2013 (including those who will retire on or after the date of this Resolution), effective with the first retiree payroll occurring after *Alameda* is final, that is, as of the August 31, 2020 retiree payroll;

2) Comply with *Alameda's* directives regarding the Board's lack of authority to include the *Alameda* Exclusions in compensation earnable and pensionable compensation, as applicable, and apply that directive to all retiree payroll for individuals who retire on or

after July 30, 2020, when the Supreme Court overturned *Guelfi* footnote 6 and KCERA was thus on notice of that statement of law (including those who will retire on or after the date of this Resolution);

3) Determine all active member contributions that were erroneously taken on and after January 1, 2013, on PEPRA Exclusions and any that were potentially erroneously taken on *Alameda* Exclusions, and propose a methodology to address those errors in a manner that complies with applicable federal tax compliance rules and California law;

4) With respect to overpayments that occurred prior to the August 31, 2020 payroll, invoke the “system-wide” error correction provisions in KCERA’s Overpayment and Underpayment of Member Benefits Policy and Overpayment and Underpayment of Member Contributions Policy (collectively “Error Correction Policies”);

5) Present revised pay codes as soon as practicable to the Board to ratify exclusions from compensation earnable and pensionable compensation in compliance with *Alameda*, and communicate to KCERA participating employers that member contributions are no longer to be taken on such pay codes;

6) Inform KCERA members of the foregoing actions through appropriate means; and

7) This resolution supersedes any previous resolutions for employer pay codes of employee compensation.

## **RESOLUTION HISTORY**

- 1) This Resolution was:
  - a) Approved by the Board on August 24, 2020.