

DRAFT

(LAST UPDATED 9-29-2020, SUBJECT TO APPROVAL BY THE BOARD OF RETIREMENT)

KCERA

ALAMEDA DECISION IMPLEMENTATION – MEMBER IMPACT ANALYSIS OF UNIQUE SCENARIOS

EXCLUSIONS – ACTIVE AND DEFERRED MEMBERS

The California Supreme Court's decision in the *Alameda* case upheld the PEPRA Legislation of 2013 and clarified two pay types that must be excluded from the pension calculation: PEPRA Exclusions and *Alameda* Exclusions.

- **PEPRA Exclusions:** PEPRA Exclusions refer to the types of pay listed in California Government Code section 31461(b) and 7522.34(c). These exclusions include, among other things, availability pays, on-call pays, stand-by pays, and any pay, regardless of its name, that is paid for services an employee provides outside normal working hours. More items of pay are excluded for PEPRA members under section 7522.34(c) than are excluded for Legacy members under section 31461(b). As a result, some pay codes are designated as pensionable for Legacy members and not pensionable for PEPRA members.

EXCLUSIONS – ACTIVES

- ***Alameda* Exclusions:** These refer to the types of pay used to fund in-kind benefits. The California Supreme Court decided in the *Alameda* case that county retirement plans must exclude these in-kind benefits from the pension calculation because the benefit is not permitted to be received by a member directly in cash, and therefore it is not considered “compensation,” as that term is defined by statute and case law. Prior to the *Alameda* case, plans were permitted to, but case law did not appear to require it to, exclude these in-kind benefits.
- It appears that the San Joaquin Valley Air Pollution Control District is the only employer with “*Alameda* Exclusions,” because it appears to be the only employer that has had an in-kind benefit included in pension calculations. These benefits are currently under review and will be presented to the Administrative Committee in September and, later, to the full Board of Retirement.
- NOTE: See the **Special Pay Code Tracker** on the *Alameda* Resources page of KCERA’s website for a full list of pay codes by type.

3

ACTIVE & DEFERRED MEMBERS

1. Not retired as of 7/30/2020 with *Alameda* Exclusions
2. Not retired as of 8/30/2020 with PEPRA Exclusions

4

1. ACTIVE/DEFERRED MEMBERS WITH SPECIAL PAY CODES THAT FALL UNDER *ALAMEDA* EXCLUSIONS (RP, DC, DE, DF, DS)

- KCERA plans to request Plan Sponsors cease taking contributions on the portion of contributions paid on "mandatory minimum coverages" for cafeteria-type pays and cease all contributions on RP pay.
- Board of Retirement to consider whether such Member(s) will be refunded the portion of contributions paid on "mandatory minimum coverages" back to their KCERA membership date with applicable interest, subject to final review of tax analysis.

5

2. ACTIVE/DEFERRED MEMBERS WITH SPECIAL PAY CODES THAT FALL UNDER PEPPRA EXCLUSIONS (ALL CODES NOT LISTED IN #1)

- KCERA has requested Plan Sponsors cease taking contributions on these pay codes.
- Board of Retirement to consider whether such Member(s) will be refunded contributions back to 1/1/2013 with applicable interest, subject to final review of tax analysis.

6

RETIRED MEMBERS

3. Retired before 1/1/2013
4. Retired after 1/1/2013 and before 7/30/2020 with *Alameda* Exclusions in their Final Average Compensation (FAC)
5. Retired after 1/1/2013 and before 8/30/2020 with PEPRAs Exclusions in FAC
6. Retired after 7/30/2020 with *Alameda* Exclusions in FAC
7. Retired after 8/30/2020 with PEPRAs Exclusions in FAC

7

3. MEMBERS RETIRED BEFORE 1/1/2013

- No impact on any contributions paid or pension received regardless of special pay codes included in the retired member's FAC.

8

4. MEMBERS RETIRED AFTER 1/1/2013 AND PRIOR TO 7/30/2020 WITH *ALAMEDA* EXCLUSIONS IN HIGHEST FINAL AVERAGE COMPENSATION PERIOD

- No impact on any member pensions as to *Alameda* Exclusions only.
Note: These members may be impacted if their FAC contains PEPRA Exclusions.

9

5. MEMBERS RETIRED AFTER 1/1/2013 AND PRIOR TO 8/30/2020 WITH PEPRA EXCLUSIONS IN HIGHEST FINAL AVERAGE COMPENSATION

- KCERA must adjust monthly pension benefits effective to reflect an FAC without the PEPRA Exclusion special pay codes.
- KCERA must also collect any pension overpayments back to 8/30/2020.
- Board of Retirement will consider whether to refund erroneously collected contributions, net of pension overpayments, back to 8/30/2017 (three year statutory limit) with applicable interest.

10

6. MEMBERS RETIRED AFTER 7/30/2020 WITH *ALAMEDA* EXCLUSIONS IN HIGHEST FINAL AVERAGE COMPENSATION

- KCERA must adjust monthly pension benefits effective 7/30/2020 to reflect an FAC without the portion of the flexible benefit constituting “mandatory minimum coverages”.
- KCERA must also collect any applicable pension overpayments back to 7/30/2020.
- Board of Retirement to consider whether such Member(s) are refunded the portion of contributions paid on “mandatory minimum coverages” back to their KCERA membership date with applicable interest, subject to final review of tax analysis.

11

7. MEMBERS RETIRED AFTER 8/30/2020 WITH PEPRA EXCLUSIONS IN HIGHEST FINAL AVERAGE COMPENSATION

- KCERA must adjust monthly pension benefits effective 8/30/2020 to reflect an FAC without the PEPRA Exclusion special pay codes.
- Collect any applicable pension overpayments back to 8/30/2020 only.
- Board of Retirement to consider whether such Member(s) are refunded contributions back to 1/1/2013 with applicable interest, subject to final review of tax analysis.

12



Questions?

Please submit questions to administration@kcera.org