



# Membership Policy

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## I. Purpose

The Membership Policy (Policy) provides the requirements for membership with the Alameda County Employees' Retirement Association (ACERA), including establishing eligibility for membership and defining service as required by the Regulations of the Board of Retirement.

## II. Membership Eligibility and Contributions

### A. Mandatory Membership

1. Membership in ACERA is mandatory for employees appointed to full time positions with a Participating Employer<sup>1</sup>. Each Participating Employer has the exclusive authority and responsibility to define what constitutes full time employment and to identify its positions that are eligible for membership<sup>2</sup>.
2. At an employee's initial time of entry into ACERA, the Participating Employer certifies in writing to ACERA the following:
  - a. The individual is an employee of the Participating Employer;
  - b. The position is eligible for membership with ACERA; and
  - c. The individual works in a full-time permanent position.
  - d. The individual shall be enrolled in ACERA.

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<sup>1</sup> For Alameda Health Systems, mandatory membership is pursuant to AB 1008 [Chapter 311, 2013] (Gov. Code §3152.4 and Health and Safety Code §101851). Unless stated otherwise, all references to statutes are California State statutes.

<sup>2</sup> ACERA has seven Participating Employers: (1) Alameda County; (2) Alameda Health Systems; (3) Alameda Superior Court of Alameda County; (4) Housing Authority of Alameda County; (5) Livermore Area Recreation and Park District; (6) First 5 Alameda County; and (7) Alameda Office of Education.

3. At the time of initial entry into ACERA all ACERA eligible employees must submit a completed membership enrollment questionnaire to ACERA.
  4. Membership is continuous until termination of employment with a Participating Employer.
- B. Mandatory Contributions
1. Membership contributions are mandatory for all members.
  2. Participating Employers must withhold member contributions from compensation earnable/pensionable compensation and forward such contributions to ACERA on a biweekly basis. (Gov. Code §§31552 and 31625.)
  3. Failure of the Participating Employer to withhold contributions in a timely manner will result in missed contributions.
    - a. Upon discovery of missed contributions, ACERA shall assess the amount owed plus earned interest for both the member and Participating Employer and shall notify each respectively of the amounts owed.
    - b. ACERA determines the earned interest rate applied to the missed contribution<sup>3</sup>.
    - c. The Participating Employer shall withhold the missed contributions plus earned interest from the employee's wages.
    - d. The Participating Employer shall pay its employer contributions and earned interest in connection with all missed contributions.
    - e. In instances where the member is no longer in active employment with the employer, the member and employer remain responsible for each of their respective portion of the legally required contributions plus earned interest. (Gov. Code §§31581, 31582, 31585, 31620, 31621.)
- C. First Date of Membership

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<sup>3</sup> *Earned interest refers to the interest rate for the previous six month cycle. This is interest that would have been earned on the account had the contributions been paid timely. If the member is in on an installment plan, the assumed interest rate shall be included in the calculation.*

1. Membership is effective on the first day of the second pay period following the employee's hire date into an ACERA eligible position (except the Housing Authority as noted below) This is the date of entry into ACERA membership. As of the date of entry, payroll deductions for retirement contributions begin and service credit for each hour worked is earned.
  2. During the short period between the beginning of employment and the ACERA plan date of entry, the employee does not pay contributions or earn service credit. A member can purchase this service credit (referred to as "days prior to entry") any time before retirement without changing the membership, and date of entry does not change.
  3. For the Housing Authority, membership is effective on the first day of an employee's hire in an ACERA eligible position. This is the first date of entry into ACERA membership. As of this date of entry, payroll deductions for retirement contributions begin and service credit for each hour work is earned.
- D. Excluded from Membership
1. Temporary, Part-time, Seasonal, Intermittent and "as needed", or Per Diem employees, as defined in the Alameda County Civil Service Rules, Alameda County Salary Ordinance, the Alameda County Administrative Code or such similar ineligible positions as defined by each Participating Employer. Individuals who work for a participating employer through the Alameda County Temporary Agency Pool (TAP) are excluded from membership in the Alameda County Employees' Retirement Association.
  2. If a full-time employee who is a member of ACERA is transferred to employment in a temporary, part-time, seasonal, intermittent and "as needed", per diem status, or TAP position, the employee is required to continue his or her membership from the date of such transfer and shall receive credit for such subsequent service as the total time served in such position bears to the total time served in a full-time position.
- E. Independent Contractors
1. Each participating employer identifies its positions which are ACERA eligible and hires employees into those positions. If a Participating Employer hires individuals

as independent contractors under an employment contract or through a third-party, those individuals are ineligible for ACERA membership. Such working time is not deemed service, county service, or public service. Additionally, such working time cannot be purchased at any time. The term contract as used here does not refer to a collective bargaining agreement between organized labor and a Participating Employer.

2. Examples of employment ineligible for ACERA membership and ineligible service include, but are not limited to, the following:
  - a. Temporary workers who work through temp agencies or third parties. (This does not include TAP employees which are discussed above.)
  - b. Individuals working under contract for temporary services requiring professional, highly technical skills or special skills as defined in Government Code §§31561 and 31000.
  - c. Independent Contractors including, but not limited to, individuals whose compensation and/or rate of compensation is fixed at a rate by the day or hour. (Gov. Code §§31000 and 31527(e).)

F. Terminated Employees

Members who terminate membership/employment before retirement and meet the service criteria may elect a deferred retirement allowance. (Gov. Code §§31700 31706.) Members who terminate membership/employment before retirement and do not meet the service criteria may elect to leave accumulated contributions on deposit in the retirement fund. (Gov. Code §31629.5.) (See Termination Election of Membership Form on [www.ACERA.org](http://www.ACERA.org).)

III. Membership Types

- A. The type of membership depends on the employer, job classification, and date of entry/re-entry into the ACERA.
- B. ACERA has two Membership types, which are based upon job classifications:

1. Safety members are employees working in active law enforcement, fire fighting, or in positions that have been designated as safety positions (i.e., Juvenile Hall Group Counselor, Probation Officer, etc.).
2. General Members are all other members.

#### IV. Tier Levels

ACERA has different Tiers (benefit levels) based upon a member's date of entry/re-entry.

##### A. Tier I:

General or Safety Members who joined ACERA on or before June 30, 1983, and have been continuous members<sup>4</sup>.

General Members who joined ACERA as employees of the Livermore Area Recreation and Park District (LARPD) before October 1, 2008, and have been continuous members.

General Members who joined ACERA as employees of the Housing Authority before September 30, 2011, and have been continuous members.

The final average salary calculation is based on the highest 12 months of pay.

##### B. Tier II:

1. General or Safety members who joined or rejoined ACERA on or after July 1, 1983
2. General members who joined ACERA on or after September 30, 2011, as employees of the Housing Authority. On September 30, 2011, the Housing Authority implemented a new benefit formula for those employees who elected to change to Tier II, and for any new Housing Authority employees.
3. The Final Average Salary calculation for Tier II is based upon the highest 36 months of pay.

##### C. Tier III:

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<sup>4</sup> Under Gov. Code §31484.8 effective January 1, 1985, a Tier I employee who leaves County service between June 30, 1983, to June 6, 1988, and subsequently returns to covered employment within three years shall return as a Tier I employee. Effective June 30, 1988, a Tier I employee who is laid off and rehired within one (1) year from the date of separation shall return as a Tier I employee. Any Tier I employee who takes a deferred retirement and subsequently returns to covered employment shall return as a Tier I employee.

General Members who joined ACERA on or after October 1, 2008, as employees of the LARPD. On October 1, 2008, LARPD implemented a new benefit formula for those employees who elected to change to Tier III and for any new LARPD employees. The Final Average Salary calculation is based upon the highest 12 months of pay.

D. Tier IV:

1. For all Participating Employers, General and Safety Members who joined ACERA for the first time on or after January 1, 2013, and
  - a. Were not members of any other public retirement system before January 1, 2013;
  - b. Were not subject to reciprocity; or
  - c. Were active members of ACERA and had a break in service of more than 6 months and returned to a different ACERA Participating Employer.
2. The final average salary is based on the 36 highest consecutive months. (Gov. Code §7522.04(f).)

E. Dual Membership Service (Split Tier Membership)

1. A member having service as both a General and a Safety member and/or service as a Tier I, Tier II, Tier III, or Tier IV member will receive benefits calculated under the type of membership and Tier for the service credit earned in each category.
2. Eligible members with Tier I and Tier II Split Tier membership may be able to convert Tier II service time to Tier I pursuant to *Aquilino vs. Marin County Employees' Retirement Association (MCERA)* (1998) 60 Cal.App.4th 1509 provided they redeposit withdrawn Tier I contributions and apply for *Aquilino* Tier I restoration.

V. Service Credit Eligible for Purchase

The following types of service credit are eligible for purchase to increase membership service credit totals. All ACERA member service purchases must be completed within five years of initiation of purchase. This entire section does not apply to time worked in positions detailed in Section II.E. above:

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- A. **Time Prior to Entry Date:** Entry dates are the first day of the pay period following the appointment to a retirement eligible position. Days worked before the entry date may be purchased and added to membership service credit.
- B. **Prior Ineligible Service:** Members who were excluded from retirement membership because Part-time, Seasonal, Intermittent, or Services-as-needed, or worked in a position through TAP may purchase this service once they become eligible for membership. Written elections to make such purchases shall be made within one year of date of entry into membership.
- C. **Medical Leave of Absence without Pay:** A member who returns to active service following an uncompensated leave of absence on account of the member's illness may receive service credit for the period of such absence upon the payment of the contributions that the member would have paid during the period, together with the interest that such contributions would have earned had they been on deposit, if the member was not absent. Upon return to employment, the member may purchase the service lost during such leave not to exceed one (1) year for each leave period. The number of payment deductions cannot exceed the number of months the member is purchasing. (Gov. Code §31646.)
- D. **Military Service Leave of Absence without Pay:**
- i. **Federal Law Provides the Following:**
    - a. The Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") allows members to take leave for up to five years of military service.
    - b. Upon returning to work, members have the right to pay for missed contributions for up to five years of service beginning from the date of re-entry into employment.
    - c. The repayment period is three times the member's period of service, not to exceed five years.
    - d. The contributions are pre-tax and not subject to interest.

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- e. Participating Employers are required to pay the employer contributions for the same period of time.
  - f. Members cannot purchase service credit for any period for which the member will receive military retirement.
2. State Law Provides the Following:
- a. If USERRA does not apply, under the California Employees' Retirement Law ("CERL"), non-PEPRA members may purchase service credit for the military leave of absence.
  - b. A member who resigns or obtains a leave of absence and enters the military, and later returns to service with an employer, may purchase service for any part or all of the military service if the following conditions apply:
    - 1) The member received an honorable discharge;
    - 2) The member return to a Participating Employer within one year from the date of discharge from the military.
  - c. The member must contribute what he or she would have paid to ACERA based on his or her compensation earnable as defined in Government Code §31461, at the time of resignation or leave of absence, along with earned interest. The member is not entitled to purchase service credit if the member will receive military retirement for the same service. (Gov. Code §§31649.5, 31649.6.)
3. Notice
- a. Participating Employers must notify members of the right to purchase military service within 30 days after the date of reemployment.
  - b. The Participating Employer is required to notify ACERA within 30 days that the member has been reemployed. (Gov. Code §31649.1.)
- E. **Redeposit of Prior Membership Contributions:** A current member who previously terminated membership with ACERA and who withdrew contributions and interest for that membership, may redeposit the withdrawn funds plus interest that would have accrued up to the date of payment at any time before retirement. All such redeposits shall



be completed within 5 years from the date the redeposit is initiated. Service credit for this prior membership would then be restored.

- F. Other Prior Public Service: A member who worked for non-ACERA public agency before becoming a member of ACERA may be eligible to purchase service credit for such service if certain requirements are met.
1. Service must be earned with an approved public agency within the State of California.
  2. Prior federal civilian and prior military service may be purchased only by members hired on or before August 8, 1972.
  3. The member must be ineligible for pension benefits from the other public service.
  4. This type of purchased service shall not count towards vesting requirements or eligibility to retire.
  5. Written elections to make such purchases shall be made within one year of date of entry into membership.

## VI. Reciprocal Membership

### A. General Rules

1. Members who enter ACERA membership within six (6) months of termination from a membership with another '37 Act County, CalPERS, or a public agency reciprocal with CalPERS and who left their membership in deferred status with the prior retirement system, may have a reciprocal agreement established between ACERA and the prior retirement system. The same is true for members who terminate employment under ACERA membership, leave funds in deferred status, and begin employment within six months with an employer under another '37 Act County, CalPERS or a retirement system reciprocal with CalPERS. Reciprocity is irrevocable. (Gov. Code §31831.)
2. If overlapping or concurrent employment or service credit occurs within the six month window, reciprocity cannot be established. ACERA may adjust the entry date to the date after the termination date in the prior agency to prevent duplicate

service crediting. However, ACERA cannot adjust the termination date if the member begins employment in the next reciprocal agency. In these instances, reciprocity will not be established unless the next agency adjusts its entry date to avoid overlapping service crediting.

3. The entry age used by ACERA will be the age when the member entered his or her first reciprocal membership. This is not applicable to Tier IV.
4. Service credit earned in a reciprocal agency will be considered in establishing a member's vesting rights and eligibility to retire.
5. The highest average salary earned will be used to compute the retirement benefits in all reciprocal memberships.

B. Rules Specific to Certain Safety Members

Safety members (law enforcement and fire fighters only) who withdrew retirement contributions after termination of employment, and currently work for a reciprocal agency, may redeposit funds to establish reciprocal benefits. Eligibility for specific reciprocal benefits will depend on whether the time lapse between system memberships is more or less than 6 months (AB 2766 [Chapter 883, 2002]).

C. Disability

If disability retirement is granted from the current reciprocal agency, the benefit must be pro-rated according to service earned in each system. Members may not receive a benefit amount for more than what they would have received had all service been earned in one retirement system. In some cases, reciprocal retirement systems pay a level of retirement benefit which is the greatest amount the member would be entitled to in any single retirement system. In those cases, ACERA will not pay any benefit to the member and will not return the member's accumulated contributions as required by Government Code §§31838.5, 31830, 31831.

VII. Thirty Year (30) Membership

A. Safety Members:

Safety members who attain 30 years of retirement service credit make no further employee contributions. Date of entry into ACERA is not considered when determining thirty (30)-year membership for safety members. (Board Resolution Number 00-134.)

B. General Members:

1. Thirty (30) year membership applies only to those members who entered or re-entered ACERA membership on or before March 7, 1973. Members who have been continuously making contributions to ACERA and/or a reciprocal Agency since March 7, 1973, make no further contributions upon attaining thirty (30) years of retirement service credit, provided the reciprocity requirements of Government Code §31836.1 are met. (Gov. Code §31625.2)
2. Thirty (30) year membership status is not applicable to those members who re-entered ACERA membership after March 7, 1973, except as noted in the footnote<sup>5</sup>. Those members will make contributions for as long as they remain active members.

C. Tier IV Members:

Effective January 1, 2013, for General and Safety members who are Tier IV, Sections II.K.1. and II.K.2. do not apply. Thirty (30) year membership is not applicable to Tier IV members. Those members will make contributions for as long as they remain active members.

## VIII. Contribution Rates for ACERA Members

A. Tier I, Tier II, and Tier III:

Contribution rates are based upon age of entry, membership type, and plan tier. The rates are adjusted annually.

B. Tier IV:

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<sup>5</sup> Board Resolution 00-134, revised the thirty (30) year membership policy. Effective December 21, 2000, thirty (30) year membership status is applicable to members whose date of entry into ACERA is after March 7, 1973, if they were previously a member of ACERA on or before March 7, 1973, terminated, and withdrew their contributions and interest and redeposited all eligible contributions and interest upon re-entry. This is consistent with the understanding of continuous membership contained in Gov. Code §31652. If a general member's date of entry is on or after December 21, 2000, and the member has established reciprocity with another retirement system, thirty (30) year membership does not apply.

Contribution rates are based upon a flat/single contribution rate. The rates are adjusted annually. (Gov. Code §§31621.11, 31639.26.)

## IX. Benefit Formulas

### A. Benefit Formulas at Retirement and Minimum Eligibility Requirements

#### i. Tier I:

##### a. General:

- 1) 2% at age 57.
- 2) Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 30 or more years of service credit.

##### b. Safety:

- 1) 3% at age 50.
- 2) Member may retire a) at age 50 or older with 10 or more years of credit service or b) at any age with 20 or more years of service credit.

#### 2. Tier II:

##### a. General:

- 1) 2.09% at age 62.
- 2) Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 30 or more years of service credit.

##### b. Safety:

Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 20 or more years of service credit. The following formulas apply.

- 1) 3% at age 50 years old.

2) Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 20 or more years of service credit.

3) 3% at age 55 years old.

Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 20 or more years of service credit.

4) 2% at age 50 years old.

Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 20 or more years of service credit.

3. Tier III:

a. 2.5% at age 55.

b. Members may retire a) at age 50 or older with 10 or more years of service credit or b) at any age with 30 or more years of service credit.

4. Tier IV:

a. General:

1) 1% at age 52.

2) 2.5% at age 67.

3) Members may retire at age 52 or older with 5 or more years of service.

b. Safety:

1) 2% at age 50.

2) 2.7% at age 57.

3) Members may retire at age 50 or older with 5 or more years of service.

(Gov. Code §§7522.20, 7522.25, 7522.30, 7522.52)

X. Benefits Available to ACERA Members

A. Retirement Benefits

Eligible members receive a guaranteed, life time benefit at retirement calculated by a set formula.

B. Disability Benefits

If a member becomes permanently incapacitated from the performance of his or her job duties, he or she may be eligible for disability retirement through ACERA.

C. Death Benefits

Death benefits payable to beneficiaries vary in form and are based on the status of the member at death. An overpayment that is outstanding upon death, can deducted from the benefit to the surviving spouse before paying out the benefit.

XI. Pensionable Compensation/Compensation Earnable Defined

A. Tier I, Tier II, and Tier III Members

Compensation Earnable means the average compensation as determined by the Board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in that same grade or class or positions during the period, and at the same rate of pay and excludes specific types of compensation as determined by the Board, including compensation deemed paid to enhance a member's retirement benefit. (Gov. Code §31461.)

B. Tier IV Members

1. Pensionable compensation means the 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 a publicly available pay schedule; and excludes specific types of compensation as determined by the Board. (Gov. Code §7522.34.)

2. Pensionable Compensation used to calculate the defined benefit paid to a Tier IV member shall not exceed 100% (for those members whose service is included in

the federal system) and 120% (for those members whose service is not included in the federal system) of the contribution and benefit base specified in Section 430(b) of Title 42 of the United States Code (Gov. Code §§7522.10(c)), 7522.34) to be adjusted each actuarial evaluation based on changes to the Consumer Price Index. (Gov. Code §7522.10(d).)

3. A public employer shall not offer a defined benefit or any combination of defined benefits, including a defined benefit offered by a private provider, on compensation in excess of the limitation stated in this Sections 1. and 2. above.

C. Tier I, Tier II, Tier III and Tier IV

Compensation that has been deferred shall be deemed pensionable compensation when earned rather than paid.

## XII. Reinstatement

A. Reinstatement

In the event of reinstatement, of a returning retiree to employment with a Participating Employer, the law and ACERA's policy require suspension of the payment of the retiree's monthly retirement allowance. In such cases the retiree may be employed without limitation on the total number of hours per fiscal year<sup>6</sup>. The reinstated retiree must be enrolled as an active ACERA membership; and payment of member contributions resumes. Participating Employers and returning retirees shall comply with the law and all ACERA policies in this regard.

B. Process for Reinstatement

A member retired from service and reemployed shall become an active member of ACERA upon the following; and the following is required:

- i. A Participating Employer shall promptly inform ACERA, in writing, when either of the following events occurs:

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<sup>6</sup> Effective November 6, 2012 through Board of Supervisor Resolution, §§31680.4 and 31680.5 are operative.

- a. A retiree of the Participating Employer works 961 hours or more in a fiscal year;
  - b. The Participating Employer elects to offer full time employment to an ACERA retiree;
  - c. the retiree returns to work without the appropriate break in service; and/or
  - d. the retiree has a verbal or written agreement to return to work.
2. The Participating Employer will supply the employee with the enrollment questionnaire to complete and submit to ACERA.
  3. The retiree will be required to complete an application for reinstatement and submit it to the Board.
  4. The Board determines, based upon medical examination and written certification from ACERA's Medical Advisor, that the retiree is not incapacitated for the duties assigned.
  5. The member meets the other membership provisions within this Policy.
  6. The effective date of reinstatement to active membership status shall be the first day of the month following the date of reemployment.
  7. The retirement allowance shall be canceled on the effective date of the member's reinstatement and shall be resumed only upon the subsequent termination of the member from employment.
  8. Government Code §31680.7 provides guidance for ACERA in its determination of membership tier during reemployment, final retirement service credit, membership contribution rate during reemployment, and reinstatement of retirement allowance after discontinuation of reemployment for returning retirees who are not new members as of January 1, 2013.
  9. The member shall be considered a new member if the member is reinstated and reemployed with a new ACERA employer.



## XIII. Policy Modification

The Governance Committee, or other committee designated by the Board, shall review this policy at least every three (3). The Committee shall make recommendations to the Board concerning any improvements or modifications it deems necessary.

## XIV. Policy History

- A. The Board adopted this policy on July 17, 2003.
- B. The Board reviewed and affirmed this policy, with revisions, on December 20, 2018<sup>7</sup>.

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<sup>7</sup> Previous amendment dates all with revisions: August 16, 2007; August 18, 2011; December 15, 2011; December 20, 2012; March 21, 2013; December 19, 2013; June 18, 2015; July 21, 2016, and December 20, 2018.