

Frequently Asked Questions: 2012 Pension Reform

Retirees

Question 1: Will my monthly retirement allowance amount be affected by the 2013 California Public Employees' Pension Reform Act (C-PEPRA) and AB 197 ?

Answer 1: No, your monthly retirement allowance will not be affected by the provisions in the C-PEPRA. ACERA will NOT recalculate your benefit based upon any benefit formula contained in the new law. Your allowance will continue to be calculated in the same way it is calculated today.

Question 2: Will my Cost of Living Adjustment (COLA) be affected by the C-PEPRA changes?

Answer 2: No, your COLA will not be affected by the provisions in the PEPRA. ACERA will NOT recalculate your COLA benefit based upon any provisions of the new law. Your COLA will continue to be calculated in the same way it is calculated today.

Question 3: Can I return to work for an ACERA covered employer without having my retirement allowance suspended?

Answer 3: Yes, if you return to work for an ACERA covered employer, you can work for 960 hours or less per fiscal year, without suspension of retirement allowance. However, now that C-PEPRA is law, an active member who retires on or after January 1, 2013 must wait 180 days after retirement to return to work. The 180 day wait period will not apply for safety retirees returning to work. The current limit of returning to work for 960 hours or less per fiscal year, without suspension of retirement allowance remain unchanged.

Current Members

Question 1: Do the benefit formulas contained in the new California Public Employees' Pension Reform Act (C-PEPRA) apply to current employees?

Answer 1: No. There are no benefit formulas in C-PEPRA applicable to current members of ACERA.

Question 2: I have heard C-PEPRA offers members who are hired after January 1, 2013 a lower benefit formula that is currently applied to members. Is that correct?

Answer 2: Yes. Under C-PEPRA, if you are hired or become an ACERA member after January 1, 2013 you will have a lower benefit formula than is applied to current members. However, members joining after January 1, 2013 who are eligible for reciprocity likely will have the benefit formula available to current members rather than the new lower benefit formulas. If you are contemplating leaving county employment and moving on to another county retirement system in California or State of California CalPERS covered employment, you should have detailed conversations with the prospective employer before you accept employment to determine what if any impact the move (and eligibility for reciprocity) may have on your retirement benefits.

Question 3: I have heard that things have changed, and now the full amount of what I earn and am paid won't be used by ACERA when calculating my retirement allowance. Is that true?

Answer 3: Actually, currently the IRS has limits on the total amount of compensation you earn that can be applied in calculation of your retirement benefit. The limit increases annually, and is currently \$255,000 for 2013. Therefore, most members have not had to think about a limit like this impacting calculations of their retirement benefits. Current members will continue to be limited by the IRS rules. (Certain employees who are impacted by this cap are covered by a Replacement Benefit Plan which addresses contributions above the limit.)

As of January 1, 2013, under C-PEPRA, new employees and new members (i.e., generally those who become members of ACERA after January 1, 2013) will have a cap on the amount of pensionable compensation that can be used to calculate the retirement allowance based on federal limits. That cap for general members is currently approximately \$113,000 and that cap for new safety members is approximately \$136,440 for 2013.

Question 4: Do the limits on the maximum amount of compensation earnable which can be included in calculations of retirement allowances contained in C-PEPRA apply to current ACERA members?

Answer 4: No. The limits on maximum amount of compensation earnable which can be included in calculations of retirement allowances contained in C-PEPRA do not apply to current ACERA members. However, C-PEPRA does contain clarifications of what is excluded from compensation earnable for current members, and vests ACERA with authority to determine what can be included in compensation earnable, and to determine if any compensation paid is done to enhance retirement benefits.

Question 5: What is the meaning of the term "compensation earnable?"

Answer 5: "Compensation earnable" is generally understood to mean an amount of compensation paid to you in cash which can be included in the formula used to calculate your retirement allowance. C-PEPRA changed the definition of compensation earnable. Under the pension reform law, ACERA has the authority to determine "compensation earnable."

The County Employees' Retirement Law of 1937 that defines "compensation earnable" has been amended. Although it still defines "compensation earnable" as "the average compensation as determined by the board [of retirement], for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay," it is important to understand, that C-PEPRA changed the definition of "compensation earnable" to exclude pay items previously included in calculating your retirement benefit, such as: the following:

- o Any compensation determined by ACERA to have been paid to enhance a member's retirement benefit is excluded;
- o Payments solely due to termination of employment and received while member is

- o employed are excluded;
- o Compensation previously provided in-kind but now paid directly to member in the form of cash in the Final Average Salary is excluded;
- o Payments for unused vacation that exceeds amount earned and payable in the Final Average Salary period are excluded;
- o Payments made at the termination of employment regardless of when reported or paid are excluded; and
- o Payments for additional services rendered outside of normal working hours;
- o One time or ad hoc payments to member, but not similarly situated members in member's grade or class are excluded.

Question 6: Will ACERA use the payment I receive for unused vacation leave earned and payable in the Final Average Salary period in the calculation of my retirement allowance if I retire on or after January 1, 2013?

Answer 6: Yes, generally, however there have been significant changes you should be aware of. Based on C-PEPRA, as of January 1, 2013, ACERA will include amounts earned and payable during the Final Average Salary period. Therefore, cash payments included in compensation earnable effective January 1, 2013 are limited to vacation hours that are earned and sold during the Final Average Salary period. If maximum allowable amount is not sold during FAS, the difference may be picked up if included in vacation payoff. Please review the document Ventura Benefits and Pension Reform for more information.

Question 7: What if I am an unrepresented member in Tier 2, earn 5 weeks of vacation per calendar year, receive a housing allowance of \$300 per month previously paid in-kind, and can sell 3 weeks of vacation per year? If my date of retirement is on or after January 1, 2013, what will be included in Final Average Salary (if the allowance was paid in my highest 36 consecutive months)?

Answer 7: It is important to note that as of January 1, 2013, "compensation earnable" has been redefined in C-PEPRA. This means that as of January 1, 2013 ACERA will not include payments which were previously made to a third party and now paid to you in cash when calculating your retirement benefit. ACERA may not include the \$300 housing allowance in calculating your retirement benefit. If you retire on or after January 1, 2013, ACERA will count 3 weeks of vacation that you can and do sell each year in the Final Average Salary period as vacation "earned and payable" (3 weeks x 3 years = 9 weeks of vacation). Please review the document Ventura Benefits and Pension Reform for more information.

Question 8: My employer does not have a vacation sell back program, so I cannot and did not sell back any vacation at any time in my employment. However, my employer does allow me to cash out unused vacation at termination of my employment; is the amount of unused vacation I cash out at my termination included in my Final Average Salary?

Answer 8: No. C-PEPRA defines compensation earnable to include payments for unused vacation, that is earned and payable in the Final Average Salary period. The payment your employer has authorized to you is a payment made solely due to termination of your employment, not made while you were employed, and not earned or payable in your Final Average Salary.

Question 9: If I am unrepresented management and don't work under an MOU. Instead, based on a resolution of the governing body (i.e., Board of Supervisors) I can sell back vacation. Will I be able to have any of my vacation sell back in my Final Average Salary period included calculations of my retirement allowance?

Answer 9: Yes. C-PEPRA defines compensation earnable to include payments for unused vacation, that is earned and payable in the Final Average Salary period. However there have been significant changes you should be aware of. Based on C-PEPRA, as of January 1, 2013, ACERA will include amounts earned and payable during the Final Average Salary period. Therefore, cash payments included in compensation earnable effective January 1, 2013 are limited to vacation hours that are earned and sold during the Final Average Salary period and/or paid off at retirement. Please review the document Ventura Benefits and Pension Reform for more information.

Question 10: If I receive payments in my Final Average Salary period which were previously paid to third parties for in-kind services (such as furnishing a car that is converted to an auto allowance, or a housing allowance now paid to me), is that "compensation earnable" if I retire on or after January 1, 2013?

Answer 10: No. C-PEPRA states those amounts are not "compensation earnable." Therefore such amounts would not be included in your Final Average Salary, if you retire on or after January 1, 2013.

Question 11: Will ACERA include payments to me solely due to termination of employment and received while I was employed, regardless of when paid, in my Final Average Salary to calculate my retirement allowance if I retire on or after January 1, 2013?

Answer 11: No. Such payments are excluded from compensation earnable and will not be included in calculations to determine your retirement allowance.

Question 12: If I retire on or after January 1, 2013, will ACERA include one time or ad hoc payments (i.e., performance pay) I received and which were not paid to similarly situated members in my grade or class in the calculation of my retirement allowance?

Answer 12: No. Such payments are excluded from compensation earnable and will not be included in calculations to determine your retirement allowance.

Question 13: I have heard the term "normal cost" in conversations about the C-PEPRA. What is "normal cost?"

Answer 13: Normal cost is a term defined in C-PEPRA as follows, "the annual actuarially determined normal cost for the defined benefit plan of an employer expressed as a percentage of payroll." Like most retirement plans, ACERA employs an actuary to annually determine the costs to fund the retirement plan based on future projections. C-PEPRA provides that employers may require current employees to share normal costs annually on a 50-50 basis. Additionally, C-PEPRA provides that employers must share normal costs with new employees on at least a 50-50 basis. In its annual report as of December 2011, the actuary reported that currently, the average total amount paid as member contributions as compared the total aggregate amount paid by all ACERA's participating employers is reasonably close to a 50-50 split.

Question 14: Can my employer require payment of all or part of the member and employer contributions from me a current member?

Answer 14: Yes. Under C-PEPRA, employers are given the authority to require current members to pay contributions at a rate which covers a larger share of the normal costs of providing retirement benefits to employees. Under C-PEPRA, as of January 1, 2013, if you are a union represented employee, so long as your employer collectively bargains for this, your employer may require you to share the normal cost. Under C-PEPRA, sharing the normal costs means paying 50% of the normal cost. C-PEPRA provides that employers have until 2018 to implement this provision. Employers are not required to bargain with unrepresented employees before requiring them to share the normal cost, and are not required to wait until 2018 to require unrepresented employees to share in the payment of normal cost.

Question 15: So, if I am unrepresented management, I could see an increase in my contribution rate requiring me to pay 50% of the normal cost before 2018?

Answer 15: Yes, C-PEPRA states that as long as the increase in contributions is no more than 14% above the normal rate established for general members and 37% above the normal rate established for safety members, you can be required to pay more contributions to effectively pay at least 50% of the normal cost.

Question 16: Can my employer adopt an enhanced benefit formula for its employees after January 1, 2013 and apply it to past service?

Answer 16: No. Any such adoption must apply to prospective service only.

Question 17: Is there a change in service-connected disability benefits for safety members in the pension reform law?

Answer 17: C-PEPRA currently provides an enhanced industrial disability retirement benefit for safety members until 2018 (or until the provision is repealed, deleted or extended). However, ACERA does not provide industrial disability retirement benefits. Rather ACERA provides service-connected disability retirement benefits. As ACERA understands at this time, this provision may not apply to ACERA safety members. We have been informed that this provision will be clearly revised in the California Legislature in December 2012 to resolve whether or not the enhanced benefit is intended for 1937 County Employees' Retirement Law systems such as ACERA. We will provide updated information on this in later FAQs.

Question 18: Is it true, if a member is convicted of a felony, the member's benefits can be terminated?

Answer 18: C-PEPRA states that members convicted of felonies for conduct arising out of or in the performance of a member's official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, shall forfeit all accrued rights and benefits in ACERA (earned or accrued from the date of the commission of the felony) and shall not accrue further benefits effective the date of the conviction.

Question 19: Will I be able to convert unused sick leave to service credit?

Answer: 19: Yes, this has not changed under C-PEPRA. Generally, 50% of the hours accrued are converted to service up to a cap for non-management employees. The cap is generally 125 sick leave days (which converts to 62.5 day of service credit). However, all employees need to refer to the current MOU, or applicable resolution if you are management.

Question 20: If I retire in 2013 and my Final Average Salary Period (FAS) used for calculation of my retirement allowance is 2011, 2012 and 2013 (extending prior to January 1, 2013 and past January 1, 2013) will my retirement allowance be calculated under C-PEPRA?

Answer 20: Yes. The laws that apply at the time of your retirement are the laws which will control ACERA's calculation of your retirement allowance. In the above described case, the pre C-PEPRA compensation included in your FAS period will be calculated under the new rules of C-PEPRA. For example, if you earned a one-time bonus 2011, and received an ad-hoc education stipend payment in 2012, the ad-hoc and one time payments will not be included in your FAS even though they were paid/earned prior to C-PEPRA's effective date of January 1, 2013.

Question 21: What if I disagree with ACERA's determination that the compensation I received was for the purpose of enhancing my retirement benefit, or is not "compensation earnable," what can I do?

Answer 21: Members can challenge ACERA's compensation determination through an appeal process and if unsuccessful, through the California Superior Court in a legal proceeding called a Petition for Writ of Mandate.

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