



Felony Forfeiture Policy

I. Purpose

This Policy is to provide guidance on how to handle felony forfeitures. The Public Employees' Pension Reform Act of 2013 ("PEPRA") added two forfeiture statutes applicable to all public employees convicted of felonies on or after January 1, 2013¹. The law took effect January 1, 2013, and the relevant Government Code sections are 7522.72 for employees hired before January 1, 2013, and 7522.74 for employees hired after January 1, 2013².

II. Objectives

- A. The felony forfeiture statutes provide that "if a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member . . . and shall not accrue further benefits in that public retirement system, effective on the date of the conviction."³
- B. The felony forfeiture statutes further provide that "if a public employee who has contact with children as part of his or her official duties is convicted of a felony that was committed within the scope of his or her official duties against or involving a child who he or she has contact with as part of his or her official duties, he or she shall forfeit all

¹ Felony forfeiture laws applicable to public retirement benefits originally applied only to elected public officers who took public office, or were re elected to public office on or after January 1, 2006. (Gov. Code §7522.20, formerly Gov. Code §1234.) PEPRA further provided that the pre existing narrower felony forfeiture statute would not apply in any instance where the newly enacted felony forfeiture statute applied.

² Gov. Code §7522.72 applies to public employees who were first employed, appointed, or elected before January 1, 2013 and Gov. Code §7522.74 applies to those who were first employed, appointed, or elected on or after January 1, 2013.

³ Gov. Code §§7522.72(b)(1); 7522.74(b)(1).

accrued rights and benefits in any public retirement system in which he or she is a member ... and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.”⁴

- C. When the felony is for conduct described in either of the above provisions, the member “shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.”⁵
- D. The employee and prosecuting agency shall notify the employer within 60 days of the felony conviction including the date of conviction and date of the first known commission of the felony⁶. The member and the employer who employs or employed the member are required to notify ACERA within 90 days of the conviction⁷.
- E. If this Policy conflicts with any statutory provisions or case law, the statutory provisions or case law will govern.

III. Policy Guidelines

A. Investigation

Upon receipt of notification from any source of a felony conviction of an ACERA member, ACERA Staff (“Staff”) will investigate the matter including obtaining the criminal record. Staff will determine (1) the earliest date of the commission of the felony;

⁴ Gov. Code §§7522.72(b)(2); 7522.74(b)(2).

⁵ Gov. Code §§7522.72(c); 7522.74(c).

⁶ Gov. Code §§7522.72(e); 7522.74(e).

⁷ Gov. Code §§7522.72(f); 7522.74(f).

(2) the conviction date; and (3) whether the conviction falls within the felony forfeiture statutes.

B. Notifying the Member

Following the notice of conviction, Staff will inform the member of ACERA's determination including:

1. The felony forfeiture statute that applies to his/her benefits;
2. Supporting documentation that the felony forfeiture statute applies; and
3. The amount forfeited and how it was calculated.

C. Member Appeal Rights

The member has the right to appeal the matter to the Board at a regularly scheduled Board meeting. Staff will inform the member of the appeal process. The Board shall have the discretion to hear the matter directly or refer it to a hearing officer for a recommendation, in which case the hearing officer's recommendation shall be made to the full Board for final decision⁸.

D. Forfeited Benefits

1. Computing Forfeited Benefits

Staff will follow the legal requirements to determine the amount of the benefit forfeited. The member is entitled to a return of his or her member paid contributions, without interest, made during the forfeited period⁹. Staff will reverse the member paid contributions and service credit for the forfeited period. Any paid contributions will be applied to an overpayment owed to ACERA first. The law specifies rules for active/deferred members and retired members.

2. Notification to the Court and District Attorney

⁸ Gov. Code §§31533, 31534.

⁹ Gov. Code §§7522.72((d)(1); 7522.74(d)(1).

ACERA is required to notify the court and district attorney at least three business days prior to refund of the money to the member¹⁰.

3. Benefits Not Forfeited

Rights and benefits attributable to service performed before the date of the first commission of the felony for which the member was convicted shall not be forfeited¹¹.

4. Reversal of Conviction

If a member's conviction is reversed and that decision is final, the employee can either recover the forfeited rights and benefits as adjusted for the contributions received or redeposit those contributions and interest that would have accrued during the forfeiture period, as determined by the system actuary, and then recover the full amount of the forfeited rights and benefits¹².

5. Returning to an ACERA Employer

After forfeiture of benefits, a member cannot return to employment with an ACERA employer and accrue further benefits in ACERA¹³.

IV. Policy Review

The Operations Committee shall review the Felony Forfeiture Policy at least every three (3) years to ensure that it remains relevant and appropriate.

V. Policy History

A. The Board adopted this policy on December 21, 2017.

¹⁰ Gov. Code §§7522.72(d)(2); 7522.74(d)(2).

¹¹ Gov. Code §§7522.72(c)(1); 7522.74(c)(1).

¹² Gov. Code §§7522.72(h); 7522.74(h).

¹³ Gov. Code §§7522.72(b)(1), (2); 7522.74(b)(1), (2).