



San Bernardino County Employees'
Retirement Association

Superior Court of San Bernardino County – Alameda Decision Fact Sheet

Background on the Alameda Decision

At its Board meetings on August 6, 2020, September 3, 2020, October 1, 2020, and November 5, 2020, the SBCERA Board of Retirement adopted resolutions 2020-5, 2020-6, 2020-8, and 2020-9, respectively, to address the California Supreme Court's decision issued on July 30, 2020, in the case known as Alameda County Deputy Sheriffs' Association et al. v. Alameda County Employees' Retirement Association and Board of Retirement of ACERA (S247095, also known as "the Alameda case").

SBCERA is one of 20 California county retirement systems governed by the County Employees' Retirement Law of 1937 (CERL). The issue in the Alameda case is the inclusion of several pay items in compensation earnable for "legacy" members of CERL retirement systems. At SBCERA, this "legacy" group includes retired, active, and deferred members of our Tier 1 retirement plan. The issues in the Alameda case date back to the implementation of the Public Employees' Pension Reform Act (PEPRA) on January 1, 2013.

Who's Affected

If you are an Active Tier 1 Member employed by the Superior Court of San Bernardino County, you may be affected by the Alameda decision if you received payment on either of the two types of pay items below:

1. **PEPRA Exclusions:** Any pay item for additional services rendered outside of normal working hours, such as standby pay, on-call pay, and call-back pay, etc.
2. **Alameda Exclusions:** Non-compensation items such as employer-paid premiums to a third-party (e.g. insurance providers). Employer-paid premiums to insurance providers are sometimes referred to as "cafeteria plans."

The Supreme Court's decision said that retirement systems like SBCERA do not have the authority to use these pay items in the calculation of your retirement benefits. This means that SBCERA cannot include these pay items in your "compensation earnable" used to calculate your Final Average Compensation (FAC) period. As a Tier 1 member, your FAC is based on your highest 12 consecutive months of compensation earnable at any time during your membership. Your FAC is used to calculate your retirement benefit, along with your years of service and your age at retirement.

Who's Not Affected

You are not affected by the Supreme Court's recent ruling in the Alameda case if you have not received any item for services rendered outside of normal working hours, or non-compensation items such as employer-paid premiums made to a third-party.

Additionally, if you are a Tier 2 member who was hired on or after January 1, 2013 and received compensation for any PEPRA or Alameda excluded pay items, the Alameda decision won't affect your Final Average Compensation (FAC) because those pay codes are not included in your FAC for retirement benefit calculations.

Excluded Pay Items

As noted above, there are two types of excluded pay items:

PEPRA Exclusion: Any pay item for additional services rendered outside of normal working hours, such as standby pay, on-call pay, and call-back pay.

Alameda Exclusion: Non-compensation items such as employer-paid premiums to a third-party (e.g. insurance providers).

Within these two types of excluded pay items are specific pay codes classified by your employer. We've included the exclusion effective dates based on the Alameda decision and related SBCERA Board Resolutions.

Pay Item Type	Earnings Code	Retro Earnings Code	Earnings Code Description	Exclusion Effective Date
PEPRA	SPOC	SPROC	On Call	1/1/2013
PEPRA	SPSB	SPRSB	Standby	1/1/2013
PEPRA	SPS1	SPRS1	Standby – Minimum Wage	1/1/2013

Pay Items Under Review

There are pay items that are pending further review and determination. The Superior Court of San Bernardino County is providing SBCERA with details about the pay item under review, shown below. Upon completion of the review, the Board will determine whether this item will continue to be included in, or will be excluded from, compensation earnable. If the determination is made to exclude this pay code, the exclusion effective date will also be determined by the Board.

Earnings Code	Retro Earnings Code	Earnings Code Description	Exclusion Effective Date
SPFLX*	SPRFX*	Flexible Benefit Plan Dollars	TBD

*This code is currently under review, but it has been removed from mySBCERA and will not currently be used in the calculation of a retirement benefits estimate. You can run an estimate in your mySBCERA account. If you don't have a mySBCERA account, you can sign up at www.SBCERA.org/mySBCERA. (Once you are in your account, select "Estimate a Benefit.")

Pay Items Reviewed and Approved

SBCERA staff has reviewed the following pay item and the SBCERA Board of Retirement determined that this item is approved to be included in compensation earnable.

Earnings Code	Retro Earnings Code	Earnings Code Description
SPRTC	SPRRC	Retirement – Excess Cash

Based on the Superior Court of San Bernardino County's description of the pay item above, the SBCERA Board determined that the reporting of the cash paid to the employee remaining in excess of the insurance payment is proper and should be treated as compensation earnable for Tier 1 SBCERA members. This conclusion is based on the fact that the "excess cash" is paid to all employees in the same job classification, and thus is compensation within the meaning of Government Code section 31460. This means only the portion that is received directly in cash by the employee, and not as a reimbursement for the purchase of insurance, should be reported as compensation earnable.

More information can be found in the approved Resolution 2020-9—Employer Pay Codes of Employee Compensation Resolution, effective November 5, 2020. A copy of this resolution is on our website at www.SBCERA.org/Alameda.

What about cash-outs?

The Alameda case clarified that cash-outs which may exceed what is earned and payable in each 12-month period during a member's Final Average Compensation (FAC) period **must be excluded** as compensation earnable, effective July 30, 2020. These types of cash-outs are recognized as an Alameda Exclusion. Upon a member's retirement, SBCERA will ensure that any cash-out dollars which are included in the member's FAC are consistent with the clarifications provided by the Alameda decision.

What happens to the contributions I may have paid to SBCERA on these pay items—will I get a refund?

PEPRA Exclusions:

- **Corrective Distributions to active members:** You may receive a "corrective distribution" on contributions you have made from January 1, 2013 through August 29, 2020 on the excluded types of pay items in this category of additional services rendered outside of normal working hours, which include items such as standby pay, on-call pay, and call-back pay. Contributions made prior to the implementation of the enactment of PEPRA on January 1, 2013 will not be refunded, because those contributions were eligible for inclusion in compensation earnable for members who retired prior to the implementation of PEPRA. If you are eligible for a corrective distribution, SBCERA will contact you directly with more details in a future correspondence.

Alameda Exclusions:

- **Refunds for active members on Non-compensation items such as of employer-paid premiums to a third-party ("Alameda Exclusions"):** The SBCERA Board of Retirement determined that you may receive a corrective distribution to you on all contributions you may have made prior to July 30, 2020 on certain types of employer-paid premiums to a third-party. That's because these pay items are not eligible to be included in your compensation earnable used to calculate your Final Average Compensation (FAC) period. If you are eligible for a corrective distribution, SBCERA will contact you directly with more details in a future correspondence.

How to Get More Information

You can find more information about the *Alameda* decision and some additional frequently asked questions on our website at www.SBCERA.org/Alameda. On this page, you can also download a copy of the Supreme Court Decision and the SBCERA Retirement Board's adopted resolutions related to this matter.

Additionally, while not all SBCERA members are affected by the Alameda case, those that are will receive a letter in the mail with more information. For those that are affected by this decision, we recognize the impact this has on you personally. We want you to know we're here to help and available to answer any questions you have.

Contact Us

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