

Creditable Compensation Regulations Effective January 1, 2015

The purpose of this circular is to alert employers that on January 1, 2015, CalSTRS Creditable Compensation Regulations, Sections 27200 through 27602 of Chapter 2, Division 3, Title 5 of the California Code of Regulations become effective. The regulations clarify Education Code sections 22112.5, 22119.2 and 22905 and apply to CalSTRS 2% at 60 members.

Class of Employees

Education Code section 22112.5 defines class of employees. It states, in part, that a "class of employees" means a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed.

Section 27300 of the regulations clarifies similar duties and type of program. Job duties grouped within each paragraph outlined in Education Code section 22119.5(a)(1)-(9) and (b) are similar. A program is any educational program established under state or federal law.

CalSTRS did not clarify other similarities related to the nature of the work in the regulations. The regulations do not affect CalSTRS' ability to override an employer's determination of a class of employees.

In addition, Education Code section 22112.5 states a class of employees may be comprised of one person if no other person employed by the employer performs similar duties, is employed in the same type of program, or shares other similarities related to the nature of the work being performed and that same class is in common use among other employers. Section 27300 of the regulations clarifies common use means the same class is in use by at least two other employers throughout the state.

Section 27301 of the regulations prohibits the establishment of a class of employees based on any of the following:

- Retirement benefit formula or retirement program;
- Minimum or maximum threshold for age or service credit;
- Characterization or structure of compensation;
- Option or requirement to work a longer or shorter day, or more or fewer days per year, performing similar job duties, except as provided in the Education Code section 22138.5 for community college instructors; or
- Performing only outgrowth activities.

Creditable Compensation

Education Code section 22119.2 defines creditable compensation. The law states remuneration paid in cash by an employer to all persons in the same class of employees for performing creditable service in that position is creditable compensation. The law also states that both of the following are creditable:

- Salary paid in accordance with a publicly available written contractual agreement; and
- Remuneration paid in addition to salary provided that it is paid to everyone in the same class of employees and in the same amount or percentage.

Section 27400 of the regulations clarifies what compensation is considered salary. To be considered salary, the compensation must be all of the following:

- Paid in cash for the performance of creditable service;
- Explicitly characterized as salary on a contract, salary schedule or employment agreement;
- Used as the basis for future pay increases; and
- Paid without a requirement for proof of expenditure.

If compensation is paid for any outgrowth activities identified in Education Code section 22119.5(a)(6), it does not have to be the basis for future pay increases to still be considered salary.

Additionally, since salary is compensation for the performance of creditable service, the employer must establish a compensation earnable for all assignments for which an employee will earn salary.

If any compensation is restructured as salary, and it meets all four characteristics of salary outlined above, CalSTRS considers that compensation to be salary on the effective date of the restructure regardless of how the compensation was previously paid or characterized.

Section 27401 of the regulations clarifies compensation that is considered remuneration in addition to salary. The compensation must be paid in cash in accordance with a publicly available written contractual agreement, and the compensation is not associated with the performance of additional service. Remuneration in addition to salary is compensation that either meets a qualification or requirement on the list below *or* is paid contingent upon the availability of funds.

- Possession or an attainment of a certificate, license, special credential or advanced degree;
- Career or service longevity;
- Hiring, transfer or retirement;
- Employment in a position that is hazardous or difficult to staff;
- Employment in an assignment in which the number of students enrolled exceeds the contractual amount; or
- Achievement of a performance benchmark.

Compensation that meets the definition of remuneration in addition to salary is creditable to CalSTRS and reportable as special compensation.

Compensation Paid a Limited Number of Times

Education Code section 22905 requires contributions on certain types of compensation be credited to the Defined Benefit Supplement Program. Section 27602 of the regulations clarifies contributions on compensation that is not ongoing and is contingent upon either the availability of funds or meeting specified qualifications or requirements are creditable to the Defined Benefit Supplement Program only.

Noncreditable Compensation

Education Code section 22119.2(c) defines compensation that is not creditable. Sections 27501 and 27502 of the regulations define fringe benefit and an expense paid or reimbursed by an employer. Below are types of compensation that are noncreditable compensation:

- Automobile allowances;
- Cash in lieu of benefits; and
- Housing allowances.

Additionally, Section 27500 of the regulations states that compensation that is contingent on the purchase of any items listed in Education Code section 22119.2(a)(5) is deemed to be covered by the employer, and therefore, it is noncreditable compensation. If an employer offers compensation for the purchase of a Tax Sheltered Annuity, it would be deemed covered by the employer and considered noncreditable compensation.

Appropriate Crediting of Contributions

Education Code section 22119.2(f) provides CalSTRS with the authority to determine whether compensation is consistent throughout a member's career, consistent amongst an entire class of employees or consistent for a position. If CalSTRS determines compensation is inconsistent, it will determine which portion of the compensation is creditable to the Defined Benefit Program and the Defined Benefit Supplement Program.

Section 27600 states that seven years, ending with the last day used to calculate final compensation, is generally the period of time that CalSTRS will review to determine if an increase in compensation is consistent. For a member with three-year consecutive or one-year final compensation, this means that CalSTRS will review his or her compensation for the year he or she retired and the immediately preceding six years.

When CalSTRS determines an increase in compensation is inconsistent, the employer or member may rebut the determination by providing substantiating documentation that the increase was attributable to one or more of the specific circumstances listed in Section 27600 of the regulations:

- A restructure of compensation that is a permanent change.
- A salary deferral due to a reduction in school funds.
- A commensurate percentage increase in compensation earnable for the majority of members employed by the same employer.
- A change in duties required of the employee that is incorporated in the first contract for the immediate successor to the position.
- An increase in responsibility of the employee that is incorporated in the first contract for the immediate successor to the position.
- Attainment of an educational or performance benchmark.
- An increase that establishes pay parity.
- A commensurate compensation earnable for the immediate successor or predecessor.
- More education or experience than the immediate predecessor.
- An increase in compensation that is required to recruit for a position which is directly responding to a specific time-bound financial crisis, as defined in the regulations.

For example, if CalSTRS inquires about an unusual increase in pay prior to an individual's retirement and the employer can demonstrate that the job responsibilities for that position were expanded because of a permanent change in the employer's business practice that was continued for the next person to hold that position, that would be viewed by CalSTRS as a consistent pay increase.

In another example, if the employer provides documentation demonstrating that an individual was promoted to a new position and that the predecessor to that position earned a similar amount, that would generally be viewed as consistent, unless the employer shows a pattern of promoting individuals into this position just prior to retirement. If CalSTRS determines that there is a pattern of assignment of duties or responsibilities by an employer to employees during the final compensation period, the additional compensation for those duties is presumed to be inconsistent.

The contributions on compensation increases presumed to be inconsistent will be allocated to the Defined Benefit Supplement Program. Compensation that does not exceed 150 percent of the median increase in compensation earnable earned by a broader population, as defined in the regulations, will be creditable to the Defined Benefit Program. Any compensation in excess of that amount will be allocated to the Defined Benefit Supplement Program.

Additionally, a restructure of compensation that does not meet the criteria of being permanent is presumed to be inconsistent, and the contributions on the restructured compensation will be credited to the Defined Benefit Supplement Program, even if the increase in compensation is less than 150 percent of the median increase of the applicable population.

CalSTRS will presume a restructure of compensation to be inconsistent if it is:

- Negotiated after January 1, 2016, and is outside of the employer's standard bargaining or employment contract timeframes; or
- Implemented for a class of one and is not negotiated in the first contract for the immediate successor in that position.

For complete information, please refer to the Creditable Compensation Regulations at calstrs.com/general-information/creditable-compensation.