



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 21

MEETING DATE: January 19, 2021

SUBJECT: Reaffirming Membership Policy with Clarifying Amendments

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Staff recommends the Board reaffirm the Membership Policy as modified by certain clarifying amendments.

PURPOSE

This item contributes to the Board's effective oversight of the retirement system and ensures consistent application of retirement law. The purpose of the proposed policy amendments is to clarify application of existing law and SCERS Bylaws in determining an employee's eligibility for membership in SCERS.

DISCUSSION

Legal Background

Under the County Employees' Retirement Law ("CERL"), "each person entering the county employ becomes a member on the first day of the calendar month after his entrance into the service, unless otherwise provided by regulations adopted by the board." Gov. Code § 31552.

Under Government Code section 31527, the Board may adopt a regulation (or bylaw) providing for "the exemption or exclusion from membership as a peace officer member or as a safety member or from membership altogether . . . of persons whose tenure is temporary, seasonal, intermittent, or for part time only, or persons whose compensation is fixed at a rate by the day or hour.

SCERS' Bylaws provide that "temporary, seasonal, intermittent, and part-time employees who work less than the full standard hours required in the District or County, are excluded from membership in the Sacramento County Employees' Retirement System." SCERS Bylaws, Ch. 3, § 18.

Membership Policy

As the Legislature has recognized, county retirement systems fulfill a “public obligation” to provide for aging and incapacitated public servants. Gov. Code § 31451. In doing so, county retirement systems facilitate higher-quality government services for the public at large. *Id.*

Consistent with that purpose, persons are automatically eligible for SCERS membership upon employment with a participating employer, unless the employee meets the criteria for exclusion set by the SCERS Board. Under SCERS’ Bylaws, an exclusion applies to “temporary, seasonal, intermittent, and part-time employees who work less than the full standard hours.”

Historically, regular or permanent part-time employees of Sacramento County who worked 20 or more hours per week or 40 or more hours in a biweekly pay period were eligible for membership. On the other hand, personnel classified as non-regular part-time, temporary, seasonal, or intermittent were not eligible.

Over time, that difference in eligibility between the two groups became less defensible. Some employees classified as non-regular temporary workers were working significantly more than 1,040 hours in a calendar year (for example, by working multiple stints as a “seasonal” worker). In light of such significant service, and the purposes of the CERL, withholding SCERS eligibility from those employees seemed problematic. Consequently, SCERS saw the need for a policy that sets out a clear, objective rule for membership eligibility that elevates substance over labels.

In 2018, the Board approved the current Membership Policy with the intent of providing a simple, numbers-based bright line for membership exclusion. That rule—formed after consultation with participating employers—is that an exclusion would apply to “Non-Career Employee hired with an agreement between the employee and the Participating Employer that the employee will work less than 1,566 hours per year.” In other words, non-regular employees who worked less than 1,566 hours would not be eligible for membership, while those who worked 1,566 or more would be eligible (excepting excessive hours due to administrative oversight).

Proposed Amendments

Even with that Membership Policy in place, however, SCERS continued to receive employer inquiries. In particular, SCERS received inquiries about whether the exclusion applies to employees who exceed 1,566 hours by working a combination of temporary positions and permanent positions and employees who exceed 1,566 hours due to error. These inquiries prompted the proposed amendments that further clarify the Membership Policy.

In essence, the amendments further clarify that, in any case of an employee who has exceeded 1,566 hours in a calendar year, unless the excess was due to administrative oversight, such employee would be deemed a member of SCERS for the entire period. Where an employer claims the 1,566 hour agreement was violated due to oversight, the employer must provide supporting evidence, and SCERS must obtain corroboration from the affected employee.

The current Membership Policy and the proposed amendments both flow from the same statutory premise: SCERS membership is an important job benefit that confers value to both public servants and society-at-large. Where an employee has rendered substantial service to a

participating employer in a calendar year (that is, over 1,566 hours), it is appropriate to provide that employee with the benefits of SCERS membership.

ATTACHMENTS

- A- Membership Policy (redlined version)
- B- Membership Policy (clean version)

Prepared by:

/S/

Stephen Lau
General Counsel

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



MEMBERSHIP POLICY

PURPOSE

The purpose of this policy is to establish an employee's eligibility for membership in SCERS. Once approved by the Board, this policy shall be operative beginning January 1, 2019.

OBJECTIVE

The retirement and related benefits administered by SCERS are part of the comprehensive benefits package that Participating Employers provide for their eligible employees. SCERS benefit design and funding is structured for longer-term, career employees. Participating Employers have a variety of other types of positions for employing personnel on a non-regular part-time, temporary, seasonal, or intermittent basis. These employees typically work less than a full-time equivalent each year and are generally not employed long term in these "non-career" types of positions.

The objective of this policy is to ensure all eligible employees are properly enrolled in SCERS membership and provide for the exclusion of employees from SCERS membership while working in non-career positions for the same Participating Employer, and to clarify existing law under California Government Code Sections 31550, et seq. and SCERS regulations with respect to the persons who are eligible for SCERS membership.

DEFINITIONS

As used in this policy the terms below have the following meaning:

Extra Help Employee – An employee who is employed for a period of short duration, whether part-time or full-time, in a position which is either designated as extra help in the annual salary ordinance or publicly available pay schedule, or is not contained therein.

Intermittent Employee – A County employee who is not appointed to a permanent position and who is not a Regular Employee whose service is irregular, periodic, and recurrent at intervals not to exceed the full-time equivalent of nine (9) months employment in a year.

Non-Career Employee – For ease of reference in this policy, means a non-Regular Part-time, Extra-Help, Intermittent, Seasonal, or Temporary Employee as those terms are defined herein.

Participating Employer – The County of Sacramento, the Superior Court in Sacramento County, and the special district employers that have taken formal action to provide the retirement and related benefits administered by SCERS to their eligible employees.

Part-Time Employee – An employee who is hired to work substantially less than 8 hours per day or 40 hours per week during the employee’s period of employment.

Permanent Position – A position established in the annual salary ordinance or publicly available pay schedule, excluding a position established to accomplish a specific project which is limited in its duration.

Regular Employee – An officer or employee of a Participating Employer who occupies a permanent position established in accordance with the annual salary ordinance or publicly available pay schedule and who is assigned to work full-time or to work part-time for at least 20 hours per week (1,044 hours per year), or any elected official.

Seasonal Employee – An employee who is not appointed to a permanent position and who is not a Regular Employee whose service is irregular, periodic, and recurrent at intervals.

Temporary Employee – An employee whose appointment to a position is of limited duration for less than 1,566 hours per year.

Year – The twelve (12) consecutive months of a calendar year January 1st through December 31st.

POLICY

All persons eligible to be members of SCERS who have not executed a valid waiver of membership must be enrolled as members of SCERS, and persons ineligible for membership must be excluded from SCERS membership.

A. Mandatory Membership

A Regular Employee not expressly excluded from membership as provided in Section C of this policy shall become a member of SCERS on the first day of employment in a position requisite for membership.

B. Optional Membership

A Regular Employee first hired in a position requisite for SCERS membership after attaining the age of sixty (60) years may irrevocably waive membership in SCERS by submitting to SCERS within sixty (60) days of beginning employment a written and signed waiver of membership on a form prescribed by SCERS.

An elective officer may file a written declaration with SCERS to establish SCERS membership, which will be effective on the first day of the calendar month following the filing of a declaration. Within 60 days after the expiration of the elective officer’s term of office or within 60 days after the officer ceases to hold the office, the officer may rescind the declaration and withdraw from SCERS membership, and all contributions paid by the officer as a SCERS member shall be refunded. Any elective officer who does not declare in writing his or her intention to become a member of

SCERS as required by Government Code Section 31553 is ineligible for SCERS membership.

C. Excluded from Membership

An employee of a Participating Employer who is described by one or more of the following conditions is ineligible for membership and shall not be enrolled as a member of SCERS:

1. The employee is eligible to waive, and has executed a valid waiver of, SCERS membership.
2. The employee is a retired member of SCERS who satisfies the requirements of Government Code Section 7522.56 to serve a Participating Employer without reinstatement from retirement.
3. A Non-Career Employee hired with an agreement between the employee and the Participating Employer that the employee will work less than 1,566 hours per calendar year, and who actually works less than 1,566 hours per calendar year.

a. A Non-Career employee who actually works more than 1,566 hours in a calendar year – whether due to a violation of said agreement, or holding multiple Non-Career positions in a calendar year, or holding a combination of Non-Career and Permanent positions in a calendar year – shall not qualify for this exclusion and shall be deemed a member for the entire period.

b. A Non-Career Employee's unused sick leave, unused vacation leave, and other forms of unused leave do not count towards the 1,566-hour threshold for the purposes of this exclusion.

~~3.~~

- ~~4. SCERS may determine an employee's eligibility for SCERS membership based on the actual number of hours worked by the employee.~~

APPLICATION

The governing documents in effect for a Participating Employer may establish a threshold number of hours worked per year at which a Non-Career Employee is eligible for SCERS membership, provided that the threshold hours for SCERS membership is less than 1,566 hours worked per year. The Participating Employer must notify SCERS in writing within 30 days of the date the Participating Employer modifies the threshold hours for SCERS membership for its Non-Career Employees.

Each Participating Employer is responsible for determining, in accordance with this policy, which of the Participating Employer's employees are eligible for membership in SCERS and is responsible for enrolling those eligible employees into SCERS membership.

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A Non-Career Employee hired with an agreement between the employee and the Participating Employer that the employee will work less than 1,566 hours per year is properly excluded from SCERS membership.

If a Non-Career employee properly excluded from SCERS membership under Section C at the outset of employment actually works 1,566 or more hours in a year in violation of the agreement, the employee shall be enrolled into SCERS membership as of the employee's first working day of the calendar year during which the employee worked the threshold hours or more, and the employee shall continue as a member of SCERS for all subsequent service with that Participating Employer. The Board-Chief Executive Officer may consider whether an employee's work hours exceeded the threshold hours per year for SCERS membership due to administrative oversight. An employer claiming administrative oversight bears the burden of proof, and must submit an affidavit containing specific facts in support of such claim. SCERS shall also contact the affected employee to determine whether he or she concurs that the agreed-upon limit was exceeded due to oversight.

SCERS may periodically review a Participating Employer's payroll practices as authorized by Government Code Section 31543 to assure compliance with this policy.

~~When a Participating Employer fails to comply with the requirements of this policy, the Board will exercise its discretion to decide an employee's eligibility for membership and determine an appropriate correction procedure based on the facts of each case.~~

BACKGROUND

The County Employees' Retirement Law authorizes a county retirement board to include in its regulations provisions for the exemption or exclusion from membership, in the discretion of the board, of "persons whose tenure is temporary, seasonal, intermittent, or for part time only, or persons whose compensation is fixed at a rate by the day or hour." [Government Code Section 31527(e)].

Chapter 3 of SCERS Bylaws contains broad provisions describing the employees who are eligible for, and those who are excluded from, membership in SCERS. More specificity is needed at the administrative policy level for Participating Employers to consistently and correctly apply the standards for SCERS membership to their employees.

This policy was established to clarify the SCERS membership standards, describe their application, and define the roles and responsibilities of Participating Employers and SCERS to ensure the membership standards are correctly applied, and provide for corrective action when necessary.

RESPONSIBILITIES

Executive Owner: Chief Benefits Officer

POLICY HISTORY

Date	Description
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1-19-2021	Staff to recommend Board reaffirm policy with clarifying revisions
6-20-2018	<i>Board to adopt new policy</i>



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