

MCERA PENSION NOTES

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Merced County Employees' Retirement Association

3199 M St

Merced, Ca 95348

209-725-3636 Phone

209-725-3637 Fax

Mcera@merced.ca.us
Email

www.mcera.merced.ca.us
Website

UPDATE ON AB 197 LITIGATION

The decision from the court on this pending litigation produced more questions than answers. The Contra Costa Superior Court issued a 43-page "Tentative Decision" on December 17, 2013. The Court concluded that the inclusion of certain leave payouts in compensation for retirement purposes was never authorized by law, and that therefore, the petitioners' (employees') do not have a "vested, contractual right" not to have AB 197 apply to their retirement allowances. For MCERA members, this means there is a possibility that the 160 hours of terminal vacation payouts may no longer be included in a member's pension calculation. However, it is unclear when and if this change will take effect. Further, the Court also concluded that under principles of equity and fairness (equitable estoppel) certain members who relied upon representations made to them over many years will be allowed some amount of accumulated leave earned from periods outside their final compensation period to be included in the calculation of their retirement allowances, as permitted by

MCERA's pre-AB 197 policy. This is addressed on page 36 of the tentative ruling:

"It is the view of the Court, however, that 'injury' applies only to those persons who did, prior to the enactment of AB 197, accumulate vacation beyond the amount that when cashed out will be in excess of the amount that, using a FIFO [first in first out] calculation, will still be allowable as 'compensation earnable'. Reliance by other persons is far too speculative to qualify as 'injury' under the estoppels doctrine."

The correct interpretation of this language is not clear and the parties will be seeking clarification in later court proceedings.

Regarding "on call" and other pay items for services rendered outside of normal working hours, the Court determined that the petitioners had not met their burden to establish that they had a right to these inclusions.

Regarding AB 197's discretionary exclusions of compensation paid to enhance a member's benefit, the Court determined that there is insufficient information available to the

Court to decide whether any potential exclusions would cause an injury to any retiring member. The court is therefore inclined to deny the petitioners' claims in this regard.

A hearing is set for Tuesday, February 11, 2014, by which date the parties have been instructed to file written briefs setting forth their objections and/or suggestions for modification of the Court's Tentative Decision.

Important Note: The "Stay Order" preventing MCERA from implementing the changes in AB 197 continues to be in effect. Honoring that order, MCERA will continue to implement its pre-AB 197 policies until further order of the Court. In accordance with the stay, MCERA expects that members will have 60 days from the date of the Court's final order to make retirement decisions before any changes take effect.

Maria L. Arevalo
Plan Administrator

ANNUAL STATEMENTS AND 1099 FORMS ARRIVING

ACTIVE MEMBERS:

MCERA mails out annual member statements in early January. If you have not received your statement by the end of January 2014 contact the office at 209 725 3636.

These statements are mailed out to the address listed in payroll. The annual statement provides you with member type, safety or miscellaneous, date of birth, tier, and beneficiary (ies) on file.

The account information section details the contribution balance as of December 31, including total interest on account and total contributions on deposit.

Lastly, the annual statement provides members with retirement service credit. It is important to check the accuracy of the information provided in your member annual statement. If you have any questions or need to report discrepancies contact the MCERA office and

we will make any necessary changes.

Retired members:

1099 forms will also be mailed this month, please contact the office if you have any questions with regards to your form.

Retirement Board

Karen Adams

Mark Bodley

Deidre Kelsey

Mary McWatters,

Jim Pacheco

David Ness, Chair

Alfonse Peterson

Michael Rhodes

Darlene Ingersoll

Ron Kinchloe

Scott Johnston

INVESTMENT RESULTS FOR QUARTER ENDING SEPTEMBER 30, 2013

As of September 30, 2013, the assets of the Merced Retirement Fund totaled \$588,871,199. Investment returns as of December 31, 2013 will be available in February.

For the third quarter ending September 30, 2013, the fund returned 5.3% exceeding the benchmark of 5.0% and ranked in the 26th percentile of other similar sized

public funds (4.6% median) Longer term, the three year and five year returns of 9.9% and 7.4% ranked above and below the median among its peer public plans (9.8% and 7.9%, respectively).

Third quarter results were enhanced by the Fund's Domestic Equity portfolio which returned 6.9% exceeding the index of 6.6%.and the fixed

income portfolio which returned 1.2% also exceeding the benchmark of 0.8%. The complete 3Q report is posted on the MCERA website.



Retirement Board Meetings

January 9, 2014

January 23, 2014

February 13, 2014

February 27, 2014

March 13, 2014

March 27, 2014

Meeting begin at 8:15 am