



Special Compensation Reportable to CalPERS is Limited by Law

Office of the Inspector General



Allegation

BART failed to report special compensation to CalPERS as pensionable compensation as required. We considered this a potential violation of law and possible abuse of position and launched an investigation into the matter.



The Law

The California Public Employees' Retirement Law (PERL) governs reportable special compensation. It encompasses two sets of regulations:

- California Code of Regulations (CCR)
 - Title 2, Division 1, Chapter 2, Section 571, defines special compensation for CalPERS classic members
- California Government Code (CGC)
 - Title 2, Division 5, Part 3, Chapter 7, Sections 20636 (c) & 20636.1(c), define special compensation for CalPERS classic members

Terminology Clarification

Use of the existing Temporary Upgrade Pay (TUP) module created confusion.

Use of the module did not mean that the pay met the TUP definition, per PERL. It allowed Human Resources to ensure the special compensation was paid only within the approved time period and at the approved rate.

PERL requires that TUP meet its definition to be pensionable. PERL does not restrict agencies from using that term for other pay that is not pensionable.



Finding

Allegation unsubstantiated: The special compensation received by the employee does not meet all necessary PERL criteria for reporting to CalPERS because its terms:

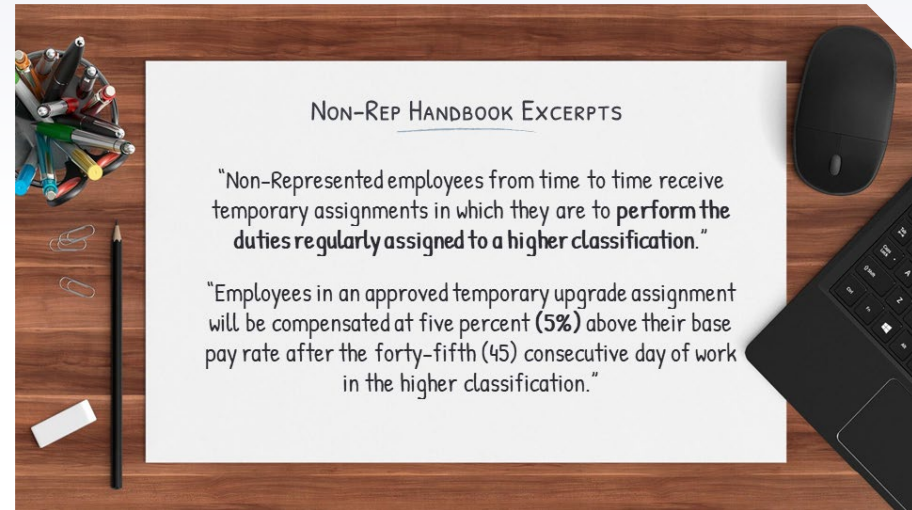
- Are not defined in a BART labor policy.
- Did not fall within the parameters of any of the listed PERL categories.
- Are not available to all members in a group or class.



Not Defined in Labor Policy

PERL requires special compensation be included in a written labor policy approved by the governing body. That factor was not true:

- The special compensation was not included in a labor policy approved by the BART Board of Directors.
- Neither the assignment nor the pay agreed with the existing labor policy for non-represented employees.



Not available to all members in a group or class

PERL requires that special compensation must be available to all members in a group or class.

The special compensation was agreed to for a single individual. It is not available to all non-represented employees or to all employees who share the same job classification as the complainant.

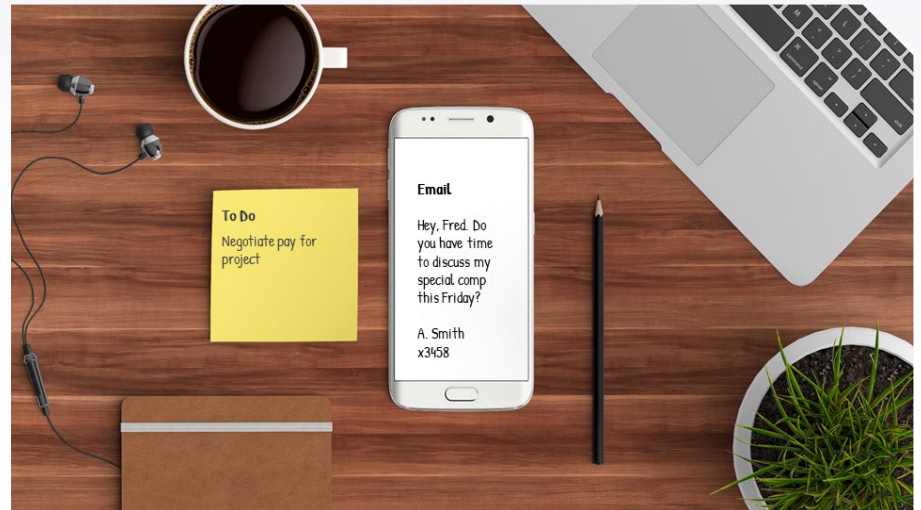


Two Different Views

Employee recalls being told that Human Resources would report the special compensation to CalPERS.

Human Resources recalls saying that the pay did not qualify for CalPERS reporting.

Ultimately, Human Resources' interpretation that the special compensation is not reportable to CalPERS agreed with the law .



Recommendation & Response

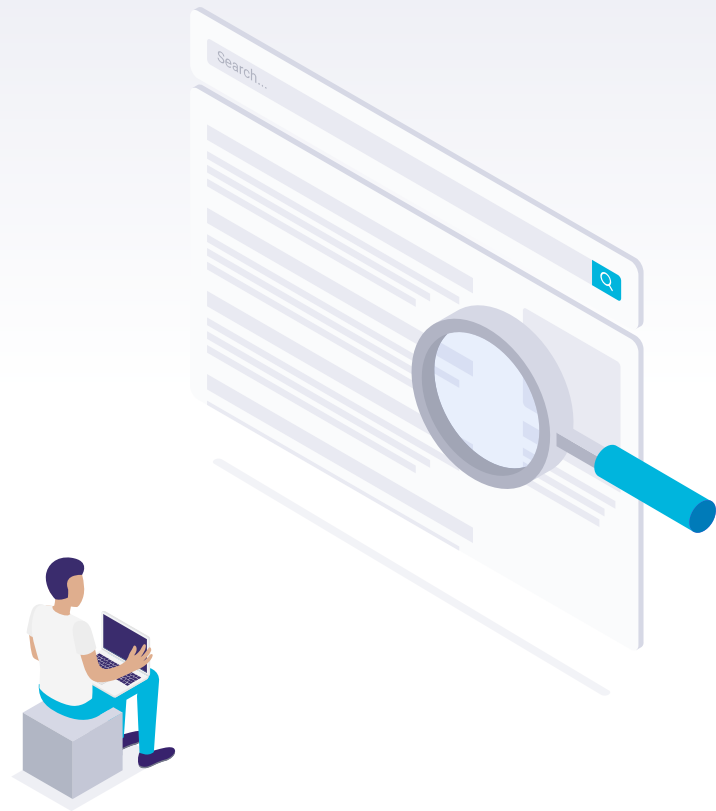
OIG Recommendation

Develop a template for use in providing a written agreement between BART and employees that explains the terms of special assignments and special compensation, including if the special compensation is reportable to CalPERS for pension purposes, and use it when such circumstances arise.

Management Response

Updated auto-generated email to indicate whether pay associated with temporary upgrades or special assignments is reportable. Will institute a standard form with details of special assignment and information on whether compensation for the assignment is reportable to CalPERS.

Questions?



Reach Out, Learn More, Report



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