



ADMINISTRATIVE APPEALS PROCEDURES FOR FELONY FORFEITURE
(Effective March 14, 2019)

I. PURPOSE

Under the California Public Employees' Pension Reform Act of 2013 (PEPRA), public employees who have been convicted on or after January 1, 2013, by a state or federal trial court of any felony under the law for conduct arising out of or in the performance of his or her official duties must forfeit all accrued rights and benefits in any public retirement system that they are a member of at the time the felony is committed retroactive to the first commission date of the crime and shall not accrue further benefits in that public retirement system. (Government Code sections 7522.72 and 7522.74.)¹

These statutes require the forfeiture if the public employee is convicted of any felony for conduct:

- Arising out of or in the performance of his or her official duties, or
- In pursuit of the office or appointment, or
- In connection with obtaining salary, disability retirement, service retirement, or other benefits, or
- Committed within the scope of official duties against or involving a child.

The public employee and the prosecuting agency are required by law to notify the public employer within 60 days of the qualifying felony conviction. The employer is required by law to notify the public retirement system within 90 days of a qualifying felony conviction.

Although it is the employer's responsibility to notify LACERA of an employee's felony conviction, LACERA can be notified by the media, third parties or members. When this occurs, LACERA will reach out to the employer to request the information described below in Section II A.

II. FELONY FORFEITURE PROCEDURES²

A. Employer's Notification to LACERA of Felony Conviction

The County of Los Angeles and other participating employers are required by law to notify LACERA within 90 days of a qualifying felony conviction. Upon notification,

¹ Section 7522.72 applies to public employee first employed by a public employer or first elected or appointed to an office before January 1, 2013 and Section 7522.74 applies to public employees first employed, elected or appointed on or after January 1, 2013.

² The Felony Forfeiture Procedures shall not be subject to LACERA's Administrative Appeals Procedures for Retirement Benefits.

LACERA will request that the employer provide the following information:

1. Name of member and County employee ID.
2. Date of conviction which is the date that the public employee pleads guilty, or when the judge (or jury) decides the case.
3. Date of the first known commission of each felony.
4. Name of the court(s) in which the case was heard.
5. Name and contact information for the prosecuting attorney.
6. Description of the felony charges for which the public employee was convicted.
7. Copy of court documents related to public employee's conviction/guilty plea.
8. Information and supporting documents relating to whether the felony offense for which the conviction was entered was committed during the conduct or performance of the public employee's job duties pursuant to Government Code sections 7522.72 or 7522.74.
9. eHR Employee Job History and Class Specifications.

B. LACERA'S Notification to the Member of the Forfeiture Review

Once LACERA receives notification from the employer of a job-related felony conviction LACERA will send a letter to the member informing them that LACERA is in process of determining the applicability of the felony forfeiture law, and, if applicable, the impact on the member's benefits. Following notification, the member's account is locked to prevent withdrawals of the account pending determination of the impact, if any, of the conviction.³

C. Staff's Review of Information

Staff will review the information provided by the employer under Section II A and determine what additional information, if any, is needed from the employer, the member and or the prosecuting agency to make the required determinations. Staff is not limited to the criminal record in gathering the information it believes is appropriate. Staff may request the Board to exercise its subpoena power under Government Code section 31535.

D. Notice of Initial Determination

After staff's review, staff will send a Notice of Initial Determination (the "Notice" or "Staff Initial Determination") to the member as to the applicability of the felony forfeiture law to the facts. This Notice will include:

1. A copy of this Procedure;
2. A letter explaining the applicability of the felony forfeiture law and, if applicable, an explanation of the impact of the forfeiture on the member's benefits and the applicable proposed actions.

³ If these Procedures conflict with any statutory or case law, the statutory or case law shall govern.

3. Information about the member's right to appeal Staff's Initial Determination to the Board of Retirement within 30 calendar days of the date of the mailing of the Notice.

E. Member's Appeal of Staff's Initial Determination

The appeal shall contain a statement of the facts forming the basis of the appeal and provide copies of documents and other evidence, if any, the member deems relevant to the appeal. The appeal shall be in writing and mailed to the following address: LACERA Legal Office, 300 N. Lake Avenue, Suite 620, Pasadena, CA. 91101. Both the member and LACERA staff shall have the opportunity to submit to the Board of Retirement written evidence and argument relevant to the matters under consideration.

If Staff's Initial Determination is not timely challenged by the member, within the time limit established above in Section II.D, it will be deemed final and binding and LACERA will implement the felony forfeiture adjustments as indicated in the Notice. Staff will send a Final Letter to the member explaining the applicability of the felony forfeiture law and the impact on the member's benefits.

F. Board of Retirement's Determination

A member's timely challenge will be heard by the Board of Retirement. Notice of the date and time of the meeting will be provided to the member at least 20 calendar days, unless waived by the member, prior to the Board of Retirement meeting along with any instructions regarding the submission of documents and other evidence as necessary.

The matter will be placed on the Board of Retirement's regular public agenda for its review, findings and decision. The member and his or her counsel will have the opportunity to address the Board in open-session prior to the closed-session. The Legal Office's analysis, recommendations, and the alternatives which are available to the Board for action will be discussed with the Board in closed-session pursuant to Government Code Section 54956.9(d)(2).

G. Member's Appeal of Board's Decision

Following the Board meeting, the Legal Office will provide the member with written notice of the Board's decision. If the Board agrees with Staff's Initial Determination, LACERA will implement the adjustments as indicated in the Notice. If the Board adopts another resolution, LACERA staff shall implement the adjustments as indicated in the Board's decision.

If the member is dissatisfied with the Board's action, the member may obtain judicial review by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure section 1085. The written notice of the Board's decision will include information as to the member's right to seek judicial review.

A member's filing of a writ challenging the Board's final administrative determination shall not prevent LACERA from implementing the Board's determination, unless a court orders otherwise.

III. ACTIONS TAKEN AFTER THE FORFEITURE OF BENEFITS

Any refunds returned to the public employee pursuant to Government Code sections 7522.72 and 7522.74 shall be disbursed by electronic funds transfer to an account of the public employee in a manner conforming with the requirements of the Internal Revenue Code, and LACERA shall notify the court and district attorney at least three business days before that disbursement of funds.

If there is a reversal of the conviction, and that decision is final, the member has the option to redeposit the contributions from the forfeited period or recover the forfeited rights and benefits.

Adopted:

Approved by Board of Retirement: (03/14/19)