



ADMINISTRATIVE APPEALS PROCEDURES FOR FELONY FORFEITURE
(Effective February 2, 2022)

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.

The provisions of this procedure apply only to felony forfeitures made under California law.

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.

II. FELONY FORFEITURE PROCEDURES ²

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, 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, as specified in Section II.C below.
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 as specified in Section II.C below.
9. Any internal investigatory reports.
10. eHR Employee Job History and Class Specifications.

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

After LACERA receives notification from the employer of a job-related felony conviction, LACERA will send a letter to the member within 30 days 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. After sending notice to the member, staff will lock the member's account to prevent withdrawals (for active and deferred contributory members) 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

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

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

the prosecuting agency to make the required determinations, and/or other sources. 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. Staff review may include, but is not limited to, law enforcement investigatory reports; criminal indictments and any information filed; trial transcripts; jury or judicial verdicts; plea agreements; transcripts of plea colloquies, and transcripts of sentencing hearings. This section is intended as a rule of general application. Where the complexity of the case or factual and legal issues dictates, staff's investigation should seek all reasonably available and relevant sources of information.

D. Notice of Initial Determination

After staff's review, staff will send a Notice of Initial Determination (the "Notice" or "Initial Determination") to the member as to the applicability of the felony forfeiture law to the facts. It is staff's burden to prepare a statement sufficient to show a prima facie case that a conviction of a forfeitable offense has occurred and the basis for determining that portion of benefits to be forfeited. The 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. An explanation of the facts and law upon which staff relied in making its determination, including copies of all documents relied upon by staff in reaching the conclusions stated in the Initial Determination. Citation should be made in the explanation to appropriate statutory or case law relied upon by staff in reaching its determination.
4. Information about the member's right to appeal the Initial Determination to the Board of Retirement within 30 calendar days of the date of the mailing of the Notice, subject to an extension of up to an additional 30 days that may be granted by staff upon request.

E. Member's Appeal of The 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. Citation should also be made in the appeal to appropriate statutory or case law relied upon by the member in support of their position. The appeal shall be in writing and sent by mail or other method to the following address so that it is received by LACERA on or before the date required under Section II.D(4): LACERA Legal Office, 300 N. Lake Avenue, Suite 650, Pasadena, CA. 91101.

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If the Initial Determination is not timely challenged by the member, within the time limit established above in Section II.D(4), the Initial Determination will be deemed final and binding and LACERA will implement the felony forfeiture adjustments as indicated in the Notice. Staff will send a letter titled PEPRA Forfeiture Impact: Notice of Final Determination to the member explaining the applicability of the felony forfeiture law and the impact on the member's benefits.

Counsel advising the staff in preparing the Notice of Initial Determination shall be separate from the counsel advising the Board in a manner consistent with *Morongo Band of Mission Indians v. State Water Resources Control Board*, 45 Cal. 4th 731 (2009).

F. Board of Retirement's Determination

The Board of Retirement will hear a member's timely challenge. Notice of the date and time of the meeting will be provided to the member at least 60 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. At the Board hearing, both the member and LACERA staff shall have the opportunity to present argument to the Board of Retirement on the facts and law relevant to the matters under consideration.

The member and staff will have the right to present written evidence and additional written argument relating to issues in the Notice of Initial Determination. All written evidence and non-privileged argument shall be exchanged between the parties at least 30 calendar days prior to the hearing. The sole questions for the Board of Retirement will be whether the conviction constitutes a forfeitable offense and that the portion of benefits to be forfeited has been correctly calculated based on the date of first commission of a job-related felony. It is staff's burden before the Board to prove by a preponderance of the evidence that a conviction of a forfeitable offense has occurred and the portion of benefits to be forfeited.

Service of papers under this Section F will be made by mail or other method so that it is received by the other party on or before the date required under this Section F.

The matter will be placed on the Board of Retirement's regular public agenda for its review, findings, and decision. The Notice of Initial Determination, Appeal, and any other written argument or evidence provided by the member and staff will be provided to the Board in advance of the hearing. Time for the hearing will be as follows: Member's opening argument for 5 minutes; staff's argument for 5 minutes; and member's reply for 2.5 minutes. No oral testimony will be taken. The Board may ask questions of the member and staff. Counsel for the Board may separately provide a memorandum to the Board providing advice as to the issues raised by the member and staff.

The hearing may be conducted in closed session if it will relate to personal health information. Otherwise, the hearing will be conducted in open session.

In acting upon the member's appeal, the Board may:

1. Affirm the forfeiture as stated in the Initial Determination;
2. Grant the member's appeal, disallowing any forfeiture;
3. Direct that the forfeiture in the Initial Determination be modified;
4. Refer the matter to a referee for hearing and recommendation in accordance with the procedures described in LACERA's *Procedures for Disability Retirement Hearings*; or
5. Take such other action as the Board deems appropriate.

G. Member's Appeal of Board's Decision

Following the Board hearing and final decision, the Legal Office will provide the member with written notice of the Board's decision setting forth the basis of its decision. If the Board agrees with the Initial Determination, LACERA will implement the adjustments as indicated in the Notice. If the Board modifies the forfeiture, LACERA staff shall implement the adjustments as indicated in the Board's decision. Staff will send the Notice of Final Determination to the member explaining the applicability of the felony forfeiture law and the impact on the member's benefits.

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 appropriate provision of the~~ California 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 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.

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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.

Approved by Board of Retirement: February 2, 2022