

Felony Forfeiture of Benefits

Overview

On January 1, 2013, the California Legislature passed the Public Employees' Pension Reform Act of 2013 ("PEPRA"). As a government pension plan, LACERA is required to administer the retirement system in accordance with PEPRA. Specifically, PEPRA mandates the forfeiture of all accrued rights and benefits in any public retirement system by any public employee convicted of a job-related felony as of the earliest date of the crime and shall not accrue further benefits in the public retirement system. (See Cal. Govt. Code Sections 7522.72 and 7522.74.) Section 7522.72 applies to employees hired prior to January 1, 2013 and Section 7522.74 applies to employees hired after January 1, 2013.

A convicted public employee is required to forfeit their public retirement benefits if the conduct was:

- Arising out of or in the performance of the public employee's 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. LACERA may also be made aware of a felony conviction by the media, third parties, or other members. A copy of the notice will also be sent to the member.

Once LACERA receives information about the job-related felony conviction, staff will review the court documents and the member's account and make an initial determination whether the felony forfeiture statutes apply. The member's account will also be locked at this time.

What Benefits Are Forfeited?

All rights and benefits from the earliest date of the commission of the felony through the date of conviction will be forfeited. This includes accrued service credit, and possibly the right to a disability retirement. For active members, all contributions made during the service period after the first date of the commission will be returned without interest, and no further benefits will be accrued after the conviction date. For retired members, there may be a recalculation of the retirement benefit amount, and Retiree Healthcare Benefits may have to be adjusted. If the member is divorced and has an ex-spouse, the legal split may also be recalculated.

Example

A member is convicted of a job-related felony on September 4, 2019. It is determined that the earliest date of the commission of the felony is February 1, 2019. All rights and benefits between February 1, 2019 and September 4, 2019 shall be forfeited.

Prior to any adjustments being made on the member's account, staff will send the *Initial Notice of PEPRA Forfeiture Impact Letter* (or *Initial Notice*) to the member. At that time, the member has 30 days to file an appeal to the Board of Retirement. The deadline date will be reflected in the *Initial Notice*. If no appeal is filed by the deadline, LACERA will implement the adjustments referred to in the *Initial Notice*.

Can I Still Retire After Being Convicted of a Job-Related Felony?

Members convicted of a job-related felony must still meet the age and service credit requirements for retirement after the forfeiture.

Example

A 45-year-old Plan D member has 11 years of service at the time of conviction. After the felony forfeiture, 7 years of service credit is removed from the member's account. As a result, the member will only have 4 years of service credit and will be ineligible for retirement.

If a retired member is convicted in federal court, the court may order the member to pay restitution through a federal garnishment of the member's monthly LACERA benefit. If this does occur, LACERA must comply with the order and will deduct the required amount from the member's gross benefit after deducting federal, state, or local taxes, if any.

Do I Have a Right to Appeal the Decision?

If the member wishes to appeal LACERA's initial determination, the member may appeal this decision to the Board of Retirement within 30 days. The deadline date will be reflected in the *Initial Notice*. 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.

The matter will be placed on the Board of Retirement's regular public agenda for its determination. The member and his or her counsel will have the opportunity to address the Board in open session and the Board will consider the matter in closed session.

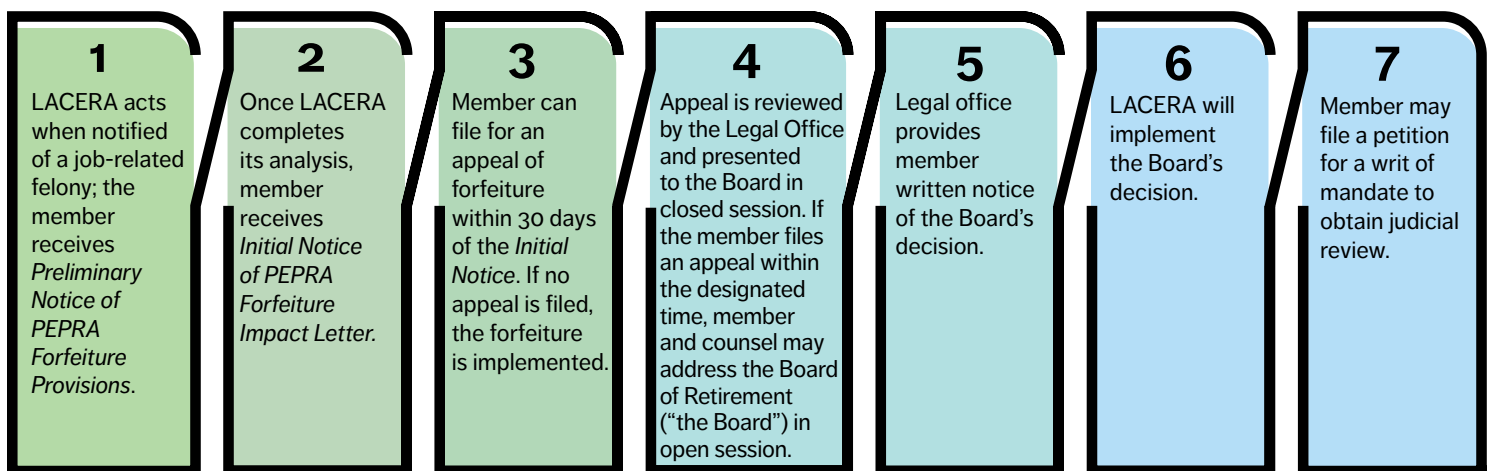
Following the Board meeting, the Legal Office will provide the member with written notice of the Board's decision. If the Board agrees with staff's initial determination, LACERA will implement the adjustments as indicated in the *Initial Notice* (see note above). If the Board adopts another resolution, 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. The written notice of the decision will include information about the member's right to judicial review.

To learn more, please refer to the Administrative Appeals Procedures for Felony Forfeiture online, at https://www.lacera.com/benefits/pdf/Admin_Appeals_Procedures_Felony_Forfeiture.pdf

Right to Recover Benefits If Conviction Is Reversed and the Decision Is Final

If a member's conviction is reversed it is the member's responsibility to notify LACERA that the conviction has been reversed. LACERA will require the member to provide a court order or document indicating the conviction has been reversed and the decision is final. In order to recover forfeited benefits, contributory plan members will be required to redeposit all refunded contributions and any interest those contributions would have earned through the current date or through the member's date of retirement whichever is first.

Felony Forfeiture Appeals Process



Disclaimer: This insert is intended for general informational purposes only and shall not be construed as legal advice. In the event that any information in this insert conflicts with information provided in any of the notification letters to the member or with any laws, the letter, and the law shall prevail.