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To: Presidents

From: June Cooper  
Vice Chancellor  
Human Resources and Operations

Bruce Richardson  
Deputy General Counsel  
Office of General Counsel

Subject: **EMPLOYMENT POLICY**

The Immigration Reform and Control Act of 1986 (P.L. 99-603) (IRCA) prohibits employers including The California State University (CSU) from knowingly hiring any individual not authorized to work in the United States and from knowingly continuing to employ any individual who is not authorized to work in the United States<sup>1</sup>. This memorandum sets forth the employment policy of the CSU in light of the passage of IRCA. This policy applies to both United States citizens and noncitizens.

**Statement of Policy**

Generally, it is the policy of the CSU to **consider** for employment all individuals, both United States citizens and noncitizens, whether or not at the time of application they are authorized to work in the United States. IRCA dictates that the CSU **employ** only those individuals who are authorized to work in the United States.

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<sup>1</sup>Persons hired by the CSU before November 7, 1986, who have been continuously employed by the CSU since that date are exempt, even if it is known that they lack employment authorization.

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This general policy to consider all individuals allows a campus to obtain work authorization for an individual who does not have authorization to work in the United States and then employ that individual once work authorization has been obtained. However, after the decision to hire and an offer of employment has been made, this policy does not obligate a campus to obtain work authorization for an individual who lacks work authorization.

There is one exception to the general policy. This exception allows a campus to elect to consider for employment for a particular position only those individuals who already have work authorization. To elect to use this exception, the campus must decide prior to initiating recruitment for the position that it wishes to consider for that position only those individuals who already have work authorization. Under this exception, a campus would be prohibited from selecting an individual for whom work authorization must be obtained.

### **Recruitment**

In addition to employer verification and sanctions provisions, IRCA provides anti-discrimination protection for workers and job applicants. With respect to recruitment, IRCA's two main anti-discrimination provisions are citizenship status discrimination and national origin discrimination. Accordingly, **prior** to making a hiring decision and an offer of employment, only the following two questions may be asked of a job applicant:

1. Are you currently authorized to work in the U.S.?
2. If you are not currently authorized to work in the U.S., please state your current immigration status.

With the exception of a job applicant for a public safety officer position,<sup>2</sup> a job applicant may not be questioned as to whether he or she is a United States citizen **prior** to making a hiring decision and an offer of employment. Additionally, if a job applicant answers "yes" to Question No. 1 above, the job applicant may **not** be questioned regarding his or her work authorization **prior** to making a hiring decision and an offer of employment. Under the general policy, if a job applicant answers "no" to Question No. 1, a campus may not refuse to consider that applicant for the position based solely on the applicant's response to that question. If the recruitment is being conducted pursuant to the exception to the general policy, for that recruitment only, a campus must refuse to consider all applicants who answer "no" to Question No. 1.

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<sup>2</sup>Recruitment of public safety officers is discussed below.

### **Time-Limited Employment Authorization**

A noncitizen may present an employment authorization document which is time-limited. Noncitizens with time-limited employment authorization may be rejected if the following criteria exist:

1. The noncitizen is **not** a permanent resident, a temporary resident, an applicant for temporary residence, a refugee or an asylee; **and**
2. The campus decides that the limited period of employment authorization creates insufficient security to justify hiring of the noncitizen.

Noncitizens who fall into any of the following categories may not be rejected for employment solely based on the noncitizen having time-limited employment authorization no matter how short a period of authorization: permanent resident; a temporary resident; an applicant for temporary residence; a refugee; or an asylee.

### **Public Safety Officers**

California Government Code Section 1031 provides that a public safety officer must either be a United States citizen or a permanent resident noncitizen who is eligible for and has applied for United States citizenship. Accordingly, questions regarding citizenship may be asked of applicants for a public safety officer position.

### **Employment Applications**

Application forms currently used by campuses must be revised in order to include Question Nos. 1 and 2 above and to delete questions which violate the various anti-discrimination laws. Examples of questions which must be deleted are:

Are you a United States citizen?

Do you have the right to remain and work permanently in the United States?

Do you have the legal right to work in the United States?

Do you have resident alien (immigrant) status?

Do you have a visa that permits you to work in the United States?

Are you prevented from lawfully becoming employed in this country because of visa or immigration status?

### **Noncitizens - Nature of Appointment**

With the exception of a noncitizen who holds a J-1 visa, all noncitizens who present a valid work authorization may be employed in other than a temporary appointment.<sup>3</sup> For example, an individual holding an H-1 visa may be employed in a faculty tenure-track position and may even be granted tenure. A waiver to employ such a noncitizen who does not have permanent residence status in other than a temporary appointment is no longer required. However, if the work authorization for an individual expires and subsequent work authorization has not been obtained, the individual's employment **must** be terminated regardless of whether the individual has been granted permanent status or tenure. A noncitizen employee may not be required to obtain permanent residence status from the Immigration and Naturalization Service as a condition of employment or as a condition of being granted tenure or permanent status. Such a requirement violates various anti-discrimination laws.

### **Oath of Allegiance/Declaration of Permission to Work**

Standard Form 689 of the State of California must be completed by all employees. Employees who are United States citizens must sign the Oath of Allegiance contained in Section 1 of that form. Instead of the Oath of Allegiance, employees who are noncitizens must sign the Declaration of Permission to Work contained in Section 2 of that form.

### **Questions and/or Assistance**

If you have any questions regarding the content of this memorandum or if you need assistance in obtaining work authorization for an individual, please contact Linda S. MacAllister, University Counsel, in the Office of General Counsel, at (310) 985-2913.

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<sup>3</sup>Under federal law, a noncitizen holding a J-1 visa is prohibited from being a candidate for a tenure-track position.