

SUPERCEDED BY HR 2003-21

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To: CSU Presidents

From: Jackie McClain
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Human Resources


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Subject: New Public Contract Code Restrictions for CSU Employees

Effective July 1, 2003, Senate Bill 1467 (authored by Senator Bowen) will amend California law making applicable to the California State University (CSU) certain civil service conflict of interest provisions located in the Public Contract Code. Although these restrictions have long been applicable to state civil service employees, they have not until this year been applicable to the CSU. These restrictions prevent CSU employees and immediate past employees from contracting with the CSU. We have listed below these new restrictions and have provided a Question and Answer document in Attachment A that clarifies their application to common CSU practices. Be advised that employees who violate these restrictions will be in violation of the Public Contract Code. ***Campuses must notify all employees of the Public Contract Code restrictions by providing an Employee Information Notice (Attachment B) as a "payroll stuffer" in the upcoming June 30, 2003, payroll warrant.***

- ◀ **Restriction 1:** A CSU employee may not "contract on his or her individual behalf as an independent contractor with any state agency to provide services or goods." (PCC §10410, made applicable to CSU by PCC §10430(a).)
- ◀ **Restriction 2:** A CSU employee may not contract or be employed by an entity that receives its funding from a state contract, unless required by his/her employment. (PCC § 10410, made applicable to CSU by PCC § 10430(a).)
- ◀ **Restriction 3:** For two years following retirement or separation from CSU employment, no former employee may enter into a contract "in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract." (PCC §10411 (a) made applicable to CSU by PCC §10430(a).)

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- ◀ **Restriction 4:** For 12 months following retirement or separation from CSU, no former employee may contract with the CSU if he or she were employed by the CSU “in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement... or separation.” Excepted are contracts for expert witness services and contracts to continue attorney services. (PCC §10411(b) made applicable to CSU by PCC §10430(a).)

Questions regarding this coded memorandum may be directed to systemwide Human Resources at 562-951-4411 or your campus counsel. This memorandum is available on Human Resources Administration's Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

JRMcC/cr

New Public Contract Code Restrictions for CSU Employees Questions and Answers Reference Guide

Important: This reference guide addresses only new restrictions resulting from Senate Bill 1467 amendments to the Public Contract Code. Additional and outside employment opportunities for CSU employees also may be limited by restrictions in other state laws and/or CSU policies and collective bargaining agreements, not addressed in this document.

◀ **Restriction 1:** A CSU employee cannot contract with CSU or any other state agency while employed by CSU.

- Can a CSU employee with a specialized skill or expertise contract with a state agency or a CSU campus, including his/her own campus, to provide a needed service?
No.
- Are there any exceptions to this restriction?
No.
- What if the contract is for a very limited short-term project of critical importance?
The nature and duration of the contract are irrelevant.
- What if the contract is for work on weekends or time other than the employee's normal work schedule?
The timing of the contract work also is irrelevant.
- Can an employee contract with the CSU or another state agency to provide services during vacation time or an unpaid leave of absence?
No.
- Can a CSU academic year employee contract with a state agency to provide services during the summer or other academic breaks?
No.
- How can a CSU employee provide a needed service or expertise to a state agency or CSU?
There is no restriction on a CSU employee being hired as an employee of a state agency or a CSU campus.
- Can a CSU employee provide a needed service or expertise to a state agency or CSU campus if the employee is employed by and/or contracts with a CSU foundation or auxiliary?
Yes, provided that the auxiliary or foundation does not receive funding for the activity from a state contract.

- Can a CSU employee be employed by a state agency to provide a special service or expertise to the CSU?
Yes. It is only service under a state contract that is forbidden.
- Can a CSU employee receive a “stipend” or “honorarium” payment for services provided to another CSU campus or another state agency?
No. Whenever there is a payment for services provided, no matter how small, there is a contractual relationship, which is subject to the new statutory restriction.
- Can a CSU employee sign a contract with a state agency to prepare and write a training manual and/or textbook and/or other similar materials?
No.
- Can a CSU coach be hired by/or contract with a CSU foundation or auxiliary to provide a CSU summer sports camp?
Yes, provided that the activity is not funded by a state contract.

◀ **Restriction 2:** A CSU employee cannot work for a contractor on an activity funded by CSU or another state agency contract, unless required by his/her employment.

- Can a CSU employee provide a needed service or expertise to a state agency or CSU if the employee is hired by a private sector entity that then contracts with the state agency?
No.
- Does this restriction apply to employee contracts with a CSU auxiliary, where the auxiliary has contracted to perform a service for CSU?
Yes.
- What determines if an employee is required to work for a contractor on an activity funded by the CSU or another state agency contract as a condition of his/her employment?
A CSU employee's position description or employment agreement would identify activities that the employee might be required to perform for a contractor on an activity funded by the CSU or another state agency. The condition of employment exception must be interpreted narrowly. The CSU, as the employer, appropriately determines whether the activity is a condition of employment, not the employee.

It is important to note that while employees, particularly faculty employees, may have voluntarily provided services to a contractor funded by the CSU or a state agency and received payment (stipend/honorarium) for those services in the past, effective July 1, 2003, those services cannot be compensated, as they, in most instances, will not qualify for the CSU condition of employment exception. For example, if a faculty employee voluntarily serves on a task force at an organization funded by the CSU or another state agency to develop educational testing standards, that employee may not receive any type of payment for participation. Also, a faculty employee serving as a keynote speaker at an organization funded by a state agency may not receive an

honorarium. Again, the employee can be hired as an employee of the agency to provide the service, s/he just cannot be a contractor.

It is the CSU, not the employee, who determines whether the activity is a condition of employment. If the CSU requires the activity as a condition of employment, the employee can be compensated.

◀ **Restriction 3:** For two years after retirement or separation, no former CSU employee may enter into a contract with CSU in which s/he engaged in any negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to that contract.

- What does “negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract” include?

If a separated employee was in any way part of the planning or procurement process, the restriction applies. If the separated employee provided technical support to the planning or procurement process as requested, but did not participate in decision-making, the restriction does not apply.

- Can a separated/retired employee who participated in the planning or procurement process provide any service related to a selected vendor’s contract?

No.

- Can a separated/retired employee be rehired by the CSU as an employee to provide a service related to the selected vendor’s contract?

Yes.

- Can a separated/retired employee contract with the selected vendor to assist the vendor in meeting its CSU contract obligations?

Yes. The law forbids contracting with the CSU. It does not forbid contracting with a vendor.

- Can a separated/retired employee be hired as an employee by the selected vendor to assist in meeting the contract obligations?

Yes.

◀ **Restriction 4:** For 12 months after retirement or separation from CSU, no former employee in a policymaking position may contract with the CSU in the same general subject area.

- What is a policymaking position?

An employee in a policymaking position sets or recommends CSU policy. Management Personnel Plan administrators are in policymaking positions. Network analysts generally are not in policymaking positions. Each campus must review a separated/retired employee’s prior position to determine its policymaking impact.

- What does in the same general subject area mean?

This language should be interpreted broadly. If an employee specialized in one area of, for example, human resources, that employee would be subject to the 12-month restriction from all areas of human resources. If a faculty member teaches English, however, s/he could contract for work in faculty personnel administration; s/he could not contract to develop a remedial reading/writing curriculum.

- Can a CSU employee in a policymaking position who retires/separates provide services in his/her subject area on a contract basis to the CSU within 12 months of separation?
No. There are two limited exceptions: Contracts for expert witness services and contracts to provide continuing attorney services.
- Can a separated/retired employee in a policymaking position contract with a different CSU campus to provide services in the same general subject area?
No. Even though CSU campuses and the Chancellor's office are separate employers, for the purpose of this restriction, a systemwide preclusion applies.
- How can CSU secure needed expert services or skills of former employees?
CSU can hire former employees as continuing CSU employees. This restriction does not prohibit the rehire of former employees or annuitants.
- Can a CSU employee in a policymaking position who retires/separates provide contract services to another state agency other than the CSU within 12 months of separation in any area of expertise?
Yes. This restriction applies only to CSU contracts.
- Can a former employee in a policymaking position be employed by or contract with a foundation or other auxiliary to provide services to CSU in his/her subject area?
Yes.
- Can a former employee in a policymaking position provide needed service or expertise to another state agency, if that agency has a contract with the state?
Yes.

IMPORTANT NOTICE

SENATE BILL 1467 Public Contract Code Restrictions

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- ◀ **Restriction 1:** A CSU employee may not “contract on his or her individual behalf as an independent contractor with any state agency to provide services or goods.” (PCC §10410, made applicable to CSU by PCC §10430(a).)
- ◀ **Restriction 2:** A CSU employee may not contract or be employed by an agency that receives its funding from a state contract, unless required by his/her employment. (PCC § 10410, made applicable to CSU by PCC § 10430(a).)
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If you have questions about these restrictions and their impact on your ability to perform certain activities, please contact your campus human resources office or faculty affairs office, as appropriate.