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Date: August 6, 2003 **Code: HR 2003-15**
To: CSU Presidents **Supersedes: HR 2002-31**
From: Jackie R. McClain 
Vice Chancellor
Human Resources
Subject: **Payment of Wages at Separation – Update**

The California State University (CSU) Payment of Wages at Separation policy has been updated to include Student Assistants. This change is effective immediately.

HR 2001-07 issued in February 2001 established the CSU's new payment of wages at separation policy due to passage of AB 2410 (Chapter 885). AB 2410 amended section §220 of the Labor Code and removed the State employer's exemption to various Labor Code sections applicable to the payment of wages and the resolution of wage disputes. The Labor Code sections that apply to the CSU include §201, §202, §203, §206, §206.5, §207, §208, §209, §210, §211, §216, §217, §218, §218.5 and §219. Sections §204.2, §204.3, §209, and §210 do not impact the CSU for various reasons. HR 2002-31, issued November 20, 2002, updated CSU's payment of wages at separation policy to reflect amendments to Labor Code sections §201, §202, and §219 due to passage of AB 1684 (Chapter 40).

This updated policy includes the following:

- Attachment A: Highlights of Labor Code Revisions that impact the deferral of leave credits as a result of AB 1684
- Attachment B: Updated CSU policy guidelines for payment of wages at separation to reflect Student Assistant coverage
- Attachment C: Updated CSU Payment of Wages at Separation Questions and Answers to reflect Student Assistant coverage (see Q14)

Distribution:

Vice Presidents, Administration
Associate Vice Presidents/Deans of Faculty
Human Resources Directors
Benefits Officers
Payroll Managers

Instructions for processing accrued leave credit deferrals can be found in technical letter HR/EHDB 2002-03. The document is available on Human Resources Administration's Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

If you have questions, please call Human Resources Administration at (562) 951-4411. This memorandum also is available on the Human Resources Administration's Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

Attachment

JRMc/ac

Highlights of Labor Code Revisions Impacting the Deferral of Leave Credits

- AB 1684 (Chapter 40) -

AB 2410 restricted a separating employee from deferring lump sum pay. With the recent passage of AB 1684, Labor Code Sections §201, §202 and §219 were amended which reinstated the ability to defer lump sum pay under certain conditions.

AB 1684 permits an employee, upon written election, to defer certain lump sum separation pay into the next calendar year and/or have 401(k), 403(b), 457 and Department of Personnel Administration's (DPA) Part-Time Seasonal Temporary (PST) retirement plan deductions withheld from lump sum separation pay in the current and next calendar year. The new language in Labor Code Sections §201 and §202 provides:

- **Deferral of all or a portion of accrued leave credits into a 401(k), 403(b), and 457 plan in current year:** An employee must submit a written request, at least five workdays prior to his/her final day of employment, electing to defer payment, all or a portion of accrued leave credits (vacation, annual leave, holiday leave, sick leave that is otherwise due to a disability retirement¹, or compensation time off) to a 401(k), 403(b), and 457 plan on a current basis (current year).
- **Deferral of all or portion of accrued leave credits into a 401(k), 403(b) and 457 plan next calendar year:** An employee must submit a written request, at least five workdays prior to his/her final day of employment, electing to defer all or a portion of accrued leave credits (vacation, annual leave, holiday leave, sick leave that is otherwise due to a disability retirement¹, or compensating time off) to a 401(k), 403(b), and 457 plan effective the next calendar year. However, an employee can only defer payment under this option for that portion of leave that extends past the November pay period.
- **Payment deferral of all or a portion of accrued leave credits in next calendar year (cashout):** An employee must submit a written request, at least five workdays prior to his/her final day of employment, electing to defer payment of all or a portion of accrued leave credits (vacation, annual leave, holiday leave, sick leave that is otherwise due to a disability retirement¹, or compensating time off) to the next calendar year. However, an employee can only defer payment under this option for that portion of leave that extends past the November pay period. Payment for this option must be made to the employee by February 1.

- **Deferral of accrued leave credits into the DPA PST (457) plan in current and next calendar year:** Employees not eligible to participate in PERS must contribute 7.5 percent of their gross salary to the PST plan in lieu of Social Security. PST contributions are not deducted automatically from lump sum separation pay (accrued leave credit payments).

An employee must submit a written request, at least five workdays prior to his/her final day of employment, electing to defer 7.5 percent of his/her lump sum separation pay to the PST plan in the current or next calendar year.

Nothing in the Labor Code authorizes contributions to 401(k), 403(b), 457, and PST plans in excess of the annual deferral limits imposed under the federal and state law or the provisions of the supplemental retirement plan itself. Accrued leave credits not deferred under the requirements above must be paid within the timeframes specified in Labor Codes §201(a) and §202(a).

¹ This provision only includes sick leave when a separation is voluntary. Provisions concerning sick leave for CSU employees is pursuant to Government Code 21163.

California State University Updated Payment of Wages at Separation Guidelines

The following provides an overview of the applicable Labor Code sections relating to the payment of wages at separation. Revisions to the Code are highlighted in bold and underlined text.

Payment of Wages

Labor Code sections §201 and §202 require the CSU to pay separating employees, including Student Assistants, in a specified timeframe. Payment of owed wages to discharged and resigned employees is treated differently in the Labor Code.

Separations – Discharge: An employee who is discharged must be paid wages earned immediately. This includes cash out of benefits (e.g., leave time on books) **unless an employee submits a written request, at least five work days prior to his/her final day of employment, to defer all or a portion of accrued leave credits.**

The completion of an appointment or assignment is not considered a discharge. “Discharge” separations may include the following CSU Separation Transaction Codes:

- S30 – Layoff
- S31 – Termination of Temporary Appointment ¹
- S34 – Faculty Nonreappointment
- S35 – Separation by Agency
- S41 – Dismissal
- S90 – Rejection During Probation/Non-Retention
- S99 – Canceled Appointment Action

Separations – Resignations: An employee who resigns from employment must be paid wages earned no later than 72 hours from the date of separation.² However, if the employee provides the employer at least 72 hours notice of his/her impending separation, he/she is entitled to owed wages at the time of separation. This includes the cash out of benefits (e.g., leave time on books) **unless an employee submits a written request, at least five work days prior to his/her final day of employment, to defer all or a portion of accrued leave credits.** The 72 hours is a continuous period that includes weekends and holidays. For example, if an employee resigns without prior notice on a Friday at 5:00 p.m., the employer

¹ Separation code S31 is considered a discharge when an employee’s appointment or assignment ends prior to the scheduled completion of the appointment or assignment (A52) transaction.

² Due to the required period of absence to be determined AWOL as specified in a memorandum of understanding or policy (e.g., five days) whereby the effective date of separation typically precedes the period of AWOL, payment of wages may be processed within 72 hours after the AWOL period is satisfied.

has until 5:00 p.m. the following Monday to pay owed wages. “Resignation” separations include the following CSU Separation Transaction Codes:

S10 – Resignation
S21 – Absent Without Official Leave
S70 – Service Retirement
S71 – Disability Retirement

Separation Code S95 (Death) does not apply to these Labor Code sections. CSU’s position is for campuses to continue processing S95 separations in accordance with established procedures. Refer to the CSU PIMS Manual, Transactions Section (Separations), and appropriate sections of the State Controller's Office Payroll Procedures Manual (PPM).

Additional Payment of Wages requirements under the applicable Labor Code sections include:

- Campuses must refrain from requiring an employee to execute a release of any claim or right to unpaid wages (§206.5).
- Campuses are required to post notices informing employees of the regular paydays and the time and place of payment (§207).
- Campuses are required to pay discharged and resigned employees at the campus where they worked (§208).

If the CSU does not comply with the newly applicable Payment of Wages Labor Code sections, the CSU will be in violation of the law and subject to penalties. The following provides an overview of the applicable sections relating to Penalties, Disputes, Civil Violations, and Other. Each campus will be responsible financially for its own violations.

Penalties

The campuses will be subject to pay penalties of up to thirty (30) days of continued wages for willful failure to make timely payment of earned and unpaid wages. If an employee avoids payment or refuses to receive payment, he/she is not entitled to any benefit under this section (§203).

Disputes

If there is a dispute over wages, the campuses must pay all conceded wages owed within the proper timeframes. The employee can pursue any disputed claim amount through the Labor Commissioner. The Labor Commissioner will determine the validity of the claim. An employer’s willful failure to pay wages awarded by the Labor Commissioner may result in additional penalties (§206).

Civil Violations

Any person, agent, manager, superintendent or officer is guilty of a misdemeanor for violations of the wage payment requirements described in §207 and §208 (§215). Any person, agent, manager, superintendent or officer is guilty of a misdemeanor for willfully refusing to pay wages, falsely denying the amount of wages owed, or harassing anyone owed wages (§216).

Other

The remaining sections, not mentioned (§211, §217, §218, §218.5, and §219), deal with legal and financial penalties against the employer for not complying with the law. AB 1684 amends §219 to allow deferral of accrued leave credits without violating the Labor Code.

PAYMENT OF WAGES AT SEPARATION

QUESTIONS AND ANSWERS

Payment Process/Timelines (no deferral of payment requested by employee)

Q1: If the campus is unable to produce a separation payment through the regular payroll process in the time prescribed by law, what options are available to the campus for generating the payment?

A1: The campus has access to revolving funds. The campus is responsible for calculating the employee's separation payment, which includes payments for leave credits and deductions for taxes and other withholdings in accordance with applicable procedures.

Q2: What if the separation payment is under/over the actual amount to be paid as determined by the State Controller's Office?

A2: If the separation payment is under/over the correct amount, the campus is responsible for reconciling the overpayment/underpayment. An underpayment to an employee must be supplemented with a payroll warrant or revolving fund check or, in the case of an overpayment, the campus is responsible for recovering the excess amount paid the employee. To the extent possible, the campus must make a good faith effort to recover all funds owed to the campus in accordance with applicable procedures.

Q3: Is the campus able to input future effective dates into the regular payroll system to allow adequate time to pay separating employees?

A3: Yes, this capability is in place.

Q4: Separation Code S35 is often used to separate Management Personnel Plan (MPP) employee resignations. Should the campus consider it a discharge regardless of the reason for leaving?

A4: Separation Code S35 is used to denote the permanent separation of a non-probationary, non-tenured employee, appointed via A50 Transaction Code, if no other Separation Code is more appropriate. Campuses that may have used this Code to denote MPP separations in the past should prospectively use other more appropriate separation codes (e.g., S10) in consideration of Labor Code implications.

Q5: Per the law or employee MOU, an employee who is absent for a specified number of consecutive workdays without securing authorized leave is considered to have automatically resigned as of the last day worked (Absent Without Official Leave). When is the campus required to pay an AWOL employee?

A5: The campus should pay the AWOL employee within 72 hours AFTER the "last" consecutive day of unauthorized leave as specified in the MOU or law.

Payment Process/Timelines (deferral of payment requested by employee)

Q6: Can an employee request to have lump sum separation pay deferred to the next calendar year?

A6: Yes, under certain circumstances. Upon written request at least five workdays prior to his/her final day of employment (discharge or resignation), an employee may elect to defer all or a portion of accrued leave credits to the next calendar year. However, an employee can only defer payment of leave that extends past the November pay period. The campus must pay the employee by February 1.

Q7: Can the employee's lump sum separation pay, deferred to the next calendar year, be transferred to a defined contribution plan (the State's Savings Plus Plans (401(k) and 457) and/or the CSU's 403(b) plan)?

A7: Yes. All or a portion of the lump sum separation pay, deferred to the next calendar year, may be transferred to a defined contribution plan (within the annual deferral limits imposed under federal or state law or the provisions of the defined contribution retirement plan itself). The payment must be made to the defined contribution plan within 45 days after the date of separation.

Q8: Can an employee request to have lump sum separation or final settlement pay transferred to a defined contribution plan (the State's Savings Plus Plans (401(k) and 457) and/or the CSU's 403(b) plan) in the current year?

A8: Yes. All or a portion of the lump sum separation or final settlement pay may be transferred to a defined contribution plan (within the annual deferral limits imposed under federal or state law or the provisions of the defined contribution retirement plan itself) in the current year only if the employee provides a written request at least days prior to his/her final day of employment (discharge or resignation). The payment must be made to the defined contribution plan within 45 days after the date of separation.

Q9: What if the employee does not request deferral of all his/her accrued leave credits? When do the remaining leave credits have to be paid to the employee?

A9: The campus is responsible for ensuring that the remainder of the accrued leave credits are paid to the employee in the time specified in Labor Code Section 201(a) and 202(a).

Q10: The Labor Code specifies that an employee must request payment deferral payment of accrued leave credits at least five workdays prior to his/her final day of employment. How would the employee have the opportunity to request a deferral if the campus discharges the employee effective immediately or if an employee quits without providing reasonable notice?

A10: The employee would not be eligible to request a deferral under those circumstances. There would be no obligation on the campus' part to process a deferral or give a separating employee five workdays notice before termination to ensure he/she has an opportunity to defer. This would also be true in situations where an employee quits without notice.

Q11: Does AB 1684 allow a part-time employee, participating in either Department of Personnel Administration's (DPA) Part-Time/Seasonal/Temporary (PST) retirement plan (a 457 plan) or the University of California's Defined Contribution (UCDC) part-time retirement plan (a 401(a) plan), to defer a portion of his/her accrued leave credits into that plan (7.5 percent of gross salary) in the current and/or next calendar year?

A11: Under certain circumstances, yes. AB 1684 provides for the deferral of accrued leave credits into 401(k), 403(b) and 457 plans. The PST retirement plan is a 457 plan and therefore included in the bill's language. PST members, who elect to defer accrued leave credits, may request PST contributions (7.5 percent of gross salary) be withheld in the current and/or next calendar.

The UCDC retirement plan, a 401(a) plan, is excluded from the bill's language. UCDC participants are restricted from deferring accrued leave credits to their UCDC retirement plan in the current year and/or next calendar year based on Labor Codes 201(a) and 202(a).

Types of Employees Included in Law

Q12: Is the campus required to process separation pay in the timeframe specified in the Labor Code for an employee in a Lecturer classification at the end of his/her temporary appointment, even though the Lecturer will be reappointed for the next term with no interruption in monthly warrant distribution?

A12: In instances where a Lecturer's appointment and pay are continuous, the campus is not required to process a separation at the end of his/her appointment (e.g., end of the academic term). A part-time Lecturer separation is only subject to the Labor Code when an employee separates in instances other than the completion of an appointment, such as a "quit" in mid semester.

Q13: Is the campus required to process separation pay in the timeframe specified in the Labor Code for a non-academic employee on a temporary appointment with beginning and ending dates?

A13: If the employer discharges the employee before the ending date of the appointment, the employer owes the employee any unpaid wages immediately. However, the campus is not required to process separation pay for a temporary employee at the end of his/her appointment in the timeframe specified by the Labor Code. Campuses are to continue processing non-reappointment separations in accordance with established procedures.

Q14: Are Student Assistant classifications (codes 1870, 1871, and 1872) subject to the Labor Code?

A14: Yes, Student Assistants are subject to the Labor Code separation requirements.

Q15: Are employees hired in “Special Pay” categories subject to the Labor Code? These classifications include Extension, Summer Session, Substitute, Demonstration, Music Studio Faculty, Special Consultants, and Special Session.

A15: Special Pay classifications are subject to the Labor Code wage payment requirements when an employee separates for reasons other than the completion of an established assignment.

Other Policy/Procedures Impacted by Labor Code

Q16: Campus policy/practice (e.g., SAM Section 8580.4) requires the recovery of all campus property and outstanding debt from the employee prior to issuing the employee’s separation pay. Does the Labor Code void the established policy/practice if the campus is unable to recover all property or outstanding debt?

A16: The Campus is subject to the Labor Code regardless of the guidelines specified in SAM or established by the campus.

Penalties

Q17: If the campus is found in violation of the Labor Code and must pay penalties, how should the campus interpret the language relating to payment?

A17: If the campus is found in violation of the Labor Code by willfully withholding wages from an employee, please contact Human Resources Administration or your campus counsel for further guidance.