

THE CALIFORNIA STATE UNIVERSITY
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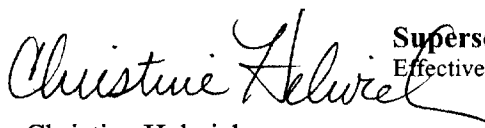
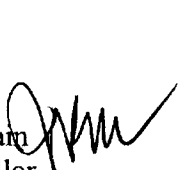
Date: November 4, 2003

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To: CSU Presidents

Reference: HR 2003-09

From: Jackie McClam
Vice Chancellor
Human Resources



Supersedes: HR 2003-09
Effective 01/01/04

Christine Helwick
General Counsel

Subject: **New Public Contract Code Restrictions for CSU Employees Effective January 1, 2004**

Effective January 1, 2004, SB 41 (authored by Senator Bowen) will amend California law by removing the California State University (CSU) from certain civil service conflict of interest provisions located in the Public Contract Code that were made applicable to the CSU as a result of SB 1467. Instead, SB 41 has created new Public Contract Code (PCC) sections that address certain CSU employee conflict of interest provisions related to contracting. (Four SB 1467 restrictions were addressed in coded memorandum HR 2003-09 issued June 9, 2003.) Two of the SB 41 restrictions are less restrictive than those under SB 1467 and two are the same. We have listed below the SB 41 restrictions and provided a Question and Answer document in Attachment A that clarifies their application to common CSU practices. ***Campuses must notify all employees of these new contracting restrictions by providing an Employee Information Notice (Attachment B) as a "payroll stuffer" no later than the upcoming December 1, 2003, payroll warrant. Also, please ensure this information is provided to future employees upon hire.***

- ◀ **Restriction 1:** A CSU employee, except for those employees with teaching or research responsibilities, may not "contract on his or her individual behalf as an independent contractor with any California State University department to provide services or goods." (PCC 10831)
- ◀ **Restriction 2:** A CSU employee, except for those employees with teaching or research responsibilities, may not engage in any employment or activity for which the employee receives compensation through or by a CSU contract, unless the employment or activity is within the course and scope of the employee's regular CSU employment. (PCC 10831)

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- ◀ **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 while employed in any capacity by any CSU department.” (PCC 10832 (a))

- ◀ **Restriction 4:** For 12 months following retirement or separation from the CSU, no former employee may contract with the CSU if he or she was 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 10832 (b))

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

JRMcC/cr

Attachment

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

Important: This reference guide addresses restrictions resulting from Senate Bill 41. 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, except for those employees with teaching or research responsibilities, may not “contract on his or her individual behalf as an independent contractor with any California State University department to provide services or goods.” (PCC 10831)

- Can a CSU employee contract with a state agency other than the CSU to provide a needed service?

Yes

- Can a CSU employee with a specialized skill or expertise contract with the CSU to provide a needed service?

A CSU employee with teaching or research responsibilities can contract with the CSU as an independent contractor; other employees cannot.

What does it mean to be an independent contractor?

Independent contractors are not under CSU control. Instead, CSU control is limited to accepting or rejecting the final result. Under the IRS test, workers are employees rather than independent contractors if the people they work for have the right to direct and control the way they work – including details of when, where and how they do their jobs. CSU is subject to state and federal statutes governing wage reporting and tax collection for employees and the IRS imposes penalties on incorrect reporting.

Note: CSU’s Additional Employment policy limits are not impacted by independent contractor assignments. Also, a participant in the Faculty Early Retirement Program (FERP) can contract with the CSU as an independent contractor without jeopardizing his/her FERP employment or CalPERS retirement.

- Are there any exceptions for employees who do not have teaching or research responsibilities?

No.

- How can a CSU employee, who does not have teaching or research responsibilities, provide a needed service to the CSU?

The CSU employee can be hired as an employee of the CSU (e.g., utilizing the “special consultant” classification), as long as the employment is not funded by a CSU contract.

- Can a CSU employee be employed by and/or contract with a CSU foundation or auxiliary to provide a needed service or expertise?

CSU employees with teaching or research responsibilities can be employed by or contract with a CSU foundation or auxiliary regardless of funding source. Other employees can be employed by or contract with the CSU foundation or auxiliary provided that the employees' activities are not funded by a CSU contract.

- Can a CSU employee receive a “stipend” or “honorarium” payment for services provided to another CSU campus?

A CSU employee with research or teaching responsibilities can receive a stipend/honorarium for independent contractor services if the work arrangement meets independent contractor criteria. (If not, the employee would need to receive an additional employment assignment to be paid for the work.) Other employees cannot because whenever there is a payment for services provided, no matter how small, there is a contractual relationship, which is subject to the SB 41 restrictions.

- ◀ **Restriction 2:** A CSU employee, except for those employees with teaching or research responsibilities, may not engage in any employment or activity for which the employee receives compensation through or by a CSU contract, unless the employment or activity is within the course and scope of the employee’s regular CSU employment. (PCC 10831)

- Can a CSU employee have his/her activities funded by a CSU contract?

Employees with teaching or research responsibilities can. Other employees cannot, unless the employment/activity is within the course and scope of the employee’s regular CSU employment.

- Can a CSU employee provide a needed service or expertise to the CSU if the employee is hired by a private sector entity to do work that is funded by a CSU contract?

CSU employees with research or teaching responsibilities can; however, other employees cannot engage in any activity for pay funded through/by a CSU contract, unless the employment/activity is within the course and scope of the employee’s regular CSU employment.

- 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’s work on an activity funded by a CSU contract is within the course and scope of the employee’s regular CSU employment?

A CSU employee’s position description or employment agreement may identify activities that the employee might be required to perform on an activity funded by a CSU contract. However, it may be that an activity is only an occasional part of the employee’s job, and not specifically identified in the position description, but is within the course and scope of the employee’s regular employment. The CSU, as the employer, appropriately determines whether the activity is within the course and scope of the employee’s regular CSU employment, not the employee. If the CSU

appropriately designates the activity as within the course and scope of employment, the employee can be compensated.

◀ **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 while employed in any capacity by any CSU department.” (PCC 10832 (a))

- Do “negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract” include technical support?
If the separated employee provided limited technical support to the planning or procurement process as requested, but did not participate in planning or decision-making, the restriction does not apply.
- 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 who participated in the planning or procurement process contract with the CSU to provide a service related to the selected vendor’s contract?
Yes.
- Can a CSU employee who participated in the planning or procurement process relevant to a proposed contract enter into that same contract after he/she retires or is otherwise separated from CSU employment?
No.
- Can a separated/retired employee who participated in the planning or procurement process contract with the selected vendor to assist the vendor in meeting its CSU contract obligations?
Yes.
- 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 following retirement or separation from the CSU, no former employee may contract with the CSU if he or she was 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 10832 (b))

- 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 campus academic administrator managed the Business school, s/he could not contract for work developing a business 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 41 CSU Contract Restrictions

Effective January 1, 2004, Senate Bill 41 (authored by Senator Bowen) will amend California law by removing the California State University (CSU) from certain civil service conflict of interest provisions located in the Public Contract Code that were made applicable to the CSU as a result of SB 1467. (SB 1467 restrictions were addressed in a notice you received late June 2003.) Instead, SB 41 has created new Public Contract Code (PCC) sections that address certain CSU employee conflict of interest provisions related to contracting. These SB 41 restrictions are less restrictive than those under SB 1467. It is your responsibility to ensure that you do not violate the Code. The new restrictions are as follows:

- ◀ **Restriction 1:** A CSU employee, except for those employees with teaching or research responsibilities, may not “contract on his or her individual behalf as an independent contractor with any California State University department to provide services or goods.” (PCC 10831)
- ◀ **Restriction 2:** A CSU employee, except for those employees with teaching or research responsibilities, may not engage in any employment or activity for which the employee receives compensation through or by a CSU contract, unless the employment or activity is within the course and scope of the employee’s regular CSU employment. (PCC 10831)
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- ◀ **Restriction 4:** For 12 months following retirement or separation from the CSU, no former employee may contract with the CSU if he or she was 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 10832 (b))

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.