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The California State University
Office of the Chancellor
401 Golden Shore
Long Beach, CA 90802-4210
(562) 951-4411

Date: November 20, 2002 **Code: HR 2002 - 31**

To: CSU Presidents **Supersedes: HR 2001 - 07**

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 reflect amendments to Labor code sections §201, §202 and §219 due to the recent passage of AB 1684 (Chapter 40). These amendments are 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.

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: AB 1684 (Chapter 40)

Attachment C: Updated CSU policy guidelines for payment of wages at separation.

Attachment D: Payment of Wages at Separation Questions and Answers

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Distribution:

Vice Presidents, Administration
Associate Vice Presidents/Deans of Faculty
Human Resources Directors
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SOSS Director

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

If you have questions not answered in this letter or the attachments, please call Human Resources Administration at (562) 951-4411. This memorandum is also available on the Human Resources Administration's Web site at: http://www.calstate.edu/HRAdm/memos.shtml.

Attachment
JRMc/br

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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. (See Attachment B for a copy of AB 1684. Relevant Labor Code amendments are in Sections 6, 7, and 8.)

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 DPA's 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 all or a portion of accrued leave credits (vacation, annual leave, holiday leave, sick leave that is otherwise due to a disability retirement[1], 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 retirement[1], 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.

- **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 all or a portion of accrued leave credits (vacation, annual leave, holiday leave, sick leave that is otherwise due to a disability retirement[1], 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.

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- **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 ½ percent of their gross salary to the PST plan in lieu of Social Security. PST contributions are not automatically deducted 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 ½ 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).

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[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.

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Assembly Bill No. 1684

CHAPTER 40

An act to add and repeal Section 20677.5 of the Government Code, and to amend Sections 201, 202, and 219 of the Labor Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 15, 2002. Filed with Secretary of State May 16, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1684, Committee on Public Employees, Retirement and Social Security. State employees: memorandum of understanding.

(1) Existing law provides that if any provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act.

This bill would approve provisions that require the expenditure of funds of a memorandum of understanding entered into between the state employer and State Bargaining Unit 2, the Association of California State Attorneys and Administrative Law Judges, and would provide that the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

This bill would provide that provisions of the memorandum of understanding approved by this bill that require the expenditure of funds shall not take effect unless funds for these provisions are specifically appropriated by the Legislature, and would provide that if funds for these provisions are not specifically appropriated by the Legislature, the state employer, and the affected employee organization shall meet and confer to renegotiate the affected provisions.

(2) Existing law prescribes contribution rates for state employees who are state miscellaneous, state industrial, or state safety members of the Public Employees' Retirement System.

This bill would reduce the contribution rates by $2^1/_2\%$ during the period from January 1, 2002, to June 30, 2002, inclusive, and by an additional $2^1/_2\%$ during the period from July 1, 2002, to June 30, 2003,

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inclusive, for state miscellaneous and state industrial members of the Public Employees' Retirement System in State Bargaining Unit 2.

(3) Existing law provides generally that wages earned and unpaid at the time an employee is discharged or an employee without a written contract quits are due and payable not later than 72 hours thereafter.

This bill would expressly permit a state employer to contribute unpaid vacation and other leave on a pretax basis, to the discharged or quitting employee's state-sponsored supplemental retirement account if the employee has submitted a written election authorizing the contribution, as specified.

(4) Existing law prohibits the contravention or setting aside by a private agreement of certain laws prescribing the frequency of wage payments.

This bill would provide that a state employer does not violate that prohibition by authorizing employees who quit or are discharged to take payment for unused or accumulated vacation or other leave.

(5) The annual Budget Act appropriates specified amounts from the General Fund, unallocated special funds, and unallocated nongovernmental cost funds, for state employee compensation.

This bill would appropriate $875,000 from those funds for state employee compensation, in augmentation of the Budget Act of 2001.

(6) The bill would also declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that the purpose of this act is to approve an agreement pursuant to Section 3517 of the Government Code entered into by the state employer and a recognized employee organization.

SEC. 2. The provisions of the memorandum of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and State Bargaining Unit 2, the Association of California State Attorneys and Administrative Law Judges, and that require the expenditure of funds, are hereby approved for the purposes of Section 3517.6 of the Government Code.

SEC. 3. The provisions of the memorandum of understanding approved by Section 2 of this act that are scheduled to take effect on or after July 1, 2001, and that require the expenditure of funds, shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. In the event that funds for these provisions are not specifically appropriated by the Legislature, the state employer and the

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affected employee organization shall meet and confer to renegotiate the affected provisions.

SEC. 4. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 5. Section 20677.5 is added to the Government Code, to read:

20677.5. (a) Notwithstanding any provisions of this part to the contrary, the normal rate of contribution for state miscellaneous and state industrial members in State Bargaining Unit 2 shall be the following:

(1) From January 1, 2002, to June 30, 2002, inclusive, the normal rate of contribution for a member whose service is not included in the federal system shall be 3.5 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered.

(2) From July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution for a member whose service is not included in the federal system shall be 1 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered.

(3) From January 1, 2002, to June 30, 2002, inclusive, the normal rate of contribution for a member whose service is included in the federal system shall be 2.5 percent of the compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered.

(4) From July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution for a member whose service is included in the federal system, shall be zero percent of the compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered.

(b) Notwithstanding any provisions of Section 21073.7 to the contrary, a member who elects to become subject to the benefits prescribed in Section 21354.1 and who is subject to this section shall be subject to the normal rate of contribution set forth in this section.

(c) This section does not apply to state miscellaneous or state industrial members who are subject to Section 21076.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

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(e) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 201 of the Labor Code is amended to read:

201. (a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. An employer who lays off a group of employees by reason of the termination of seasonal employment in the curing, canning, or drying of any variety of perishable fruit, fish or vegetables, shall be deemed to have made immediate payment when the wages of said employees are paid within a reasonable time as necessary for computation and payment thereof; provided, however, that the reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any employee who so requests and designates a mailing address therefor.

(b) Notwithstanding any other provision of law, the state employer shall be deemed to have made an immediate payment of wages under this section for any unused or accumulated vacation, annual leave, holiday leave, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, provided, at least five workdays prior to his or her final day of employment, the employee submits a written election to his or her appointing power authorizing the state employer to tender payment for any or all leave to be contributed on a pretax basis to the employee's account in a state-sponsored supplemental retirement plan as described under Sections 401(k), 403(b), or 457 of the Internal Revenue Code provided the plan allows those contributions. The contribution shall be tendered for payment to the employee's 401(k), 403(b), or 457 plan account no later than 45 days after the employee's discharge from employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(c) Notwithstanding any other provision of law, when the state employer discharges an employee, the employee may, at least five workdays prior to his or her final day of employment, submit a written election to his or her appointing power authorizing the state employer to defer into the next calendar year payment of any or all of the employee's unused or accumulated vacation, annual leave, holiday leave, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power. To qualify for the deferral of payment under this section, only that portion of leave that extends past the November pay

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period for state employees shall be deferred into the next calendar year. An employee electing to defer payment into the next calendar year under this section may do any of the following:

(1) Contribute the entire payment to his or her 401(k), 403(b), or 457 plan account.

(2) Contribute any portion of the deferred payment to his or her 401(k), 403(b), or 457 plan account and receive cash payment for the remaining noncontributed unused leave.

(3) Receive a lump-sum payment for all of the deferred unused leave as described above.

Payments shall be tendered under this section no later than February 1 in the year following the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

SEC. 7. Section 202 of the Labor Code is amended to read:

202. (a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

(b) Notwithstanding any other provision of law, the state employer shall be deemed to have made an immediate payment of wages under this section for any unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, provided at least five workdays prior to his or her final day of employment, the employee submits a written election to his or her appointing power authorizing the state employer to tender payment for any or all leave to be contributed on a pretax basis to the employee's account in a state-sponsored supplemental retirement plan as described under Sections 401(k), 403(b), or 457 of the Internal Revenue Code provided the plan allows those contributions. The contribution shall be tendered for payment to the employee's 401(k), 403(b), or 457 plan account no later than 45 days after the employee's last day of employment. Nothing in this section is intended to authorize

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contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(c) Notwithstanding any other provision of law, when a state employee quits, retires, or disability retires from his or her employment with the state, the employee may, at least five workdays prior to his or her final day of employment, submit a written election to his or her appointing power authorizing the state employer to defer into the next calendar year payment of any or all of the employee's unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability, retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power. To qualify for the deferral of payment under this section, only that portion of leave that extends past the November pay period for state employees shall be deferred into the next calendar year under this section may do any of the following:

(1) Contribute the entire payment to his or her 401(k), 403(b), or 457 plan account.

(2) Contribute any portion of the deferred payment to his or her 401(k), 403(b), or 457 plan account and receive cash payment for the remaining noncontributed unused leave.

(3) Receive a lump-sum payment for all of the deferred unused leave as described above.

Payments shall be tendered under this section no later than February 1 in the year following the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

SEC. 8. Section 219 of the Labor Code is amended to read:

219. (a) Nothing in this article shall in any way limit or prohibit the payment of wages at more frequent intervals, or in greater amounts, or in full when or before due, but no provision of this article can in any way be contravened or set aside by a private agreement, whether written, oral, or implied.

(b) The state employer does not violate this section by authorizing employees who quit, or are discharged from, their employment with the state to take payment for any unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, as provided in Section 201 or 202.

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Attachment B
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SEC. 9. The sum of eight hundred seventy-five thousand dollars ($875,000) is hereby appropriated for expenditure in the 2001–02 fiscal year in augmentation of, and for the purpose of state employee compensations as provided in, Items 9800-001-0001, 9800-001-0494, and 9800-001-0988 of Section 2.00 of the Budget Act of 2001 (Chapter 106, Statutes of 2001) in accordance with the following schedule:

(a) Three hundred ninety-two thousand dollars ($392,000) from the General Fund in augmentation of Item 9800-001-0001.

(b) Three hundred nine thousand dollars ($309,000) from unallocated special funds in augmentation of Item 9800-001-0494.

(c) One hundred seventy-four thousand dollars ($174,000) from other unallocated nongovernmental cost funds in augmentation of Item 9800-001-0988.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 2001–02 fiscal year, and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.

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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 have been highlighted in bold and underlined.

Payment of Wages

Labor Code sections §201 and §202 require the CSU to pay separating employees 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 has until 5:00 p.m. the following Monday to pay owed wages. "Resignation" separations include the following CSU Separation Transaction Codes:

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[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.

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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, Section 10 (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 financially responsible 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).

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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.

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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.

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

Q5: Can an employee request to have lump sum separation pay deferred to the next calendar year?

A5: 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.

Q6: 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)?

A6: 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.

Q7: 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?

A7: 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.

Q8: 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?

A8: 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).

Q9: The Labor Code specifies that an employee must request the deferral 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?

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A9: 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.

Q10: Does AB 1684 allow a part-time employee, participating in either DPA's 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 ½ % of gross salary) in the current and/or next calendar year?

A10: 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 ½ 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

Q10: 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?

A10: 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.

Q11: 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?

A11: 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.

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Q12: Are Student Assistant classifications (codes 1870, 1871, and 1872) subject to the Labor Code?

A12: The CSU is taking the position that Student Assistants (non Bridge classifications) are not subject to the Labor Code separation requirements. However, campuses are strongly urged to process separation pay for Student Assistants in a timely manner when they are discharged or resign.

Q13: 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.

A13: 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

Q14: 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?

A14: The Campus is subject to the Labor Code regardless of the guidelines specified in SAM or established by the campus.

Penalties

Q15: 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?

A15: 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.