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Code: TECHNICAL LETTER
HR/Salary 2006-18

To: Human Resources Directors
Payroll Managers

Reference: HR/Salary 2005-29

From: Gail Brooks 
Associate Vice Chancellor
Human Resources Administration

Subject: **Clarification: State University Police Association Article 19 (Holidays)**

The purpose of this memo is to provide clarification of and processing instructions for new provisions in the State University Police Association (SUPA - Unit 8) Memorandum of Understanding (MOU) concerning Holidays, including the Side Letter of Agreement on the Pay-Out of Holiday Work Compensation for Employees with Holiday Credit Balances in Excess of 100 Hours. The MOU is effective July 19, 2006 – June 30, 2008.

Pursuant to provision 19.4, an employee is entitled to holiday time off in an amount equal to their normal workday if the employee's regularly scheduled day off falls on the day the holiday is observed. If an employee works on the day a holiday is officially observed, s/he is paid an overtime rate at one and one-half (1 and ½) times their normal rate of pay for each hour actually worked on the holiday. In both instances, the MOU provides that compensation may be paid in the form of cash (salary) or credited as holiday credit. Pursuant to the Side Letter of Agreement, employees with Holiday Credit in excess of one hundred (100) hours may submit a written request for an optional cash payout of all or part of those hours in excess of one hundred (100).

Holiday Credit Cash Payout Considerations:

Establishing Uniform Crediting and Payout Processes: Campuses must consider that Holiday Credit balances under the new agreement combine straight time hours (Holidays on Scheduled Days Off) with hours based upon an overtime factor (Holiday on Scheduled Work Days). Adjustments may be needed to ensure uniformity in crediting and payment processes. This would be applicable to existing holiday balances earned prior to the new agreement (that may require converting balances) as well as

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newly attained balances earned under the new agreement. Campuses need to make appropriate adjustments to ensure that cash out payments (e.g., at straight time rate or at overtime rate) are consistent.

Payment Codes: As previously addressed in technical letter HR/Salary 2005-29, “holiday pay” is regarded by the California Public Employees’ Retirement System (CalPERS) as “special compensation” subject to retirement withholding under certain conditions. Holiday payments made to Unit 8 employees typically qualify under CalPERS’ definition of special compensation because they are law enforcement related, e.g., employees are scheduled to work without regard to holidays. It must be noted, however, that all “holiday pay” payments may not be regarded as special compensation. For example, CalPERS requires cash outs to be done at least annually and reported in the period earned. If the labor agreement allows an employee to accumulate holiday credit beyond the year in which it is earned, it is not special compensation for CalPERS purposes. Attachment A provides information taken from Section 571 of the California Public Retirement Law to assist campuses in determining when holiday-related payments should be processed as special compensation subject to retirement withholding.

Payments should be calculated based upon the employee’s current rate of pay. When holiday credit hours are used to supplement an employee’s paid time off work (e.g., vacation), the hours are regarded as “regular” compensation for retirement reporting purposes.

The following earnings ID’s should be used for processing holiday credit payments:

HG5/HG6	<ul style="list-style-type: none"> • Hourly rate is manually calculated. • The payment may be regarded as special compensation (by CalPERS). • Payment is subject to retirement withholding, taxed at a flat rate method. • HG5 pays at the “straight time” rate (1.0 factor) for the number of hours submitted for payment. • HG6 pays at the overtime rate (1.5 factor) for the number of hours submitted for payment. • The warrant description will indicate “PLANNED OT”
OF5/OF6	<ul style="list-style-type: none"> • Hourly rate is manually calculated. • The payment is regarded as an overtime payment, not subject to retirement, and taxed at a flat rate method. • The payment is <u>NOT</u> regarded as special compensation (by CalPERS). • OF5 pays at the “straight time” rate (1.0 factor) for the number of hours submitted for payment. • OF6 pays at the overtime rate (1.5 factor) for the number of hours submitted for payment. • The warrant description will indicate “FLSA OT”

One-Time-Only Requests for Cash Pay-outs of Holiday Credit Hours in Excess of 100 Hours: Pursuant to the Side Letter of Agreement concerning the one-time-only opportunity to request a cash pay-out of Holiday Credit balances in excess of one hundred (100) hours, the cash pay out must be satisfied within the timeframe and parameters noted as follows:

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- ⇒ Within 12 months of the date of the request if the employee is requesting between 1 and 300 hours (e.g., total Holiday Credit balance is greater than 100 hours but equal to or less than 400 hours, whereby the number of hours requested for payment in excess of 100 could range from 1 to 300 hours);
- ⇒ Within 24 months of the date of the request if the employee is requesting more than 300 hours (e.g., total Holiday Credit balance exceeds 400 hours and the number of hours requested for payment would be at or above 300 hours).

Cash Out Agreements: It is suggested that campuses develop an agreement process to address the one-time-only cash pay out requests. Agreements should include the date of the request, number of hours requested, required signature levels and a payment schedule for the respective 12 or 24 month period. The agreement should also acknowledge that the cash out of Holiday Credit balances in excess of 100 hours is a one-time-only opportunity. It is suggested that the cash pay out hours be separated from the employee's remaining Holiday Credit balance to allow the remaining balance to be managed pursuant to the new agreement.

Holiday Credit Leave-Related Considerations:

Distinguishing "New" Balances from "Grandfathered" Balances: "Holiday Credit" provisions under the new agreement effective July 19, 2006 differ from previously designated "Holiday/CTO," "Holiday Work Compensation" or "Holiday Credit" leave balances. Prior to the new agreement, Holiday Credit was earned indefinitely, and until authorized for use to offset deficit hour balances, the hours were typically not cashed out until the employee separated from employment.

Under the new agreement, all holiday credit hours will be treated the same unless:

- The hours are identified for the one-time-only cash pay-out opportunity;
- The holiday credit was earned on or after July 19, 2006, whereby the hours must be used or paid out within one (1) year of the holiday credit being earned.

Remaining balances will continue to be used to offset "deficit hour" balances (refer to HR/Salary 2005-25) and augment an employee's time off pursuant to the new agreement.

Tracking Holiday Credit Hours: Provision 19.4(e) of the MOU provides that Holiday Credit shall be used or paid out within one (1) year of the Holiday Credit being earned. This requires campuses to establish a method to track when the Holiday Credit was earned; it is a separate process from provision 19.4(d) of the MOU. For example, if an employee was credited 12 hours of holiday credit for Veteran's Day (November 10, 2006 observance date) pursuant to provision 19.4(a) – Holidays on Scheduled Days Off – the campus should be able to confirm that the employee either used or received a cash pay out for those 12 hours by November 2007 pay period, regardless of the employee's Holiday Credit balance.

Reviewing Crediting Practices: Since campus leave accounting systems vary, historical crediting practices may differ. It is important that campuses review how "grandfathered" balances were previously banked to ensure consistency and uniformity when cash payments are made pursuant to the Side Letter of Agreement. For example:

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- If the employee worked 8 hours on a holiday observance and 12 hours were banked as holiday work compensation, the payment code would be based upon a straight time (1.0) factor;
- If the employee was credited 12 hours for a holiday that was observed on his/her regular day off, the payment code would be based upon a straight time (1.0) factor;
- If the employee worked 4 hours on a holiday observance and was credited as Holiday/CTO for 4 hours, the payment code would be based upon an overtime (1.5) factor.

Campuses are requested to carefully review current practices to ensure that the requirements of the new agreement are met. Questions regarding this technical letter should be directed to Human Resources Administration at (562) 951-4411. This technical letter is available on Human Resources' web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

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ATTACHMENT A

California Public Employees' Retirement Law

Excerpts from Section 571:

(a)(5) – Holiday Pay:

- Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to PERS.
- For those employees with written labor agreements providing holiday credit and allowing employees to cash out accumulated holiday credit, the cash out must be done at least annually and reported in the period earned. If a written labor agreement allows an employee to accumulate holiday credit beyond the year in which it is earned and an employee later elects to cash out accumulated holiday credit, it is not compensation for PERS purposes.
- If an employee utilizes the cash out option only during his/her final compensation period, it will be considered final settlement pay and excluded from reportable compensation. If the cash out portion is also utilized near his/her final compensation period, it may still be excluded based upon a review of the contracting agency or school employer's experience relating to: the number of employees who exercise this option; whether or not the cash out is paid periodically, and in a manner that is historically consistent; and whether or not the cash out would create an unfunded liability over and above PERS' actuarial assumptions. This review will be conducted by PERS on a case-by-case basis.

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

- (1) Contained in a written labor policy or agreement;
- (2) Available to all members in the group or class;
- (3) Part of normally required duties;
- (4) Performed during normal hours of employment;
- (5) Paid periodically as earned
- (6) Historically consistent with prior payments for the job classification;
- (7) Not paid exclusively in the final compensation period;
- (8) Not final settlement pay; and,
- (9) Not creating an unfunded liability over and above PERS' actuarial assumptions

(c) Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b).

(d) If an item of special compensation is not listed in subsection (a) or is out of compliance with any of the standards in the subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual.