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Code: HR 2001-07

Date: February 16, 2001

To: CSU Presidents

From: Jackie R. McClain
Vice Chancellor
Human Resources

Subject: Payment of Wages at Separation – AB 2410 (Chapter 885)

I am writing to inform you of the passage of AB 2410 (Chapter 885) and its application to the California State University (CSU). AB 2410 amends section 220 of the Labor Code and removes the State employer’s exemption to various Labor Code sections applicable to the payment of wages and the resolution of wage disputes. This change to the Labor Code became effective January 1, 2001. CSU General Counsel has determined that AB 2410 applies to the CSU. See Attachment A for a copy of AB 2410. Campuses are now required to pay separating employees in the timeframes specified by the Labor Code.

The Labor Code sections that apply to the CSU can be found in Attachment B (California Labor Code, Sections 200-219). The applicable sections are §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.

The following provides an overview of the applicable Labor Code sections relating to the payment of wages at separation.

-Over-

Distribution: All With Attachments

Vice Presidents, Administration
Associate Vice Presidents/Deans of Faculty
Human Resources Directors
Benefits Officers
Payroll Managers
SOSS Director
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 (separated from service other than voluntary) must be paid wages earned immediately. This includes cash out of benefits (e.g., leave time on books). However, 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

(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).

Separations – Resignations: An employee who voluntarily resigns from employment must be paid wages earned no later than 72 hours from the date of separation. 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). 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:

S10 – Resignation
S21 – Absent Without Official Leave (1)
S70 – Service Retirement
S71 – Disability Retirement

(1) It is unclear at this time the affect of this section on Absent Without Official Leave (AWOL). Separation Code S95 Death does not apply to these Labor Code sections and our position is for campuses to continue processing these separations in accordance with established procedures.
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).

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.
Questions?

To assist your campus with the implementation of AB2410, Attachment C provides a list of questions and answers. If you have additional questions not included in the attachment, 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/tier3/HR-Adm/memos.html.

Attachments
JRM/br
BILL NUMBER: AB 2410  CHAPTERED
BILL TEXT

CHAPTER 885
FILED WITH SECRETARY OF STATE  SEPTEMBER 29, 2000
APPROVED BY GOVERNOR  SEPTEMBER 29, 2000
PASSED THE ASSEMBLY  AUGUST 31, 2000
PASSED THE SENATE  AUGUST 10, 2000
AMENDED IN SENATE  AUGUST 25, 2000
AMENDED IN ASSEMBLY  APRIL 25, 2000

INTRODUCED BY  Assembly Member Machado

FEBRUARY 24, 2000

An act to amend Section 220 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 2410, Machado. Wages: state employees.

Existing law prescribes requirements respecting employer payment of wages, including timely payment thereof, that are applicable to all employers, other than the state, counties, cities, and other municipal corporations. These provisions of existing law also prescribe penalties for violations, make certain violations misdemeanors, and provide for enforcement by the Division of Labor Standards of the Department of Industrial Relations and by district attorneys and city prosecutors, as specified.

This bill would delete specified exemptions for the state as an employer from these provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 220 of the Labor Code is amended to read:

220. (a) Sections 201.5, 201.7, 201.1, 201.5, 204, 204.1, 204.5, 204c, 204.1, 205, and 205.5 do not apply to the payment of wages of employees directly employed by the State of California. Except as provided in subdivision (b), all other employment is subject to these provisions.

(b) Sections 200 to 211, inclusive, and Sections 213 to 219, inclusive, do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation. All other employments are subject to these provisions.
CALIFORNIA CODES
LABOR CODE
SECTION 200-219

200. As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

201. 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 such reasonable time as may be necessary for computation and payment thereof; provided, however, that such reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any such employee who so requests and designates a mailing address therefor.

201.5. An employer who lays off an employee engaged in the production of motion pictures, whose unusual or uncertain terms of employment require special computation in order to ascertain the amount due, shall be deemed to have made immediate payment of wages within the meaning of Section 201 if the wages of the employee are paid by the next regular payday, as prescribed by Section 204, following the layoff. For purposes of this section, "layoff" means the termination of employment of an employee where the employee retains eligibility for reemployment with the employer. For purposes of this section, "discharge" means the unconditional termination of employment of an employee. However, if an employee is discharged, payment of wages shall be made within 24 hours after discharge, excluding Saturdays, Sundays, and holidays. For purposes of this section, a payment required by this section may be mailed and the date of mailing is the date of payment.

The Legislature finds and determines that special provision must be made for the payment of wages on layoff and discharge of persons engaged in the production of motion pictures because their employment at various locations is often far removed from the employer's principal administrative offices and the unusual hours of their employment in this industry is often geared to the completion of a portion of a picture, which time of completion may have no relation to normal working hours.
201.7. An employer who lays off an employee or a group of employees engaged in the business of oil drilling shall be deemed to have made immediate payment within the meaning of Section 201 if the wages of such employees are paid within such reasonable time as may be necessary for computation or payment thereof; provided, however, that such reasonable time shall not exceed 24 hours after discharge excluding Saturdays, Sundays, and holidays; and provided further, such payment may be mailed and the date of mailing is the date of payment.

The Legislature finds and determines that special provision must be made for the payment of wages on discharge of employees engaged in oil drilling because their employment at various locations is often far removed from the employer's principal administrative offices, which makes the computation and payment of wages on an immediate basis unduly burdensome.

202. 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.

203. If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.

Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise.

203.1. If an employer pays an employee in the regular course of employment or in accordance with Section 201, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by check, draft or voucher,
which check, draft or voucher is subsequently refused payment because
the employer or maker has no account with the bank, institution, or
person on which the instrument is drawn, or has insufficient funds in
the account upon which the instrument is drawn at the time of its
presentation, so long as the same is presented within 30 days of
receipt by the employee of the check, draft or voucher, those wages
or fringe benefits, or both, shall continue as a penalty from the due
date thereof at the same rate until paid or until an action therefor
is commenced. However, those wages and fringe benefits shall not
continue for more than 30 days and this penalty shall not apply if
the employer can establish to the satisfaction of the Labor
Commissioner or an appropriate court of law that the violation of
this section was unintentional. This penalty also shall not apply
in any case in which an employee recovers the service charge
authorized by Section 1719 of the Civil Code in an action brought by
the employee thereunder.

203.5. (a) If a bonding company issuing a bond which secures the
payment of wages for labor or the surety on a bond willfully fails to
pay, without abatement or reduction, any verified claim made for
wages found to be due and payable, the claim for wages shall continue
as a penalty against the bonding company or surety from the date on
which demand for payment was made at the same rate until paid as the
wages upon which the claim is based, except that the claim shall not
continue as a penalty for more than 30 days.

(b) This section shall not apply to contractor’s bonds required
pursuant to Section 7071.6 of the Business and Professions Code.

204. All wages, other than those mentioned in Section 201, 202,
204.1, or 204.2, earned by any person in any employment are due and
payable twice during each calendar month, on days designated in
advance by the employer as the regular paydays. Labor performed
between the 1st and 15th days, inclusive, of any calendar month shall
be paid for between the 16th and the 26th day of the month during
which the labor was performed, and labor performed between the 16th
and the last day, inclusive, of any calendar month, shall be paid for
between the 1st and 10th day of the following month. However,
salaries of executive, administrative, and professional employees of
employers covered by the Fair Labor Standards Act, as set forth
pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as
amended through March 1, 1969, in Part 541 of Title 29 of the Code of
Federal Regulations, as that part now reads or may be amended to
read at any time thereafter, may be paid once a month on or before
the 26th day of the month during which the labor was performed if the
entire month’s salaries, including the unearned portion between the
date of payment and the last day of the month, are paid at that time.

Notwithstanding any other provision of this section, all wages
earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

204a. When workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers, or some of them, cooperate to establish a plan for the payment of wages at a central place or places and in accordance with a unified schedule of pay days, all the provisions of this chapter except 201, 202, and 208 shall apply. All such workers, including those who have been discharged and those who quit, shall receive their wages at such central place or places.

This section shall not apply to any such plan until 10 days after notice of their intention to set up such a plan shall have been given to the Labor Commissioner by the employers who cooperate to establish the plan. Having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the Labor Commissioner by the employers intending to abandon the plan.

204b. Section 204 shall be inapplicable to employees paid on a weekly basis on a regular day designated by the employer in advance of the rendition of services as the regular payday.

Labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week.

Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week.

204c. Section 204 shall be inapplicable to executive, administrative or professional employees who are not covered by any collective bargaining agreement, who are not subject to the Fair Labor Standards Act, whose monthly remuneration does not include overtime pay, and who are paid within seven days of the close of their monthly payroll period.

204.1. Commission wages paid to any person employed by an employer
licensed as a vehicle Dealer by the Department of Motor Vehicles are
due and payable once during each calendar month on a day designated
in advance by the employer as the regular payday. Commission wages
are compensation paid to any person for services rendered in the sale
of such employer’s property or services and based proportionately
upon the amount or value thereof.

The provisions of this section shall not apply if there exists a
collective bargaining agreement between the employer and his
employees which provides for the date on which wages shall be paid.

204.2. Salaries of executive, administrative, and professional
employees of employers covered by the Fair Labor Standards Act, as
set forth pursuant to Section 13(a)(1) of the Fair Labor Standards
Act of 1938, as amended through March 1, 1969. (Title 29, Section 213
(a)(1), United States Code) in Part 541 of Title 29 of the Code of
Federal Regulations, as that part now reads, earned for labor
performed in excess of 40 hours in a calendar week are due and
payable on or before the 26th day of the calendar month immediately
following the month in which such labor was performed. However, when
such employees are covered by a collective bargaining agreement that
provides different pay arrangements, those arrangements will apply
to the covered employees.

204.3. (a) An employee may receive, in lieu of overtime
compensation, compensating time off at a rate of not less than one
and one-half hours for each hour of employment for which overtime
compensation is required by law. If an hour of employment would
otherwise be compensable at a rate of more than one and one-half
times the employee’s regular rate of compensation, then the employee
may receive compensating time off commensurate with the higher rate.

(b) An employer may provide compensating time off under
subdivision (a) if the following four conditions are met:
(1) The compensating time off is provided pursuant to applicable
provisions of a collective bargaining agreement, memorandum of
understanding, or other written agreement between the employer and
the duly authorized representative of the employer’s employees; or,
in the case of employees not covered by the aforementioned agreement
or memorandum of understanding, pursuant to a written agreement
entered into between the employer and employees before the performance
of the work.
(2) The employee has not accrued compensating time in excess of
the limit prescribed by subdivision (c).
(3) The employee has requested, in writing, compensating time off
in lieu of overtime compensation.
(4) The employee is regularly scheduled to work no less than 40
hours in a workweek.

(c) (1) An employee may not accrue more than 240 hours of

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compensating time off. Any employee who has accrued 240 hours of compensating time off shall, for any additional overtime hours of work, be paid overtime compensation.

(2) If compensation is paid to an employee for accrued compensating time off, the compensation shall be paid at the regular rate earned by the employee at the time the employee receives payment.

(d) An employee who has accrued compensating time off authorized to be provided under subdivision (a) shall, upon termination of employment, be paid for the unused compensating time at a rate of compensation not less than the average regular rate received by the employee during the last three years of the employee's employment, or the final regular rate received by the employee, whichever is higher.

(e) (1) An employee who has accrued compensating time off authorized to be provided under subdivision (a), and who has requested the use of that compensating time, shall be permitted by the employee's employer to use the time within a reasonable period after making the request, if the use of the compensating time does not unduly disrupt the operations of the employer.

(2) Upon the request of an employee, the employer shall pay overtime compensation in cash in lieu of compensating time off for any compensating time off that has accrued for at least two pay periods.

(3) For purposes of determining whether a request to use compensating time has been granted within a reasonable period, the following factors shall be relevant:
(A) The normal schedule of work.
(B) Anticipated peak workloads based on past experience.
(C) Emergency requirements for staff and services.
(D) The availability of qualified substitute staff.

(f) Every employer shall keep records that accurately reflect compensating time earned and used.

(g) For purposes of this section, the terms "compensating time" and "compensating time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(h) This section shall not apply to any employee exempt from the overtime provisions of the California wage orders.

(i) This section shall not apply to any employee who is subject to the following wage orders of the Industrial Welfare Commission: Orders No. 8-80, 13-80, and 14-80 (affecting industries handling products after harvest, industries preparing agricultural products for market on the farm, and agricultural occupations), Order No. 3-80 (affecting the canning, freezing, and preserving industry), Orders No. 5-89 and 10-89 (affecting the public housekeeping and amusement and recreation industries), and Order No. 1-89 (affecting the manufacturing industry).
205. In agricultural, viticultural, and horticultural pursuits, in stock or poultry raising, and in household domestic service, when the employees in such employments are boarded and lodged by the employer, the wages due any employee remaining in such employment shall become due and payable once in each calendar month on a day designated in advance by the employer as the regular payday. No two successive paydays shall be more than 11 days apart, and the payment shall include all wages up to the regular payday. Notwithstanding the provisions of this section, wages of workers employed by a farm labor contractor shall be paid on payroll periods at least once every week on a business day designated in advance by the farm labor contractor. Payment on such payday shall include all wages earned up to and including the fourth day before such payday.

205.5. All wages, other than those mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section 1140.4, are due and payable twice during each calendar month, on days designated in advance by the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the month during which the labor was performed. Labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid between the first and the seventh day of the following month. Agricultural employees, as used in this section, shall not include those employees who are covered by Section 205.

206. (a) In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed.

(b) If, after an investigation and hearing, the Labor Commissioner has determined the validity of any employee's claim for wages, the claim is due and payable within 10 days after receipt of notice by the employer that such wages are due. Any employer having the ability to pay who willfully fails to pay such wages within 10 days shall, in addition to any other applicable penalty, pay treble the amount of any damages accruing to the employee as a direct and foreseeable consequence of such failure to pay.

206.5. No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made. Any release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee and the violation of the provisions of this section...
section shall be a misdemeanor.

207. Every employer shall keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment, in accordance with this article.

208. Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

209. In the event of any strike, the unpaid wages earned by striking employees shall become due and payable on the next regular pay day, and the payment or settlement thereof shall include all amounts due the striking employees without abatement or reduction. The employer shall return to each striking employee any deposit, money, or other guaranty required by him from the employee for the faithful performance of the duties of the employment.

210. In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:
(a) For any initial violation, fifty dollars ($50) for each failure to pay each employee.
(b) For each subsequent violation, or any willful or intentional violation, one hundred dollars ($100) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. All money recovered therein shall be paid into the State Treasury to the credit of the General Fund.

211. When action to recover such penalties is brought, no court costs shall be payable by the state or the division. Any sheriff or marshal who serves the summons in the action upon any defendant within his or her jurisdiction shall do so without cost to the
division. The sheriff or marshal shall specify in the return what costs he or she would ordinarily have been entitled to for such service, and those costs and the other regular court costs that would have accrued were the action not on behalf of the state shall be made a part of any judgment recovered by the plaintiff and shall be paid out of the first money recovered on the judgment. Several causes of action for the penalties may be united in the same action without being separately stated. A demand is a prerequisite to the bringing of any action under this section or Section 210. The division on behalf of the state may accept and receipt for any penalties so paid, with or without suit.

212. (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank’s address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

213. Nothing contained in Section 212 shall:

(a) Prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessaries of life or for the tools and implements used by the employee in the performance of his duties.

(b) Apply to counties, municipal corporations, quasi municipal corporations or school districts.

(c) Apply to students of nonprofit schools, colleges, universities, and other nonprofit educational institutions.

(d) Prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank.
savings and loan association or credit union of the employee’s choice in this state, provided the employee has voluntarily authorized such deposit. If an employer discharges an employee or the employee quits such voluntary authorization for deposit shall be deemed terminated and the provisions of this article relating to payment of wages upon termination of employment shall apply.

214. Prosecution under section 212 may be brought either at the place where the alleged illegal order, check, draft, note, memorandum or other acknowledgment of wage indebtedness is issued or at the place where it is made payable.

215. Any person, or the agent, manager, superintendent or officer thereof, who violates any provision of Sections 204, 204b, 205, 207, 208, 209, or 212 is guilty of a misdemeanor. Any failure to keep posted any notice required by Section 207 is prima facie evidence of a violation of such sections.

216. In addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who:

(a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made.

(b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.

217. The Division of Labor Law Enforcement shall inquire diligently for any violations of this article, and, in cases which it deems proper, shall institute the actions for the penalties provided for in this article and shall enforce this article.

218. Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.

218.5. In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney’s fees and costs to the
prevailing party if any party to the action requests attorney’s fees and costs upon the initiation of the action. This section shall not apply to an action brought by the Labor Commissioner. This section shall not apply to a surety issuing a bond pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code or to an action to enforce a mechanics lien brought under Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code.

This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.

218.6. In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

219. 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.
AB 2410 (CHAPTER 885)
PAYMENT OF WAGES AT SEPARATION

QUESTIONS AND ANSWERS

Payment Process/Timelines

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.

Types of Employees Included in Law

Q5: 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?
Q5: 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.

Q6: 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?

A6: 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.

Q7: Are Student Assistant classifications (codes 1870, 1871, and 1872) subject to the Labor Code?

A7: 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.

Q8: 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.

A8: 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 Bill

Q9: 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?

A9: The Campus is subject to the Labor Code regardless of the guidelines specified in SAM or established by the campus.
Penalties

Q10: 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?

A10: 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.