

PSB FAQs

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1. LEAVES

1.1 Administrative Time Off

Question: *What are the approval requirements that appointing authorities must follow to place employees on paid Administrative Time Off (ATO)?*

Answer: Personnel Management Liaison Memorandum (PML) 2012-008 specifies the requirements.

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation or when work facilities are unavailable. ATO can also be granted when employees need time off for donating blood and when extreme weather that makes getting to work impossible.

Any ATO lasting over 30 calendar days must be approved by the California Department of Human Resources (CalHR). Approval will generally be given in 30 calendar day increments and any extension must be approved prior to the expiration of the 30 calendar days; and as with all types of paid administrative leave, appointing authorities must properly document and track ATO for any length of time. This documentation is subject to audit by CalHR.

Reference(s): PML 2012-008, PML 2007-026

Division(s): Personnel Services Branch

Question: *If there is an evacuation at an employee's home as a result of extreme weather, is it reasonable to allow Administrative Time Off (ATO) for the employee?*

Answer: Appointing authorities are authorized to approve ATO if the employee lives in an area declared a State of Emergency by the Governor for up to 5 working days under California Code of Regulations 599.785.5 and have delegated authority from CalHR to approve up to 30 calendar days.

If the employee does not live in an area that has been declared a State of Emergency by the Governor, to the extent it is operationally feasible, departments should grant the employee's request to use their leave credits.

Reference(s): CCR 599.785.5, PML 2012-008 and PML 2007-026

Division(s): Personnel Services Branch

Question: *Can an employee have ATO to take a civil service exam at another department?*

Answer: Upon giving two (2) days' notice to his or her supervisor, the employee shall be permitted to take any state civil service examination scheduled during work hours. Employment interviews for eligible persons on employment lists shall be considered part of the examination process. However, note that departments must always refer to MOUs for rank and file employees. If the MOU is in conflict with this answer, the MOU is controlling.

Reference(s): Government Code 19991, Bargaining Unit Contracts

Division(s): Personnel Services Branch

Question: *If an employee does not have sufficient time to vote at a statewide election outside of working hours, can he/she have ATO to go vote?*

Answer: Most employees will not need time off to vote since the Polls are open 7:00 a.m. to 8:00 p.m. However, if the employee does not have sufficient time outside of working hours to vote, the employee may request ATO time off work to vote in a statewide election.

Up to two (2) hours of ATO is allowed and the time off shall be only at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from the regular working shift, unless otherwise mutually agreed with the employee's supervisor.

Reference(s): Elections Code 14000, Bargaining Unit Contracts, CalHR website:
<http://www.calhr.ca.gov/employees/Pages/time-off-to-vote.aspx>

Division(s): Personnel Services Branch

Question: *Can an employee have ATO to take time off work to donate blood?*

Answer: If an employee does not have sufficient time outside of working hours to make his or her donation, the employee may be allowed up to two (2) hours of ATO. Efforts should be made to schedule these appointments in a manner that creates the least disruption to the work setting, preferably at the beginning or end of the work day.

Reference(s): PML 2012-008 and PML 2001-034

Division(s): Personnel Services Branch

1.2 Annual Leave

Question: *Are employees that are hired new to state civil service required to wait 6 months before they can enroll in the Annual Leave Program or can they enroll in Annual Leave Program right away?*

Answer: Departments should always refer to the Bargaining Unit Contract for specifics. Most employees appointed to a classification that is eligible for the Annual Leave Program may enroll in the Annual Leave Program upon their appointment. Depending on the bargaining unit, the employee may be eligible to change from the Annual Leave Program to the Vacation/Sick Leave Program during an open enrollment period. In addition, there may be a requirement to remain in the program for 24 months.

Reference(s): Bargaining Unit Contract, California Code of Regulations 599.752

Division(s): Personnel Services Branch

Question: *Can an Excluded (unrepresented) employee change from the Vacation/Sick Leave Program or the Annual Leave Program at any time?*

Answer: Yes, as long as the employee has served 24 months in either program they can elect to change at any time. Once the employee chooses, they must remain in that program for 24 months before they can make a change.

Reference(s): California Code of Regulations 599.752

Division(s): Personnel Services Branch

1.3 Bereavement Leave

Question: *Are full time employees required to use the 24 hours (3 days) of bereavement leave within consecutive days or are they allowed to use 24 hours over a period of time?*

Answer: As long as the employee does not use more than 24 hours of bereavement leave per occurrence or fiscal year it does not have to be requested on consecutive days. Departments are to refer to the bargaining unit contract for rank and file employees and Government Code section 19859.3 for excluded employees for qualifying events and amount of hours the employee is eligible for.

Reference(s): Bargaining Unit Contract, Government Code section 19859.3

Division(s): Personnel Services Branch

Question: *Can a full time rank and file, work week group 2 employee, working on a formal 4/10/40 alternate work week schedule use bereavement leave in 10 hour increments?*

Answer: Employees working formal alternate work schedules may use bereavement leave in the amount of hours they are scheduled to work each day, not to exceed the maximum amount of hours allowable for the bereavement leave event. For example, a full time employee who works 4/10/40 each week may use two (2) – 10 hour days of bereavement leave for the first two days and four (4) hours of bereavement leave on the third day. After that, the employee must request and receive approval to use available leave credits. Departments are to refer to the employee's bargaining unit contract to determine eligibility and if it is per occurrence or fiscal year.

Reference(s): Bargaining Unit Contract, Government Code section 19859.3

Division(s): Personnel Services Branch

1.4 Catastrophic Leave

Question: *Is an employee who is receiving Catastrophic (CAT) Leave donations required to exhaust their miscellaneous leave credits, such as Compensation Time Off (CTO), prior to using CAT leave?*

Answer: All leave must be exhausted before an employee is eligible for CAT leave donations. However, Sick Leave may only be used for Sick Leave purposes.

Reference(s): Bargaining Unit Contract, California Code of Regulations 599.925

Division(s): Personnel Services Branch

Question: *A rank and file employee is off work using Catastrophic (CAT) Leave and passes away. The employee has CAT leave hours that have been donated to her/him but were not used yet, are the donated hours returned to the donors?*

Answer: Donations processed to the receiving employee's time bank are not returned and become part of the recipient's estate; however, any hours not yet keyed to the recipient's leave bank are returned to the donating employee. However, note that departments must always refer to MOUs for rank and file employees. If the MOU is in conflict with this answer, the MOU is controlling.

Reference(s): Bargaining Unit Contract

Division(s): Personnel Services Branch

Question: *Are employees required to maintain a minimum of 80 hours of paid leave time in order to donate leave to another state employee that is a non-family member for Catastrophic Leave? What about when transferring leave credits to a family member?*

Answer: Catastrophic (CAT) leave and the transfer of leave credits between family members are two separate areas.

If the employee is covered by bargaining, please refer to the appropriate bargaining unit contract.

The legal authority for the transfer of leave credits between family members is California Code of Regulations 599.913, which requires the donating employee to maintain a minimum of 80 hours. However, note that departments must always refer to MOUs for rank and file employees. If the MOU is in conflict with this answer, the MOU is controlling.

For Excluded employees the legal authority for Catastrophic (CAT) Leave is California Code of Regulations 599.925.

Reference(s): Bargaining Unit Contract, California Code of Regulations 599.913 and 599.925

Division(s): Personnel Services Branch

Question: *A rank and file employee has been approved for Catastrophic (CAT) Leave. The contract says that the total leave credits received by the employee shall normally not exceed three (3) months but the appointing authority can approve the total leave credits received up to six (6) months. Does this give the department flexibility to approve additional time beyond the six (6) months if needed by the employee?*

Answer: The maximum time allowed for a rank and file employee is six (6) months. The language in most contracts allows the department to extend from three (3) months up to six (6) months. The appointing authority's flexibility ends at six (6) months and there is no authority to extend beyond that. However, note that departments must always refer to MOUs for rank and file employees. If the MOU is in conflict with this answer, the MOU is controlling.

Reference(s): Bargaining Unit Contract

Division(s): Personnel Services Branch

Question: *An excluded employee has been approved for Catastrophic (CAT) Leave and a represented employee wants to donate leave. What are the rules of CAT Leave for excluded employees?*

Answer: If the transfer of eligible leave credits is approved any excluded employee may donate eligible leave credits at a minimum of one hour. Donations thereafter must be in whole hour increments. Donations will be reflected as an hour for hour deduction from the leave balance of the donating employee. When transferring eligible leave credits, the agency should assure that only credits that may be needed are transferred. An excluded employee may donate eligible leave credits to a represented employee and may be the recipient of eligible leave credits donated by a represented employee. Transfer of eligible leave credits may be interagency in accordance with the policies of the receiving agency. Use of donated credits may not exceed a maximum of twelve (12) continuous months for any one catastrophic illness. The total amount of leave credits donated may not exceed an amount sufficient to insure the continuance of regular compensation. All such transfers are irrevocable.

Reference(s): California Code of Regulations 599.925

Division(s): Personnel Services Branch

1.5 Compensating Time Off

Question: An employee recently went from a Rank and File Work Week Group 2 classification to an Excluded (non-represented) Work Week Group E classification. The employee has a balance of 25 hours of CTO. The department would like to cash out the employee's CTO balance. Can they and what is the process?

Answer: If possible, the CTO should be used and not cashed out. If the employee will not be able to use the time within 12 months of it being earned, the department may request CalHR's PSB to authorize the cash out of the CTO.

The request should include the following information:

Employee's name, classification and bargaining unit when the CTO was earned, current classification, age of the CTO (over 12 months), reason the CTO was not used prior to the employee becoming a Work Week Group E and the number of hours to be cashed out.

Reference(s): Bargaining Unit Contracts, Management Memo 90-03

Division(s): Personnel Services Branch

1.6 Dock

Question: *If an employee has requested and is approved for an unpaid leave, choosing dock rather than using leave credits, can the continuity of dock be broken in order to be paid for Bereavement Leave?*

Answer: An employee cannot break the continuity of dock with using leave credits except during Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA). An employee may be on an unpaid leave of absence (dock), use Bereavement Leave credits to cover the Bereavement Leave event and then return to work. The use of the Bereavement Leave credits must be immediately preceding returning to work or may be used at a later date after the employee returns to work.

Reference(s): California Code of Regulations 599.785

Division(s): Personnel Services Branch

Question: *If a Permanent Intermittent (PI) employee has a set schedule and wants to use dock for some of the days he/she were scheduled to work is it documented and keyed as dock?*

Answer: PI employees are paid on a positive basis; their pay is keyed manually at the end of the pay period for all hours they have worked, including leave credits used. Therefore, it is inappropriate to key dock hours for PI employees. A department can track dock time in the California Leave Accounting System (CLAS) for intermittent employees, however, dock is not keyed in the payroll system.

If the employee is represented, refer to the appropriate Bargaining Unit Contract for language addressing PI schedules and/or dock. If the contract does not address your situation, you would approve or deny the employee's request for the day off or they can request not to be scheduled on a specific date.

Reference(s): Payroll Procedures Manual Section B004 and D100, Bargaining Unit Contract

Division(s): Personnel Services Branch

Question: *Can a full time employee request to work a set number of hours less each month and to charge the leave to dock versus reducing their time base? The request for a reduction of work hours is not related to any FMLA covered absence.*

Answer: It would not be appropriate to use dock as a way to reduce an employee's time base. In essence, the employee is working less than full time but still retaining the same benefits they are receiving at the full time base. Departments should review the employee's request to charge dock time and determine how many hours the employee would be working. Compare the amount of hours worked and determine what time base that would equate to. Discuss the request with the employee and the option of a reduced time base.

Reference(s): Government Code sections 19996.19, 19996.20, 19996.21, Bargaining Unit Contract

Division(s): Personnel Services Branch

1.7 Family Medical Leave Act

Question: *Does the time an employee is placed on Administrative Time Off (ATO) count towards the 1,250 hours for the purpose of determining FMLA/CFRA eligibility?*

Answer: ATO should be treated as “hours worked” for purposes of determining FMLA and CFRA eligibility based on the fact that when the employee is placed on ATO s/he is required to be available to report to work (or respond to work) usually within 15-30 minutes. Thus, the employee is not free to do whatever s/he wants (i.e., go on Vacation, be unavailable, not answer their phone, etc.).

Reference(s): 29 U.S.C.A. § 2611; 29 C.F.R. § 825.110; 2 CCR § 11087

Division(s): Personnel Services Branch

Question: *When the State Personnel Board (SPB) revokes a dismissal and reinstates the employee with full back pay and benefits, how does that impact the 1,250 hours worked for the purpose of determining FMLA/CFRA eligibility if the employee requests FMLA/CFRA leave upon reinstatement?*

Answer: When an employee is dismissed from State Civil Service and is reinstated with full back pay and benefits by way of an Order from the State Personnel Board (SPB), the employee will have his or her benefits restored, and there will be no break in service. Accordingly, it is as though the employee never left. As such, the time the employee was not at work, but was later reinstated, will count as hours worked for purposes of calculating eligibility for FMLA/CFRA. Hours worked will be determined based on the employee’s regularly scheduled workweek.

Reference(s): 29 U.S.C.A. § 2611; 29 C.F.R. § 825.110; 2 CCR § 11087

Division(s): Personnel Services Branch

Question: *Can the employer force an employee to use FMLA/CFRA leave?*

Answer: No. The employer cannot force designation of FMLA/CFRA leave as this could give rise to a claim by the employee that the employer ‘interfered’ with the employee’s statutorily protected leave benefit. An employee can affirmatively decline to use or request FMLA leave, even where the underlying reason for seeking the leave would have entitled the employee to FMLA protected leave. The best practice is for the employer to provide the employee notice that explains to the employee that s/he may be entitled to FMLA/CFRA leave and that this entitlement includes job protection and the maintenance of benefits. The notice should also alert the employee that without FMLA/CFRA coverage there is no job protection under FMLA/CFRA.

Reference(s): *Escriba v. Foster Farms* (2014) 743 F.3d 1236; 29 C.F.R. § 825.302(c)

Division(s): Personnel Services Branch

Question: *Does the time that an employee worked for the Legislature count towards the 1,250 hours worked for purposes of determining FMLA/CFRA eligibility?*

Answer: No. Generally agencies and departments of the State of California are considered one employer under the Executive Branch for purposes of FMLA/CFRA. The Legislature is an entirely different branch of government and the employees of the Legislature are not considered civil service employees. Accordingly, any time worked at the Legislature does not count towards the 1,250 hours eligibility requirement.

Reference(s): Government Code § 8902, *et. seq.*; 29 U.S.C.A. § 2611; 29 C.F.R. § 825.110; 2 CCR § 11087

Division(s): Personnel Services Branch

Question: *The State of California follows the calendar method for determining the 12-month period in which the 12 workweeks of FMLA/CFRA entitlement occurs. Under this method, does the clock reset for an eligible female employee on January 1st for baby bonding that crosses two calendar years such that the employee is entitled to an additional 12 workweeks of baby bonding leave in the new year?*

Answer: Yes. Since the State has adopted the calendar year method for determining the 12-week entitlement, an employee can take 12 workweeks of leave at the end of the year and 12 workweeks at the beginning of the following year. On January 1, the clock would reset and the employee would be entitled to a full bank of FMLA/CFRA protected leave.

Reference(s): 2 CCR § 11090; 2 CCR § 11093; 29 C.F.R. § 825.200; see also *Bachelder v. America West Airlines, Inc.* (9th Cir. 2001) 259 F.3d 1112

Division(s): Personnel Services Branch

Question: *Can an employer charge leave credits for employees in Workweek Group E (WWG E) who take partial day FMLA/CFRA absences?*

Answer: Fair Labor Standards Act (FLSA)-exempt employees do not have to charge leave balances for absences of less than a full work day. Normally, if an FLSA-exempt employee works some part of a work day, the employee does NOT have to charge leave credits. Therefore, when FLSA exempt employees use FMLA/CFRA leave intermittently, they will not have to charge leave credits for partial day absences and they will receive full pay for those partial day absences. However, if the employee is placed on a reduced work schedule by their health care provider, then the employee may elect to use leave credits to supplement for full pay.

Reference(s): PML 95-023

Division(s): Personnel Services Branch

Question: *If an employee is absent from work due to military service, will this affect his or her eligibility for FMLA/CFRA leave?*

Answer: No. Time spent fulfilling military obligations counts as "hours worked" when determining whether an employee has been employed for 12 months or has the required 1,250 hours of service. Under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), hours an employee would have worked, but for his or her military service, are credited toward the employee's required 1,250 "hours worked" for FMLA eligibility. Similarly, the time in military service also must be counted in determining whether the employee has been employed at least 12 months by the employer.

Reference(s): 29 C.F.R. § 825.110

Division(s): Personnel Services Branch

Question: *Can an employer require annual recertification of an on-going serious health condition?*

Answer: No. Under CFRA, an employer may not ask for annual recertification; rather if additional leave is necessary, the employer can only require recertification upon the expiration of the health care provider's certification of a serious health condition.

Reference(s): 2 CCR § 11091

Division(s): Personnel Services Branch

1.8 Personal Development Days

Question: *Is there a waiting period for Professional Development Days (PDD) for new employees that are eligible for PDD?*

Answer: There is no waiting period. New to State civil service employees who are eligible for PDD are eligible for PDD leave when they are hired.

Reference(s): PML 2012-010, Bargaining Unit Contract

Division(s): Personnel Services Branch

Question: *An employee changed from a Bargaining Unit 4 classification to a Bargaining Unit 1 classification on December 1, 2014. The employee earned and used two (2) days of Professional Development Days (PDD) while in the BU 4 classification. Does the employee get another 2 days PDD upon being hired into the new bargaining unit?*

Answer: No. PDD leave is available for use each July 1st. Employees are eligible for the amount of PDD leave for the classification they are in on July 1st. Exception: An employee transfers from a classification that is not eligible for PDD to a classification that is eligible for PDD. In this case, the employee would be eligible for the PDD upon hire into the eligible classification.

Reference(s): PML 2012-010, Bargaining Unit Contract

Division(s): Personnel Services Branch

Question: *An employee changed from Bargaining Unit 2 classification to an Excluded (unrepresented) M01 classification on February 1, 2014. The employee earned 5 days Professional Development Days (PDD) on July 1, 2013. Does the employee lose 3 days of PDD now that he/she is in a classification that is only eligible for 2 days of PDD?*

Answer: No. PDD leave is available for use each July 1st. Employees are eligible for the amount of PDD for the classification they are in on July 1st. When an employee transfers to another position, the employee will carry over the remaining PDD through the end of the current fiscal year.

Reference(s): PML 2012-010, Bargaining Unit Contract

Division(s): Personnel Services Branch

Question: *If an employee is out on an unpaid leave of absence do they receive Professional Development Days (PDD) once they return to pay status or do they have to wait until the next July 1st?*

Answer: The employee will be able to use the PDD once he/she return to pay status.

Reference(s): PML 2012-010, Bargaining Unit Contract

Division(s): Personnel Services Branch

1.9 Personal Holiday

Question: *Would an employee who had eight (8) years of previous permanent civil service status, and had a permanent break in service for longer than six months, be required to serve a new six (6) month waiting period before receiving a personal holiday (PH) credit?*

Answer: No. Employees are required to serve six (6) months of the original probationary period in state service in order to receive a Personal Holiday. This employee already served his/her initial six (6) months probationary period in state service. However, note that departments must always refer to MOUs for rank and file employees. If the MOU is in conflict with this answer, the MOU is controlling.

Reference(s): Bargaining Unit Contract, Government Code 19854

Division(s): Personnel Services Branch

Question: *How do you determine the number of hours a Permanent Intermittent employee's Personal Holiday (PH) equates to?*

Answer: The PH is based on the employee's time base at the time the PH is used. An intermittent employee will receive paid time off for a PH based on the number of hours worked in the pay period which included the day initially requested as the PH. Time should be granted in accordance with the following table:

Hours on Pay Status During Pay Period	Personal Holiday Hours to be Paid
0 – 10.9	0
11 – 30.9	1
31 – 50.9	2
51 – 70.9	3
71 – 90.9	4
91 – 110.9	5
111 – 130.9	6
131 – 150.9	7
151 or over	8

Reference(s): SPB Memo No. 61 - October 29, 1975, Government Code 19854

Division(s): Personnel Services Branch

1.10 Vacation

Question: *If a Permanent Intermittent (PI) employee had five (5) months of qualifying pay periods of their six (6) month waiting period for Vacation Leave and they separate from state service, is the employee entitled to any vacation leave cash out in their lump sum for the hours earned thus far?*

Answer: The employee is not entitled to Vacation leave credits until after six (6) qualifying pay periods.

Reference(s): California Code of Regulations 599.739 and 599.740

Division(s): Personnel Services Branch

Question: *Upon hire, a new to state civil service employee elected to enroll in the Annual Leave program. During open enrollment they changed to the Vacation/Sick Leave Program after having only 4 months in the Annual Leave program. When the conversion takes place should the employee still have a 2 month waiting period for Vacation?*

Answer: Due to the employee electing to change to the Vacation/Sick Leave Program during the open enrollment period and only having four (4) months of State service they would not be eligible to use the Vacation hours for an additional two (2) months until they have completed a total of six (6) qualifying months of State service. However, note that departments must always refer to MOUs for rank and file employees. If the MOU is in conflict with this answer, the MOU is controlling.

Reference(s): Bargaining Unit Contract, Government Code section 599.739

Division(s): Personnel Services Branch

Question: *A new to State service employee is being rejected during probation (ROP). The employee had four (4) months of qualifying pay periods of their six (6) month waiting period for Vacation Leave and they separate via a ROP from state service, is the employee entitled to any vacation leave cash out in their lump sum for the hours earned thus far?*

Answer: If an employee is rejected on probation before they complete six (6) months of State service they do not receive any Lump Sum Vacation pay.

Reference(s): California Code of Regulations 599.739

Division(s): Personnel Services Branch

2. DISABILITY LEAVES

2.1 Non-Industrial Disability Insurance

Question: *An employee, who was in a supervisory classification until recently transferring to a rank and file classification, is requesting disability benefits. The employee has not made any contributions into the State Disability Insurance (SDI) Program.*

Should the employee file a claim for SDI or would he/she be disqualified?

Answer: If an employee transfers from an excluded (unrepresented) classification to a rank and file classification covered by a bargaining unit and was eligible for Non-Industrial Disability (NDI) or Enhanced Non-Industrial Disability (ENDI) prior to the transfer, the employee would retain their NDI/ENDI eligibility for six (6) months. See appropriate Bargaining Unit Contract.

The employee should file for SDI and NDI with the Employment Development Department (EDD). EDD will determine the employee's eligibility for benefits under the appropriate program.

Reference(s): Bargaining Unit Contract

Division(s): Personnel Services Branch

Question: *When a full time Work Week Group (WWG) E employee is working while on Enhanced Non-Industrial Disability (ENDI), 4 hours per day, no supplementation, are they entitled to full time leave credit accrual?*

Answer: If the employee's time base is full time, they will need to work/use leave time equal to 88 hours (11 days) or more to qualify the pay period. The qualifying pay period entitles them to full time leave credits in accordance with their time base.

Reference(s): California Code of Regulations 599.608 and 599.739.1.a

Division(s): Personnel Services Branch

Question: *If an employee goes from rank and file to supervisory are they entitled to both SDI and NDI?*

If yes, can the employee supplement SDI with leave credits?

Answer: The provision for supplementation while on SDI is in the appropriate Bargaining Unit Contract. Since the employee is no longer covered by bargaining, by rights he/she may be entitled to SDI, however, they are not entitled to supplementation. EDD will determine what the employee is entitled to regarding disability benefits.

Reference(s): Bargaining Unit Contract and Excluded Employee Definition, CalHR website

Division(s): Personnel Services Branch

Question: *When an employee is on Enhanced Non-Industrial Disability (ENDI) leave, how is their retirement service credit calculated for the ENDI leave period?*

Answer: Non-Industrial Disability (NDI) does not have a retirement deduction; therefore, employees do not receive retirement service for NDI payments. If the employee is supplementing their NDI with leave credits, the supplementation amount is subject to retirement deductions and the employee will receive a prorated amount of retirement credit with California Public Employees Retirement System (CalPERS) according to the number of hours used to supplement.

When supplementing ENDI to receive 100% pay, employees receive full leave accruals and State service (for purposes of seniority and leave accruals) accruals.

When supplementing ENDI to receive 75% pay, employees receive half ($\frac{1}{2}$) their leave accruals and State service accruals.

When employees do not supplement, they receive no accruals.

Employees who wish to “buy back” the NDI portion of their time off should contact CalPERS at www.calpers.ca.gov or 1-888-CalPERS (1-888-225-7377) for additional information.

Reference(s): Government Codes 19883

Division(s): Personnel Services Branch

2.2 State Disability Insurance

Question: *If an employee worked for seven (7) days then went out on State Disability Insurance (SDI) and supplemented 40 hours for the pay period would the 40 hours/5 days of supplementation count towards a qualifying pay period because it would give them 11 days to qualify?*

Answer: Supplementation does count towards a qualifying pay period. When a full time employee has 11 days or more in the pay period, physically worked or using leave credits, the pay period is qualifying.

Reference(s): PML 2006-042

Division(s): Personnel Services Branch

Question: *If an employee goes from rank and file to supervisory are they entitled to both SDI and NDI?
If yes, can the employee supplement SDI with leave credits?*

Answer: The provision for supplementation while on SDI is in the appropriate Bargaining Unit Contract. Since the employee is no longer covered by bargaining, by rights they may be entitled to SDI, however, they are not entitled to supplementation.

Reference(s): Bargaining Unit Contract, Excluded Employee Definition, CalHR website

Division(s): Personnel Services Branch

Question: *Departments were instructed to use State Disability Insurance (SDI) check stubs to verify payments when an employee has supplemented with leave credits. Now that EDD has replaced paper warrants with debit cards, what method should departments use to verify payments?*

Answer: All SDI recipients still receive a hard copy statement of payments for each payment issued to them. The employee may provide a copy of the statement to the department in order to verify payments. In addition, employees may present their EDD issued pay verification using EDD's online system.

Reference(s): PML 2006-042

Division(s): Personnel Services Branch

Question: *If an employee on State Disability Insurance (SDI) is paid for 26 weeks of health benefits; returns to work for three (3) weeks, and then goes out again for the same illness, is the employee entitled to an additional 26 weeks of insurance coverage because it is considered a new claim?*

Answer: Yes. An employee who returns to full employment for more than 14 calendar days ends his or her continuous period of disability. However, it is up to the Employment Development Department to approve or deny the claim.

Reference(s): PML 2006-042, California Unemployment Insurance Code 2608

Division(s): Personnel Services Branch

Question: *If an employee on State Disability Insurance (SDI) is paid for 26 weeks of health benefits; returns to work for one week, and goes out again for the same illness, is the employee provided an additional 26 weeks of insurance coverage?*

Answer: No. Two consecutive periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one disability benefit period. However, it is up to the Employment Development Department to approve or deny the claim.

Reference(s): PML 2006-042, California Unemployment Insurance Code 2608

Division(s): Personnel Services Branch

Question: *If an employee is off pay status and receiving State Disability Insurance (SDI) benefits are they eligible to use bereavement leave during the SDI period?*

Answer: During the SDI period the employee may elect bereavement leave instead of SDI if it is during an FMLA period. If not covered by FMLA, the employee is not eligible for bereavement leave because the continuity of dock cannot be broken with paid leave.

Reference(s): California Code of Regulations 599.785

Division(s): Personnel Services Branch

3. MILITARY

3.1 Emergency

Question: *What are the terms for emergency military leave?*

Answer: Emergency military leave is military leave for members of the National Guard during such time as the Governor may have issued a proclamation of a state of extreme emergency or insurrection under the provisions of section 143 or 146 of the Military and Veterans Code or during such time as the National Guard may be on active duty for one or more situations in Section 146 of the Military and Veterans Code (Government Code 19773).

The State grants emergency military leave if the employee is:

- a member of the National Guard, and
- ordered to report for active duty in response to the Governor's proclamation of a state of extreme emergency or insurrection under the provisions of sections 143 or 146 of the Military and Veterans Code. (This also includes such time as the National Guard may be on active duty for one or more situations described in section 146 of the Military and Veterans Code.)

The length of the employee's military leave is the period of active duty plus one day for travel going to and returning from such duty, unless the employee's orders already provide for additional travel time.

If the employee needs to use travel time and the employee is traveling on a working day (other than when a Saturday, Sunday, or holiday is a working day) the employee can use any leave credits except Sick leave to receive pay for the travel time.

To receive the rights and benefits of emergency military leave, the employee must begin his/her active duty within 10 calendar days after:

- the last day the employee physically worked, or
- the employee's last day on Vacation or compensating time off before the employee's active duty date.

If the employee meets the requirements, the state pays the employee's salary for up to 30 calendar days of active duty each time the employee is granted emergency military leave.

If the employee is absent longer than 30 days, the employee can use any leave credits except Sick leave to cover their absence.

If the employee is a permanent or probationary state employee, the employee must return to state service within 14 calendar days after the end of their military leave, following any period of rehabilitation afforded by the United States or the State, or after termination of the State military emergency ordered by the Governor. If the employee is a limited-term or temporary state employee, the employee must return to state service within 10 calendar days after the end of their military leave, or 30 calendar days after the end of the State military emergency ordered by the Governor.

Reference(s): Government Code 19773, Military and Veterans Code Sections 143, 146
Division(s): Personnel Services Branch

3.2 General Military Leave

Question: Does CalHR have information on Military Leave that departments can give to employees as a reference?

Answer: Yes, the Military Leave information can be found on the CalHR website, www.calhr.ca.gov . Here is a direct link <http://www.calhr.ca.gov/employees/Pages/military-leave.aspx>.

Reference(s): CalHR website

Division(s): Personnel Services Branch

Question: *If an employee indicates that their reservist duty falls under Individual Mobilization Augmentation (IMA) and they are required to attend a specific number of training dates each year in addition to the 2 weeks of drills, is this time off considered reserve duty and is the employee only entitled to an unpaid leave of absence?*

Answer: Typically, the weekend training is non-active duty so the employee may use leave credits or request an unpaid leave of absence for that time off.

However, it is possible for the two week drill to be active duty training. Departments will determine this by looking at the orders/letter received by the employee. If it is active duty training, it would be covered under short term Military Leave and the 30 calendar day leave would apply.

Reference(s): Government Code 19772 and 19775.1

Division(s): Personnel Services Branch

Question: *If Military Leave benefits were applied inaccurately by allowing paid Military Leave for inactive duty which resulted in an overpayment to the employee, is there any authority or mechanism to forgive the overpayment or are departments required to collect the amount overpaid?*

Answer: There is no method of forgiveness for overpayments. If the employee was allowed paid Military Leave for inactive duty the employee will need to either charge accrued leave credits (retroactively) to cover the absence or have an account receivable established.

Reference(s): Bargaining Unit Contract, Government Code sections 19838

Division(s): Personnel Services Branch

Question: *Is an employee on Military leave only entitled to continued coverage for health, dental, and vision through direct payment? How does the department process the continuation of the Cash Option, when applicable?*

Answer: Health, dental, and vision benefits are covered while the employee is receiving paid Military Leave. An employee on Long Term Military Leave receives pay up to 30 calendar days. Also, for an employee deployed for the War on Terrorism this benefit coverage would be up to 730 calendar days.

Direct payment for health, dental and vision coverage applies to an employee once the employee is no longer receiving pay from the state. For Long Term Military Leave after 30 calendar days and for the War on Terrorism after 730 calendar days. Note: other types of Military Leave should be reviewed on a case by case basis to determine length of time for benefit coverage.

Departments are to process for continuation of the Cash Option by completing a form 674 and submitting to the State Controller's Office.

Reference(s): Government Codes 19775 – 19776, Executive Order D-65-02

Division(s): Personnel Services Branch

Question: *Does an employee that is deployed more than once for the War on Terrorism who used all 730 calendar days receive an extension to the 730 calendar day's limit?*

Answer: No, the War on Terrorism is one event and deployments are cumulative. Government Code section 19775.18 allows for 365 calendar days and Executive Order D-65-02 allows an additional 365 calendar days for the War on Terror for a total of 730 calendar days.

730 calendar days is the maximum entitlement for the War on Terror and all orders specifying the War on Terrorism count against this entitlement. Once the 730 calendar days are exhausted whether by one consecutive order or multiple orders over a period of time, there is no authority to extend it.

Reference(s): Government Codes 19775.18, Executive Order D-65-02

Division(s): Personnel Services Branch

3.3 Long Term Military Leave

Question: *What is Long Term Military Leave?*

Answer: Long Term Military leave is military leave of more than six (6) months (Government Code 19772).

The state grants Long Term Military Leave if the employee is:

- a permanent or probationary employee, and
- ordered to report for active duty in the armed forces, National Guard, or Naval Militia for a period of more than six (6) months.

The length of the employee's Military Leave is the period of active duty plus one day for travel going to and returning from such duty, unless the employee's orders already provide for additional travel time. If the employee needs to use travel time and the employee is traveling on a working day (other than when a Saturday, Sunday, or holiday is a working day) the employee can use any leave credits except Sick leave to receive pay for the travel time.

Long Term Military Leave cannot exceed five (5) years except as provided in Federal Statute section 4312.c.

To receive the rights and benefits of Long Term Military Leave the employee must begin their active duty within 90 calendar days after:

- the last day the employee physically worked, or
- the employee's last day on Vacation or compensating time off before their active duty date.

The employee is entitled to their state salary and benefits if the employee:

- Did not have a break in the continuity of their state service, and
- has 12 qualifying pay periods of state service immediately prior to their active duty date.

If the employee meets the above requirements the state pays the employee's salary for the first 30 calendar days of active duty served during a fiscal year. The employee cannot receive more than 30 calendar days pay in any one fiscal year. The employee's active duty start date determines the fiscal year when the period of active duty extends into a new fiscal year. If the employee is absent longer than 30 days in one fiscal year, the employee can use any leave credits except Sick leave to cover their absence. The employee may elect to use leave credits for their absence at the time of their Military Leave is granted.

When the employee has completed their active military duty, the employee needs to submit a certification of completion signed by their commanding officer. This can be:

- the a form the department gives the employee when granting their leave, or
- a letter from the employee's commanding officer certifying the dates of the employee's active military duty. The employee's commanding officer should send the letter to directly to the department's personnel office.

If the employee is a permanent, probationary, or exempt state employee, and the employee wants to return to their job after the Long Term Military Leave, the employee should contact their department upon release from active duty to request reinstatement. The employee must return to state service within six (6) months after the end of their long term military service. The employee's military service cannot extend beyond five (5) years except under special circumstances (Government Code section 19780).

Reference(s): Government Code sections 19772, 19780 and Federal Statute section 4312c

Division(s): Personnel Services Branch

3.4 Short Term Military Leave

Question: *What is a Short Term Military leave?*

Answer: *Short Term Military leave* is a military leave of six (6) months or less (Government Code section 19772). The state grants Short Term Military Leave if the employee is:

- a permanent, probationary, limited-term, or temporary employee, and
- ordered to report for active duty in the armed forces, National Guard, or Naval Militia for a period of six (6) months or less.

The length of the employee's Military Leave is the period of active duty plus one day for travel going to and returning from such duty, unless your orders already provide for additional travel time.

The state also grants *Short Term Military leave* for annual training such as active duty military training, encampment, naval cruises, and special exercises. (Government Code section 19775.1)

Inactive duty such as scheduled reserve drill periods also qualifies for a military leave of absence. The state does not grant paid time off for inactive duty leaves. But the employee may use any leave credits except Sick leave to attend scheduled reserve drill periods or perform other inactive duty reserve obligations.

Reference(s): Government Code sections 19772, 19775.1

Division(s): Personnel Services Branch

3.5 War or National Emergency

Question: *What are the terms for War or National Emergency leave?*

Answer: War or national emergency leave is leave when the President has determined that it's necessary to augment the active forces for any operational mission, or in time of a national emergency declared by the President or Congress (Government Code sections 19775.15 through 19775.18).

The state grants war or national emergency military leave if the employee is:

- a State employee, and
- a member of the California National Guard or United States military reserve organization, and
- ordered to active duty by the President or Congress.

The length of the employee's Military Leave is the period of active duty plus one day for travel going to and returning from such duty, unless the employee's orders already provide for additional travel time.

If the employee needs to use travel time, and the employee is traveling on a work day (other than when a Saturday, Sunday, or holiday is a working day) the employee can use Vacation and/or any other leave credits except Sick leave to receive pay for the travel time.

To receive the rights and benefits of war or national emergency military leave, the employee must begin their active duty within 10 calendar days after:

- the last day the employee physically worked, or
- the employee's last day on Vacation or compensating time off before their active duty date.

The employee is entitled to certain benefits if they are called to active duty by Presidential or Congressional determination (Sections 12302 and 12304 of Title 10 of the United States Code).

- War on Terrorism
- Presidential determination of national emergency following September 11, 2011 attack.
- Bosnia
- Iraq-Kuwait

Reference(s): Government Codes 19775.15 – 19775.18, Title 10 Sections 12302 and 12304

Division(s): Personnel Services Branch

4. PAYROLL QUESTIONS

4.1 Accounts Receivable

Question: *Can all employees participate in the leave offset program to satisfy overpayments with leave credits?*

Answer: Departments should first review the appropriate bargaining unit contract. Various bargaining unit contracts allow for the use of leave credits to satisfy overpayments by mutual agreement or by the request of the employee. If not addressed in the bargaining unit contract, Government Code section 19838 allows for the use of leave credits to satisfy an overpayment involving the accrual or crediting of leave credits.

Departments have the delegated authority to enter into mutual agreements with employees to use leave credits to satisfy overpayments/accounts receivables that do not involve the accrual or crediting of leave credits or who are not represented by a bargaining unit contract that allows for the use of leave credits to satisfy an overpayment.

The following payroll overpayments/account receivables cannot be satisfied using this process:

- Account Receivables established for payment types 6 and N (Industrial Disability Leave Pay).

The following non-payroll overpayments cannot be satisfied using this process:

- Travel Expense Claims
- Travel Advances
- Salary Advances

All leave credits may be used to for this process with the following exceptions:

- Furlough Hours
- Personal Leave Program 2010/2011/2012
- Personal Development Day
- Holiday Informal Time
- Sick Leave may only be used to satisfy Account Receivables caused by errors in Sick leave balances.

Reference(s): Government Code 19838, Bargaining Unit Contract, PML 2004-038, CalHR Department Communication email dated May 6, 2011.

Division(s): Personnel Services Branch

4.2 Intermittent Employee

Question: *Do intermittent employees (PI) have to be paid on a "set date", such as the 5th, 10th, or 15th of the month?*

Answer: Refer to appropriate bargaining unit contract, some bargaining unit contracts address the date intermittent pay is to be issued. For example, Bargaining Unit 1 Contract states that monthly paid PI employees shall be paid by the 15th of each month.

Reference(s): Bargaining Unit Contract

Division(s): Personnel Services Branch

5. SALARY

5.1 Alternate Range Change

Question: *Can departments delay a Merit Salary Adjustment (MSA) to coincide with an alternate range change date?*

Answer: Because the MSA rule indicates that the employee “shall” receive an MSA, there is no authority for an employee to decline or postpone their MSA.

However, various bargaining unit contracts do allow employees to delay their movement to the next Alternate Range in order to benefit from an MSA. Please refer to the appropriate bargaining unit contract.

Reference(s): California Code of Regulations Rule 599.683, Bargaining Unit Contract

Division(s): Personnel Services Branch

5.2 Bilingual

Question: *Can an employee receive the bilingual pay differential back dated to the date the position was approved, or are they only eligible from the time they were certified as bilingual through the California Department of Human Resources?*

Answer: The bilingual pay cannot be backdated prior to the date of bilingual certification for the employee or prior to the position being identified as bilingual. If the bargaining unit contract is in conflict with this answer, the bargaining unit contract is controlling.

Reference(s): Bargaining Unit Contract, Pay Differentials for Bilingual Pay

Division(s): Personnel Services Branch

Question: *If an employee received bilingual pay at their prior department is it mandatory that the employee receive bilingual pay at the current department just because they were certified by the California Department of Human Resources (CalHR) as bilingual?*

Answer: No, the employee is not automatically entitled to bilingual pay. To receive bilingual pay, an employee must be in a position designated as bilingual and the employee must be certified as bilingual. The various bargaining unit contracts have provisions for bilingual pay and the criteria for employees to receive it.

Reference(s): Bargaining Unit Contract, Pay Differentials for Bilingual Pay

Division(s): Personnel Services Branch

5.3 Merit Salary Adjustment/Special In-Grade Salary Adjustment (MSA/SISA)

Question: *An employee received a Merit Salary Adjustment (MSA) that took her/him within \$25 of the maximum (MAX) rate of the class. Is the department required to process a Special Salary Adjustment (SAL) transaction to take the employee to MAX?*

Answer: Departments have delegated authority to approve SAL's for employees whose MSA takes them to within \$25 of the MAX, but departments are not required to approve it. Each department should have a policy in place on whether or not they give the employee the MAX. The department's policy must be applied to all employees. If approved, departments would key a SAL when processing this action.

Reference(s): PML 2007-026

Division(s): Personnel Services Branch

Question: *An employee transferred into a class with a Special In-Grade Salary Adjustment (SISA) but transferred in with a salary above the minimum rate of Range A. Are they still entitled to the SISA?*

Answer: No. California Code of Regulations 599.685 requires the employee must be at the minimum of the SISA salary range to be eligible for a SISA.

Reference(s): California Code of Regulations 599.685

Division(s): Personnel Services Branch

Question: *If a MSA or SISA is due on the same date a General Salary Increase (GEN) or promotion is effective, how is the transaction documented?*

Answer: When a GEN becomes effective the same date as an employee's salary adjustment anniversary date, the employee shall first receive the MSA/SISA and then receive the GEN.

When a GEN becomes effective the same date as an employee's promotion, the salary adjustments shall be made in such order that the employee shall gain the maximum benefit from the adjustments.

References: California Code of Regulations 599.689

Division(s): Personnel Services Branch

Question: *If an employee had a movement to another class that resulted in a salary increase of less than one step. How do we determine an accelerated MSA date?*

Answer: Section 9 of the Pay Scales explains accelerating anniversary dates and provides charts for how many qualifying pay periods to accelerate them.

References: California State Pay Scales, Section 9

Division(s): Personnel Services Branch

5.4 Out of Class

Question: *If an employee is approved for Out of Class (OOC) pay and goes out on State Disability Insurance (SDI) with no supplementation, is the employee entitled to the OOC pay for the period they were on SDI?*

Answer: The employee is only eligible for the OOC pay for the period they are on pay status. Once the employee is on SDI they are not eligible for OOC pay. An employee is eligible to receive compensation based on the duties performed.

Refer to the appropriate bargaining unit contract for exact definitions of OOC work.

Reference(s): CalHR's Classification and Pay Guide section 375, Bargaining Unit Contract

Division(s): Personnel Services Branch

5.5 Pay Differential

Question: *When a Service Retirement transaction is processed, should pay differential(s) be removed?*

Answer: When employees who are receiving pay differentials have changes made to their history such as, retirement, disability, movement to another classification, etc. you must read the pay differential completely to determine what transactions affect their eligibility or affect their rate of pay when the transaction happens. There is a chart at the bottom of each pay differential which tells if the rate is to be included or not in the various transactions.

Reference(s): California Code of Regulations 599.689, Pay Differentials

Division(s): Personnel Services Branch

Question: *An employee is receiving Pay Differential 141, Recruitment and Retention Differential Pay- Bargaining Unit 4 and Excluded employees, and has accepted a Training and Development (T&D) Assignment to another classification in another bargaining unit. Is the employee eligible to receive the Pay Differential while on the T&D Assignment?*

Answer: Yes, an employee receiving Pay Differential 141 in their current classification will retain the pay differential after accepting a temporary assignment, such as a T&D. The employee shall retain the benefits and pay in the classification they are appointed to while on a T&D. Personnel staff are to review each pay differential carefully for eligibility criteria.

Reference(s): Personnel Management Policies Procedures Manual Section 340 and PML 1995-017

Division(s): Personnel Services Branch

5.6 Red Circle Rates

Question: *How do General Salary Increases (GEN's) and Salary Increases (SAL's) affect an employee's Red Circle Rate?*

Answer: An employee who meets the criteria to receive a SAL or GEN has their based on salary increased and the plus salary reduced so that the total amount the employee receives does not exceed the Red Circle Salary Rate amount.

Reference(s): CalHR's Classification and Pay Guide

Division(s): Personnel Services Branch

5.7 Salary Determination

Question: *When salary rule 599.674 (a) is applied to an employee who is transferring between classes, the new rate does not meet the minimum of the new class. What rate should the employee receive?*

Answer: All employees are entitled to at least the minimum rate of the classification per California Code of Regulations 599.673.

Reference(s): Pay Scales Section 6, California Code of Regulations 599.673

Division(s): Personnel Services Branch

6. SROA

6.1 Hiring Preferences for Surplus Employees

Question: *What does Surplus mean?*

Answer: A Surplus employee is one who is in jeopardy of being laid off or demoted in lieu of layoff. Surplus employees will receive a surplus certification letter notifying them of their surplus status. The Surplus employees should seek out vacancies in classes they feel qualified for and they are eligible to transfer into. When applying for job vacancies, Surplus employees must attach a copy of their surplus certification letter to their applications.

Question: *What does SROA (State Restriction of Appointment) mean?*

Answer: SROA status means the employee's name has been placed on SROA hiring certification lists for the employee's current class and area of layoff.

Question: *What is the difference between being designated Surplus and being on an SROA list?*

Answer: Both designations entitle the employee to equal hiring preference. The only difference is:

SROA – departments filling a vacancy in a SROA employee's current class and location will use the SROA list to notify the SROA employees of the job vacancy.

Surplus – employees can use their Surplus status to seek out job vacancies in any location or class the employee is qualified for and can transfer into.

Question: *What should a department do if it has a vacancy to fill and is not in layoff mode?*

Answer: Widely circulate job opportunity bulletins. Post job vacancies on CalHR's vacant positions database (VPOS) at jobs.ca.gov. Advertise jobs for a minimum of five (5) days for service wide classes or 10 days for department-specific classes. Verify status of employees claiming to be surplus at CalHR's State Restriction of Appointment (SROA) web page.

Question: *Does a department have to hire a SROA employee before considering an employee with Surplus status?*

Answer: No. Surplus and SROA list employees have the exact same rights to be hired. The hiring supervisor can hire an employee with either status.

The only distinction is that employees on SROA lists receive contact letters from hiring departments and surplus employees do not.

Question: *How does a hiring department verify that an employee actually has Surplus/SROA status?*

Answer: All Surplus/SROA employees receive letters from their departments for them to submit a copy to prospective hiring departments. Letters should include the employee's name, verification of Surplus and SROA status and current status class. SROA list eligibility serves as verification of Surplus status. Departments are to review and print (for audit purposes) the Surplus listing on CalHR's State Restriction of Appointment (SROA) web page. CalHR publishes the Surplus listing by class and by department. The Surplus listing will identify the date specific classes by department that declared Surplus.

Question: *What does "Super SROA" refer to?*

Answer: Bargaining Units 2, 9, 10 and 18 have special SROA provisions negotiated in their contracts.

Hiring departments filling job vacancies in classes in these four bargaining units must send job vacancy advertisements to CalHR's Personnel Services Branch and to the layoff coordinators in the departments laying off employees in these units. Hiring departments need to provide the class titles, salaries, number, and location of vacancies.

Hiring departments filling vacancies in a Bargaining Unit 2, 9, 10, 18 classes must fill these vacancies with qualified "Super SROA" employees. To qualify, employees must meet the minimum qualifications, have eligibility for the job vacancy, and be in the same geographic area and bargaining unit. "Same geographic area" means any county that touches the county in which the vacancy exists. The contracts provide no exemptions.

Employees designated as Super SROA may apply for job vacancies outside their geographic area. Hiring departments are to consider these employees as Surplus employees. Refer to CalHR's SROA website and PML 2011-051.

Question: *Is a Surplus employee eligible for reimbursement if the employee must travel to an interview?*

Answer: No. No statute or regulation provides for such reimbursement.

Question: *Is a Surplus employee eligible for relocation reimbursement if required to relocate to accept a new job?*

Answer: Only if the employee has received an official layoff notice at the time of hire to the new job (Government Code 19841). The hiring department would pay for this reimbursement.

6.2 Process for Designating Surplus/SROA List Employees

Question: *How is an employee placed on an SROA list?*

Answer: The personnel office in a department facing layoffs processes information to certify SROA eligibility for employees. CalHR and the department will have determined which employees are Surplus and meet the SROA list criteria. The department transmits the SROA eligibility information to CalHR, which places the employees on SROA certification lists.

Question: *How many SROA lists may an employee's name be placed on?*

Answer: Only one, normally for the current class in which the employee has permanent status. However, if that class exists only at the employee's layoff department, the department should, if possible, place the employee on a SROA list for an appropriate alternative class. This improves the employee's chances of filling a job vacancy at other departments with job openings. CalHR can assist departments in selecting an appropriate alternative class.

Refer to the Layoff Department section of the SROA Manual.

Question: *Can a layoff department place an employee that is currently on a limited term appointment on the SROA list for the limited term class?*

Answer: No. The employee would be placed on the SROA list either for the class from which the employee has return rights to and is affected by the layoff, or for an appropriate SROA class designated by the layoff department.

Question: *How is an appropriate SROA class determined?*

Answer: It must be a class that has a salary exactly the same as or lower than the layoff class; it must have essentially the same class concept; and it must be a class in which actual employment opportunities exist.

Refer to the Layoff Department section of the SROA Manual.

Question: *Can another department's department-specific class be used as an appropriate SROA class?*

Answer: Yes, but the other department must agree to its use. CalHR can assist in resolving differences.

Question: *Can an employee appeal the determination of an appropriate SROA class and suggest a different class?*

Answer: Employees should discuss this with their departmental personnel office. CalHR will assist personnel offices with the selection and solve disputes.

Question: *What does the 120 calendar day period of SROA status refer to? When does the 120 calendar day period begin?*

Answer: The 120 calendar day requirement refers to how long the SROA program covers a Surplus/SROA employee.

The 120 calendar day period begins when CalHR places the employee's name on SROA eligible certification lists and the layoff department notifies the employee of surplus/SROA status. On occasion, CalHR will approve the extension of the 120 calendar days due to extenuating circumstances.

Question: *Can an employee elect not to be on an SROA list?*

Answer: Yes. SROA is voluntary. Employees can ask their personnel offices to remove their names from SROA certification lists.

Question: *Are names on the SROA lists sorted in seniority order?*

Answer: No. Names on SROA lists appear in random order. Anyone on the employment list with SROA status may be hired regardless of relative seniority.

Question: *Are departments required to continue checking for new names on the SROA list after a certification list is ordered?*

Answer: No.

Question: *Are hiring departments required to contact SROA list employees in writing?*

Answer: The initial contact may be by phone, but the department must follow up in writing.

Question: *Can a department fill a position with a non-Surplus or non-SROA list candidate?*

Answer: Yes, if:

- no reemployment list exists for the class (follow certification rules for list clearance of reemployment),
- the SROA list has been cleared, and
- no surplus employees express interest.

A department may also fill a position with a non-Surplus or non-SROA candidate if

- CalHR grants an exemption or
- the department meets one of the identified exemption criteria in the SROA manual.

Refer to the SROA manual section on regarding SROA exemptions.

Question: *Are departments required to hire a Surplus employee if it would be a promotion for the Surplus employee?*

Answer: No. Surplus status does not give an employee hiring priority when it comes to promoting.

Question: *Does a department hiring for a permanent, full-time position need to consider a Surplus status part-time or permanent intermittent employee?*

Answer: Only if the Surplus/SROA employee has eligibility for a permanent, full-time position.

Question: *Can a hiring department require a Surplus employee to serve a new probationary period?*

Answer: Yes, unless the appointment is to a class in which the employee already served a probationary period under the same department.

Refer to the SROA Manual section on Probationary Periods.

6.3 Criteria for Terminating Surplus/SROA Status

Question: If a Surplus employee declines a job offer will he/she retain Surplus status?

Answer: The SROA program helps employees in jeopardy of being laid off find jobs. If an employee declines a job offer, CalHR will investigate to determine if the employee had a valid reason to decline the offer. If the reason is not valid, the employee may lose Surplus/SROA status.

Example of a valid reason for turning down a job offer: the employee would experience a hardship by accepting it.

An employee will not lose Surplus/SROA status if the employee does not respond to an inquiry from a potential hiring department.

Question: *When a Surplus/SROA employee finds a new job, does the employee keep surplus/SROA status?*

Answer: If an employee finds a new job, his or her surplus/SROA status ends upon starting the new job.

Question: *Does an employee's SROA list eligibility end after 120 calendar days, even if the department's layoff is still in progress and the employee has not found another job?*

Answer: Yes. However, CalHR may extend the employee's Surplus/SROA status under extenuating circumstances.

6.4 SROA Exemptions

Question: *If a Surplus employee applies for a position in a different class than he or she currently has permanent or probationary status in, must a department consider him or her for employment?*

Answer: If the Surplus employee meets the minimum qualification (as identified in the class specification) of the class she/he is applying for, yes, the department must consider the Surplus employee. However, if the hiring department feels the employee does not possess the qualifications necessary for the class in question, the department must seek a SROA exemption from CalHR's Personnel Services Branch. Previously, CalHR delegated this determination to departments, but the delegation has been rescinded.

If the Surplus employee does not meet the minimum qualifications (as identified in the class specification) of the class she/he is applying for, the Surplus employee is not eligible to transfer, and therefore, the department would not consider the Surplus employee.

Refer to the SROA manual section on exemptions and the California Code of Regulations 250 FAQs.

Question: Do departments have delegation for any SROA exemptions?

Answer: Yes, refer to the SROA manual for the delegated automatic exemptions listed under SROA Policy Exemptions, section VI. Submit all other Surplus/SROA exemption requests to CalHR's Personnel Services Branch, as found in section VII, Special Exemptions to SROA.

6.5 How the SROA Program is Administered

Question: *How does CalHR administer the SROA program?*

Answer: CalHR's responsibilities are to:

- develop and maintain rules, policies and procedures
- approve the designation of classes and employees on surplus/SROA status
- make decisions on surplus status exemption requests
- ensure compliance with SROA program rules, policies, and procedures
- implement corrective actions as appropriate
- process the SROA eligibility information for SROA certification lists
- place employees on employment lists with SROA designation
- issue SROA employment lists
- remove names from SROA lists when appropriate
- answer inquiries regarding certification of SROA employees

Refer to the SROA manual section on CalHR's role as SROA administrator.

Question: **How can a department in layoff mode help its Surplus employees find new jobs?**

Answer:

- Inform all surplus employees, preferably in writing, of their Surplus/SROA list rights.
- Accurately submit employee SROA eligibility information to CalHR.
- Make resources such as CalHR's web pages on SROA and the layoff process available.
- Provide surplus employees with individual Surplus/SROA certification letters that they may present to hiring departments.
- Conduct initial investigations of any alleged violations of SROA law, rules, or procedures and refer substantiated allegations to CalHR.
- Maintain a library of job announcements.
- Provide access to CalHR's vacant positions database system (VPOS) jobs.ca.gov.

6.6 Areas of Layoff Defined

Question: *What are the possible "area of layoff" types?*

Answer:

- Statewide
- Geographic
- Organizational or functional

The first two are common, but the "organizational or functional" type is rarely used. It is appropriate when a department has hired employees for a specific project with a limited duration with the understanding their employment would end when the project was completed.

Question: *When is the area of layoff "Statewide"?*

Answer: When any of these are true:

- the department conducted Statewide recruitment, testing, and hiring for the layoff class, or
- employees typically change residence to accept appointment to the layoff class, or
- employees in the layoff class typically rotate between positions in one geographic area and another.

The structure of the exam plan alone doesn't determine whether the area of layoff is Statewide.

For example, to save money, a department tests on a Statewide basis. Applicants must indicate which specific area they will accept employment in. In this case, the area of layoff for the layoff class would be geographic, not Statewide.

Layoffs of higher-level managerial classes are normally Statewide.

Question: *When is the area of layoff "geographic"?*

Answer: When both of these are true:

- the department conducted local recruitment, testing, and hiring for the layoff class, and
- employees in the layoff class normally stay in the original location where they were hired.

Layoffs of working-level classes and first-level supervisors are normally geographic.

Question: *It sounds like the area of layoff is determined by class. Does this mean a department may have more than one area of layoff?*

Answer: Yes.

Question: *Is there more than one type of geographic area of layoff?*

Answer: Yes. Geographic areas of layoff can be by:

- county (most common)
- facility
- region

6.7 Leave Balances

Question: *If a Surplus employee in the Annual Leave Program chooses to retire in lieu of layoff, can the employee run the Annual Leave balance past the effective date of the layoff?*

Answer: No. The Surplus employee may run out Annual Leave only up to the date of layoff. The department must issue a lump sum payment for any remaining balance as part of the employee's final compensation.

However, the employee may transfer all or a portion of the leave payment to a 401(k) or 457 account with the Savings Plus Program to avoid or reduce tax liability.

Question: *What happens to an employee's unused Sick leave when the employee is laid off?*

Answer: Any Sick leave will remain in the employee's records and is credited to them if they return to state service. Also, the employee's prior state service counts for purposes of calculating state service, Sick leave, and Vacation leave.

6.8 Demotional Patterns

Question: *What are the “primary” and “personal” demotional patterns?*

Answer: A “primary” demotional pattern consists of lower-level classes in the same series as the layoff class.

A “personal” demotional pattern consists of classes in other series in which the employee served (in any department) in probationary or permanent appointments, if the layoff department uses the classes in the area of layoff, and the employee has sufficient seniority to successfully demote to that class.

“Personal” demotional rights may be elected to any former class that is within transfer range or lower salary range of the class of layoff and is used in the area of layoff.

6.9 Examples of Employees Who Return to Layoff

Question: *If an SROA employee moves to another department and is rejected on probation. Is the previous department (layoff department) required to take the employee back?*

Answer: Yes, if the layoff department has no vacancies, and the effective date of the layoff has not yet been reached, the department would designate the employee as Surplus again, allowing the employee to find a job with another department.

However, if the employee is the least senior and the layoff department already issued 30-day layoff notices to other employees, the layoff department should also issue a 30-day notice to this employee.

If:

- the effective date of the layoff has passed, and
- there are no vacancies, and
- the employee is the least senior.

The layoff department should provide a 30-day layoff notice and lay off the employee after the 30-day period. This 30-day notice can only be issued if the employee was notified when they left the layoff department that they may be impacted by layoff should they return. If the employee did not receive that notice, the employee would need to be included in a new layoff and receive 120 calendar days of SROA. If the employee is not the least senior, then bumping may occur.

Question: *If a department is being abolished and its functions are not transferred to another department, what happens to an employee who holds a limited term appointment in another department whose return rights are to the abolished department?*

Answer: The department being abolished will issue a layoff notice to the employee on a limited term to another department. They will inform the employee that, because the department and its functions will no longer exist, the employee will have no return rights. If the employee does not find a permanent appointment before the limited-term expires, the employee will be laid off when the limited term appointment terminates.

Question: *A department has an employee on a Training and Development Assignment (T&D) to another department. The department is about to have a layoff in the employee's classification. How will this layoff affect the employee?*

Answer: The layoff department will calculate the employee's seniority score. If the employee's seniority is high enough to continue in the class of layoff, the T&D assignment can continue. If not, and the employee would be laid off, the layoff department should terminate the T&D assignment and include the employee in the layoff process. If the employee would be demoted in lieu of layoff, re-evaluate whether the T&D assignment is still appropriate after the demotion.