

MEMORANDUM

TO: PERSONNEL MANAGEMENT LIAISONS DATE: May 10, 2001
REFERENCE CODE: 2001-018

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FROM: Department of Personnel Administration
Policy Development Office

SUBJECT: DPA 2001 Law Booklet

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Bob Painter, Chief
Policy Development Office

Attachment(s)

STATE OF CALIFORNIA
DEPARTMENT OF PERSONNEL ADMINISTRATION

**"Laws Governing California State
Personnel Administration"**

Year 2000



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PART 2.6. PERSONNEL ADMINISTRATION

CHAPTER 1. DEPARTMENT OF PERSONNEL ADMINISTRATION

Article 1. General

19815. As used in this part:

- (a) "Department" means the Department of Personnel Administration.
- (b) "Director" means the Director of the Department of Personnel Administration.
- (c) "Division" means the Division of Labor Relations.
- (d) "Employee" or "state employee," except where otherwise indicated, means employees subject

to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1), supervisory employees as defined in subdivision (g) of Section 3513, managerial employees as defined in subdivision (e) of Section 3513, confidential employees as defined in subdivision (f) of Section 3513, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the Public Employment Relations Board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than audit staff, intermittent athletic inspectors who are employees of the State Athletic Commission, professional employees in the Personnel/Payroll Services Division of the Controller's office and all employees of the executive branch of government who are not elected to office.

19815.2. There is hereby created the Department of Personnel Administration, for the purposes of managing the nonmerit aspects of the state's personnel system.

19815.3. With the consent of the Senate, the Governor shall appoint, to serve at his pleasure, an executive officer who shall be director of the department. The director shall be appointed wholly on the basis of training, demonstrated ability, experience, and leadership in personnel administration and labor relations. The director shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2. In addition thereto, the Governor shall appoint a deputy director and a chief counsel for the department. Both appointments shall be subject to confirmation by the Senate.

19815.4. The director shall:

- (a) Be responsible for the management of the department.
- (b) Administer and enforce the laws pertaining to personnel.
- (c) Observe and report to the Governor on the conditions of the nonmerit aspects of personnel.
- (d) Formulate, adopt, amend, or repeal rules, regulations, and general policies affecting the

purposes, responsibilities, and jurisdiction of the department and which are consistent with the law and necessary for personnel administration.

All regulations relating to personnel administration heretofore adopted pursuant to this part by the State Personnel Board, State Board of Control, Department of General Services, and the Department of Finance, and in effect on the operative date of this part, shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed by the director.

- (e) Hold hearings, subpoena witnesses, administer oaths, and conduct investigations concerning all matters relating to the department's jurisdiction.
- (f) Act on behalf of the department and delegate powers to any authorized representative.
- (g) Serve as the Governor's designated representative pursuant to the provisions of Section 3517.
- (h) Perform such other duties as may be prescribed by law, and such other administrative and executive duties as have by other provisions of law been previously imposed.

19815.41. (a) Notwithstanding subdivision (e) of Section 19815.4, this section shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16.

(b) The director shall hold nonmerit statutory appeal hearings, subpoena witnesses, administer oaths, and conduct investigations in accordance with Department of Personnel Administration Rule 599.859 (b)(2).

(c) The director may, at his or her discretion, hold hearings, subpoena witnesses, administer oaths, or conduct investigations or appeals concerning other matters relating to the department's jurisdiction.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be

controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19815.5. Subject to the State Civil Service Act, the director shall appoint such other assistants and other employees as are necessary for the administration of the affairs of the department and shall prescribe their duties.

19815.6. (a) Notwithstanding the provisions of Sections 11042 and 11043, the chief counsel shall represent the department in all legal matters in which the department is interested, before any administrative agency or court of law.

(b) The department may charge state agencies and departments for the actual and necessary costs of legal services rendered by the legal division in unfair practice cases, representation cases, and requests for injunctive relief arising pursuant to Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1, in grievance arbitration cases arising under negotiated memoranda of understanding, and in all labor law and nonmerit personnel matters in state and federal courts.

(c) In grievance arbitration cases arising pursuant to memoranda of understanding negotiated pursuant to Sections 3517 and 3517.5, the department may charge state agencies involved for the actual and necessary costs of arbitration, including the state's share of the arbitrator's fees, transcription fees, and other related costs.

(d) The department may charge state agencies for their pro rata share of the actual and necessary costs of negotiating and administering memoranda of understanding pursuant to Sections 3517 and 3517.5.

19815.8. (a) No action or proceeding shall be brought by any person having or claiming to have a cause of action or complaint or ground for issuance of any complaint or legal remedy for wrongs or grievances based on or related to any law administered by the Department of Personnel Administration unless the action or proceeding is commenced and served within one year after the cause of action or complaint or ground for issuance of any writ or legal remedy first arose. Such a person shall not be compensated for the time subsequent to the date when the cause or ground arose unless the action or proceeding is filed and served within 90 days after the cause or ground arose. Where an appeal is taken from a decision of the department, the cause of action does not arise until the final decision of the department.

(b) Process directed to any officer or employee, or the Department of Personnel Administration, in any action or proceeding arising under this part, may be served upon the director or chief counsel.

Article 2. Powers and Duties

19816. Except as provided by Section 19816.2, the department succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the State Personnel Board with respect to the administration of salaries, hours and other personnel related matters, training, performance evaluations, and layoffs and grievances.

The department succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the State Board of Control and the Department of General Services with respect to the administration of miscellaneous employee entitlements.

The department succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the Department of Finance with respect to the administration of salaries of employees exempt from civil service and within range salary adjustments.

19816.2. Notwithstanding any other provision of this part, regulations and other provisions pertaining to the layoff or demotion in lieu of layoff of civil service employees that are established or agreed to by the department shall be subject to review by the State Personnel Board for consistency with merit employment principles as provided for by Article VII of the California Constitution. This section does not apply to state employees in State Bargaining Unit 5, 6, 8, or 16.

19816.4. The department shall have possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, land, and other property real or personal held for the benefit or use by the State Personnel Board, the State Board of Control, the Department of General Services, and the Department of Finance in the performance of the duties, powers, purposes, responsibilities, and jurisdiction that are vested in the department by Section 19816.

19816.6. All officers and employees of the State Personnel Board, the State Board of Control, the Department of General Services, and the Department of Finance, who, on the operative date of this part,

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are serving in the state civil service, other than as temporary employees, and engaged in the performance of a function vested in the department by Section 19816 shall be transferred to the department. The status, positions, and rights of such persons shall not be affected by the transfer and shall be retained by them as officers and employees of the department pursuant to the State Civil Service Act, except as to positions exempt from civil service.

19816.8. The department may expend, in accordance with law, all moneys made available for its use or for the administration of any statute administered by it.

19816.10. (a) In order to secure substantial justice and equality among employees in the state civil service, the department may provide by rule for days, hours and conditions of work, taking into consideration the varying needs and requirements of the different state agencies and the prevailing practices for comparable services in other public employment and in private business.

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

19816.12. The department shall establish and maintain in suitable form an official roster of all persons holding positions under this part and enter thereupon their names, complete record of state employment, and other facts prescribed by board rule.

19816.14. The department, with the concurrence of the Department of Finance, shall provide for such audit and certification of payrolls as it deems necessary to insure that all persons in the state civil service, for whom claim for payment of salaries or compensation is made on the Controller, are holding positions as provided by law.

19816.16. The department shall implement the State Employee Assistance Program established by Executive Order B96-82 and may enter into one or more contracts to provide problem assessment and referral services. If the department enters into one or more contracts, the Controller shall transfer from the operating budgets of departments participating in the contract to the State Payroll Revolving Fund, an amount sufficient to fund each department's per capita cost, including state administrative fees. The Controller shall pay the contractor or contractors pursuant to the master payment schedule and monthly certification from the department.

19816.17. The department may enter into contracts for the provision of legally authorized employee benefits not requiring voluntary participation or payroll deductions. Where these contracts are made, the Controller shall transfer from the operating budgets of the departments participating in the contract to the State Payroll Revolving Fund, an amount sufficient to fund each department's per capita cost. The Controller shall pay the contractor or contractors pursuant to the master payment schedule and the certification from the department.

19816.18. (a) The department may either self-fund or self-insure any benefit program under its administration when it is cost-effective to do so. The department may administer the self-funded or self-insured benefit program directly or may contract with a third party administrator. The Treasurer, Controller, and the Department of Finance shall assist the department to ensure that the appropriate fiscal and administrative procedures are established. These procedures shall include, but not be limited to, processes, fund accounts, and transfers from each department's operating budget, including a pro rata share of the cost of administration.

(b) Funds appropriated for self-funded or self-insured benefit programs established pursuant to this section shall be maintained in the State Employees' Self-Funded Benefit Fund, which is hereby created in the State Treasury. Moneys in this fund shall be used by the department to make benefit payments and pay related administrative costs. Income of whatever nature earned on the moneys in the State Employees' Self-Funded Benefit Fund during any fiscal year shall be credited to the fund. The Controller and the Department of Finance may establish individual accounts within the fund, as deemed appropriate, for individual self-funded or self-insured benefit programs. Notwithstanding Section 13340, moneys in this fund and accounts within the fund that are used to pay benefits for a self-funded or self-insured program established pursuant to this section are continuously appropriated, without regard to fiscal years.

19816.20. Notwithstanding Section 18717, this section shall apply to state employees in State Bargaining Unit 16.

(a) The department shall determine which classes or positions meet the elements of the criteria for the state safety category of membership in the Public Employees' Retirement System. An employee

organization or employing agency requesting a determination from the department shall provide the department with information and written argument supporting the request.

(b) The department may use the determination findings in subsequent negotiations with the exclusive representatives.

(c) The department shall not approve safety membership for any class or position that has not been determined to meet all of the following criteria:

(1) In addition to the defined scope of duties assigned to the class or position, the member's ongoing responsibility includes:

(A) The protection and safeguarding of the public and of property.

(B) The control or supervision of, or a regular, substantial contact with one of the following:

(i) Inmates or youthful offenders in adult or youth correctional facilities.

(ii) Patients in state mental facilities that house Penal Code offenders.

(iii) Clients charged with a felony who are in a locked and controlled treatment facility of a developmental center.

(2) The conditions of employment require that the member be capable of responding to emergency situations and provide a level of service to the public such that the safety of the public and of property is not jeopardized.

(d) For classes or positions that are found to meet this criteria, the department may agree to provide safety membership by a memorandum of understanding reached pursuant to Section 3517.5 if the affected employees are subject to collective bargaining. The department shall notify the retirement system of its determination, as prescribed in Section 20405.1.

(e) The department shall provide the Legislature an annual report that lists the classes or positions which were found to be eligible for safety membership under this section.

19816.22. Section 19816.2 does not apply to state employees in State Bargaining Unit 19.

19816.23. (a) Notwithstanding Section 18717, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The department shall determine which classes or positions meet the elements of the criteria for the state safety category of membership in the Public Employees' Retirement System. An employee organization or employing agency requesting a determination from the department shall provide the department with information and written argument supporting the request.

(c) The department may use the determination findings in subsequent negotiations with the exclusive representatives.

(d) The department shall not approve safety membership for any class or position that has not been determined to meet all of the following criteria:

(1) In addition to the defined scope of duties assigned to the class or position, the member's ongoing responsibility includes:

(A) The protection and safeguarding of the public and of property.

(B) The control or supervision of, or a regular, substantial contact with one of the following:

(i) Inmates or youthful offenders in adult or youth correctional facilities.

(ii) Patients in state mental facilities that house Penal Code offenders.

(iii) Clients charged with a felony who are in a locked and controlled treatment facility of a developmental center.

(2) The conditions of employment require that the member be capable of responding to emergency situations and provide a level of service to the public such that the safety of the public and of property is not jeopardized.

(e) For classes or positions that are found to meet this criteria, the department may agree to provide safety membership by a memorandum of understanding reached pursuant to Section 3517.5 if the affected employees are subject to collective bargaining. The department shall notify the retirement system of its determination, as prescribed in Section 20405.3.

(f) Notwithstanding Section 7550.5, the department shall prepare and submit an annual report to the Legislature that lists the classes or positions which were found to be eligible for safety membership under this section.

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Article 2.1. Administrative Procedure

19817. This article applies only with respect to regulations that apply to state employees in State Bargaining Unit 5, 6, 8, or 16.

19817.1. (a) The department is exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3).

(b) The procedures in this article shall apply to any regulations promulgated by the department, but the procedures shall not apply to agreements, directives, interpretations, or actions arising from the department's authority under the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1).

(c) When any provision of law directs or authorizes the department to adopt regulations, those regulations shall be promulgated in accordance with the appropriate procedures in this article, or, as applicable, under the Ralph C. Dills Act.

(d) All regulations that are issued in accordance with the procedures in this article shall have the same force of law as if they had been promulgated under the Administrative Procedure Act.

(e) The courts shall take judicial notice of the contents of each of the department's regulations that is printed or that is incorporated by reference into the California Code of Regulations. The courts shall also take judicial notice of the repeal of a regulation of the department as published in the California Regulatory Code Supplement as compiled by the Office of Administrative Law.

19817.2. (a) The department shall follow the procedures specified in subdivisions (c) to (j), inclusive, when adopting, amending, or repealing regulations on the following topics:

- (1) Alcohol, drug, and other substance abuse testing.
- (2) Incompatible activities, as specified in Section 19990.
- (3) Grievance and appeal procedures.
- (4) Layoff, demotion, and mandatory transfer.
- (5) Career executive termination.
- (6) Separations, resignation, and absence without leave.
- (7) Performance appraisal.
- (8) Bona fide organizations.
- (9) Leaves of absence.
- (10) Penalties for misuse of state-owned vehicles, and other infractions.
- (11) Sick leave and disability benefits.
- (12) Reduced work time.

(b) For purposes of this section, a regulation is every rule, regulation, order, or standard of general application adopted or amended by the department to implement or interpret the law administered by it, but shall not include the following:

- (1) Routine, technical, and procedural instructions and criteria that, in themselves, do not significantly affect the rights and privileges of state agencies, employees, or other parties.
- (2) Decisions, orders, and interpretations that are limited to a particular case or set of circumstances, and that are not intended to have an ongoing general effect.
- (3) Provisions relating only to the internal administration of the department.

(c) When adopting, amending, or repealing regulations subject to this section, the department shall provide at least a 45-day public comment period and shall hold a public hearing during the last 10 days of this period. If a department rulemaking action is not completed within one year of the beginning of the public comment period, it shall either be suspended or initiated again.

(d) The department shall prepare the following prior to the beginning of the public comment period:

- (1) The text of the proposed rulemaking action clearly showing the proposed changes and citing the provisions of law on which the action is based.
- (2) An initial statement of reasons containing all of the following:
 - (A) A description of the problem, requirement, or other circumstance that each proposed rulemaking action is intended to address.
 - (B) The department's reasons for determining that each proposed rulemaking action is needed to address the specified problem, requirement, or circumstance.
 - (C) A specific reference to each study or report, if any, on which the department is relying in taking the proposed rulemaking action.
- (3) A public notice of the proposed rulemaking action that:

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- (A) Specifies the sections to be adopted, amended, or repealed.
 - (B) Cites the legal authority for the action, and the code sections or other provisions of law being implemented or interpreted by it.
 - (C) Contains an informative digest that summarizes any existing laws or regulations pertaining to the proposed rulemaking action and describes the impact of the proposed rulemaking action.
 - (D) Gives specific directions and the deadline for submitting written comments on the proposed action, and indicates the time and place of the public hearing.
 - (E) Indicates how to obtain a copy of the text of the action and the initial statement of reasons.
 - (F) Provides the name, address, and telephone number of the department contact person for the action.
- (e) At least 45 days prior to the close of the public comment period, the department shall do all of the following:
- (1) Mail the notice of the proposed rulemaking action to state agencies, organizations representing state employees, and other parties who have asked to be notified of these actions. This notice shall be concurrent with any other notice required by law.
 - (2) Submit the notice of the proposed rulemaking action to the Office of Administrative Law, which shall publish it in the California Regulatory Notice Register.
 - (f) The department shall allow both written and oral testimony at the hearing. The department may continue the hearing to another time and place, provided that it gives reasonable notice to the public of when and where the hearing will be resumed.
 - (g) The department shall review and consider all written comments and testimony received during the public comment period and hearing on the rulemaking action, and may seek any additional comments or clarification that the director deems necessary to reach a final decision on the rulemaking action.
 - (h) The department shall file a copy of its final regulations with the Office of Administrative Law, which shall file the final regulations with the Secretary of State within three working days and publish them in the California Code of Regulations.
 - (i) Department regulations shall become effective three working days after they are filed with the Office of Administrative Law, unless a later date is specified by the department.
 - (j) The department shall prepare and retain a file of the rulemaking action containing all of the following:
 - (1) The public notice of the action.
 - (2) The initial statement of reasons.
 - (3) The initial and final rule text.
 - (4) A tape or transcript of the hearing.
 - (5) Any studies or reports on which the department relied in taking the rulemaking action.
 - (6) Copies of all written comments received during the public notice period.
 - (7) The final statement of reasons that shall specifically respond to the issues and recommendations raised during the hearing or in the written comments.
 - (k) All of the materials in the rulemaking file are public records and shall be made available to the public upon request once they have been created or received by the department.
- 19817.3. (a) The procedures in subdivision (b) shall apply to all policies, guidelines, rules, and documents issued by the department that are not subject to the rulemaking procedures specified in Section 19817.2. This includes, but is not limited to, policies, guidelines, rules, and documents relative to salary rates and ranges, class specifications and related position allocation standards, travel reimbursement rates, vacation and annual leave provisions, matters pertaining to employee benefit programs administered by the department, and other policies, guidelines, rules, and documents established or issued by the department to administer the state personnel system under the authority given to it by law.
- (b) These policies, guidelines, rules, and documents shall be made reasonably available to state agencies, state employees and their representatives, and other interested parties. It is the intent of the Legislature that, as feasible, the department make items of broad interest, such as class specifications and the state pay scales, available electronically or as a hard copy at various locations around the state. As determined by the department, any of these items may be codified and published in the California Code of Regulations.
 - (c) For the purposes of adopting, amending, and repealing classifications in accordance with Article VII of the California Constitution, and related law, this section, rather than the Administrative Procedure Act, shall also apply to the State Personnel Board.

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19817.4. (a) All department regulations, policies, guidelines, rules, and documents shall be consistent with law and shall be clearly written in plain English. When published in the California Code of Regulations, they shall also include a notation listing the specific statutes or other provisions of law authorizing their adoption and the specific statutes or provision of law they implement.

(b) This article shall not be construed in a manner that invalidates a department regulation, policy, guideline, rule, or document on the basis of a failure to comply with this article if there has been substantial compliance with this article.

19817.5. Department regulations, policies, guidelines, rules, and documents in effect on the effective date of this article shall remain in effect until they are amended or repealed in a manner consistent with this article and any applicable collective bargaining requirements.

Article 2.5. Personnel Classification Plan

19818. Subject to Article VII of the California Constitution, the department succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the State Personnel Board with respect to the administration of the Personnel Classification Plan.

19818.2. The department shall have possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, land, and other property, real or personal, held for the benefit or use by the State Personnel Board in the performance of the duties, powers, purposes, responsibilities, and jurisdictions that are vested in the department by Section 19818.

19818.4. All officers and employees of the State Personnel Board, who, on the effective date of this article, are serving in the state civil service, other than as temporary employees, and engaged in the performance of a function vested in the department by Section 19818 shall be transferred to the department.

19818.6. The department shall administer the Personnel Classification Plan of the State of California including the allocation of every position to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions shall be included in the same class if:

(a) The positions are sufficiently similar in respect to duties and responsibilities that the same descriptive title may be used.

(b) Substantially the same requirements as to education, experience, knowledge, and ability are demanded of incumbents.

(c) Substantially the same tests of fitness may be used in choosing qualified appointees.

(d) The same schedule of compensation can be made to apply with equity.

19818.7. (a) Notwithstanding Section 19818.6, this section shall apply to state employees in State Bargaining Unit 6 or 16.

(b) The department shall administer the Personnel Classification Plan of the State of California including the allocation of every position to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions that meet the definition of a class pursuant to Section 18523.1 shall be included in the same class.

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

(d) A broadband project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

19818.8. A person shall not be assigned to perform the duties of any class other than that to which his or her position is allocated, except as permitted by Section 19994.9.

19818.9. (a) Notwithstanding Section 19818.6, this section shall apply only to state employees in State Bargaining Unit 19.

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(b) The department shall administer the Personnel Classification Plan of the State of California including the allocation of every position to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions that meet the definition of a class pursuant to Section 18523.3 shall be included in the same class.

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

(d) A broadband project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

19818.10. The department shall assess the adequacy of the Personnel Classification Plan and, as needed, recommend changes in the plan to the State Personnel Board. The recommendations shall include the need for the establishment of additional classes or the abolishment or alteration of existing classes.

19818.11. (a) This section shall apply to state employees in State Bargaining Unit 6 or 16.

The department may, directly or through agreement or contract with one or more agencies, conduct demonstration classification, compensation, and related projects. "Demonstration project", for the purposes of this section, means a project that uses alternative classification, compensation, and other personnel management policies and procedures to determine if a change would result in cost savings, improved efficiency, or both cost savings and improved efficiency in the existing personnel management system.

(b) Nothing in this section shall infringe upon or conflict with the merit principles as embodied in Article VII of the California Constitution.

(c) The establishment of a demonstration project shall not be limited by the lack of specific authority in this division or by the existence of any statute or regulation that is inconsistent with actions to be taken in the demonstration project.

(d) Prior to implementation of a demonstration project, the department shall adopt regulations specifying the impact of the project on employee status, compensation, benefits, and rights with regard to transfer, layoff, promotion, and demotion. These regulations are not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3), and shall automatically expire after five years from the date of adoption or at the end of the demonstration project, whichever is earlier. Nothing in this section shall affect the rights of employees included within demonstration projects, except those rights directly pertaining to the subject matter of the demonstration project.

(e) The department shall notify each house of the Legislature when a demonstration project is undertaken. The department shall also evaluate each project at its conclusion and notwithstanding Section 7550.5, shall prepare and submit a summary of the evaluation to each house of the Legislature that includes a discussion of the following:

(1) The purpose of the demonstration project that specifically states the goals or objectives of the project.

(2) The cost projections and methods by which savings, if any, may be calculated.

(3) A definitive mechanism by which the value and success, if any, of the demonstration project may be quantified as feasible. This mechanism shall include specific numerical objectives that must be met or exceeded if a demonstration project is to be judged successful.

(f) A demonstration project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

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(g) Any demonstration project implemented under this section shall not include the adoption or waiver of regulations or statutes that are administered or enforced by the State Personnel Board without the express approval of the State Personnel Board.

19818.12. Positions in the state service shall be established by the appointing power as authorized by law subject to budgetary authorization and the availability of funds. Each appointing power shall promptly report to the department his or her intention to establish new positions in order that those positions may be classified and allocated, and shall so report material changes in the duties of any position in his or her jurisdiction.

19818.14. The department may designate an appointing power to allocate positions to the Personnel Classification Plan in accordance with Section 19818.6 and department rule. The department may audit position allocations and order corrective action. Any corrective action including the reallocation of a position that impacts an incumbent shall be reported promptly to the State Personnel Board which shall determine the status of the probationary or permanent employee affected.

19818.16. (a) Notwithstanding Sections 905.2, 19818.8, and 19823, the department shall have the authority to review employee claims for additional reimbursement for the performance of duties outside the scope of their present classification and to authorize additional reimbursement for those duties. The department shall award employee claims under this section for a period no greater than one year preceding the filing of a claim.

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

19818.18. Upon the allowance of the department of all or part of an employee claim for additional reimbursement for the performance of duties outside the scope of their present classification, certification by the Director of Finance that a sufficient appropriation exists, the execution and presentation of such documents as the department may require which discharge the state of all liability under the claim, and notwithstanding the provisions of Section 19630, the department shall designate the fund from which the claim is to be paid and the state agency concerned shall pay the claim from that fund. Where no sufficient appropriation for the payment is available, the department shall submit a request to the Legislature for appropriation of those funds.

19818.20. (a) Reasonable opportunity to appeal shall be provided by the department to any employee affected by the allocation or reallocation of his or her position.

(b) Notwithstanding subdivision (a), this subdivision shall only apply to state employees in State Bargaining Unit 5. Reasonable opportunity to appeal shall be provided by the department to any employee affected by the allocation of his or her position.

19818.21. When the Legislature, in the Budget Act, authorizes a specified number of positions in a specified class in a specified agency, the department shall approve the allocation of those positions to classes on the basis of the total responsibilities and productivity requirements of the job, without placing primary emphasis on the number of positions subordinate to the positions authorized.

19822.7. (a) There is hereby created in the State Treasury the Work and Family Fund to which funds shall be allocated from the amount negotiated in memoranda of understanding between the state and the recognized employee organization, as defined in Section 3513, and appropriated by the Legislature, for the 2000-01 fiscal year and subsequent fiscal years.

(b) The fund shall be used to establish and maintain work and family programs for state employees. These programs may include, but are not limited to, financial assistance to aid in the development of child care centers administered by either nonprofit corporations formed by state employees or child care providers, or to provide grants, subsidies, or both grants and subsidies for child care and elder care. Other programs may include enhancement or supplementation of existing employee assistance program services and other work and family programs.

(c) The fund shall be administered by the Department of Personnel Administration. The amounts to be allocated and expended from funds available for compensation shall be determined by the department.

(d) Notwithstanding Section 13340, funds in the fund shall be available for expenditure without regard to fiscal years through June 30, 2005. As of June 30, 2005, the fund shall cease to exist and any balance in the fund shall revert to the General Fund, unless the existence of the fund is extended by statute and that statute is enacted and becomes effective prior to June 30, 2005.

Article 3. Division of Labor Relations

19819.5. There is in the Department of Personnel Administration, the Division of Labor Relations.

19819.6. The Governor shall appoint a deputy director from a list of nominees submitted by the director. This deputy director shall be in addition to the deputy director appointed pursuant to Section 19815.3.

The Governor may also appoint civil service exempt labor relations officers. The total number of exempt positions in the department responsible for labor relations shall not exceed 10.

19819.7. Notwithstanding any other provisions of the law, it shall be the function of the division to represent the Governor regarding all the relevant provisions of law with respect to state employees found in Section 3517 and to represent the Governor by attending the meeting and conferring as required by Section 3572. The duties of the Deputy Director of Labor Relations and the labor relations officers shall be limited to the department's professional functions and responsibilities in labor relations matters pursuant to Chapter 10.3 (commencing with Section 3512) and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

CHAPTER 2. ADMINISTRATION OF SALARIES

Article 1. Claims for Reimbursement

19820. The director shall adopt general rules and regulations doing all of the following:

(a) Limiting the amount, time, and place of expenses and allowances to be paid to officers, employees, experts, and agents of the state while traveling on official state business. The rules and regulations shall provide for reasonable reimbursement to an officer, employee, expert, or agent of the state for expenses incurred by him or her to repair a privately owned vehicle which was damaged through no fault of the officer, employee, expert, or agent, if the damage occurred while the vehicle was used on official state business with the permission or authorization of an employing agency.

As used in this subdivision, "officers and employees of the state" means all officers and employees of the state other than elected state officers, officers and employees of the state provided for in Article VI of the California Constitution, and officers and employees of the California State University. "Officers and employees of the state" is not limited by subdivision (d) of Section 19815.

(b) Governing such matters as are specifically committed to the jurisdiction of the department.

(c) Governing the computation of pay in the case of any employee on a monthly basis salary who is entitled to less than a full month's pay.

If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if any conflicting provision of a memorandum of understanding requires the expenditure of funds, that provision shall not become effective unless approved by the Legislature in the annual Budget Act.

19821. (Repealed by Stats. 1996, Ch. 253.)

19822. (a) The director shall determine the fair and reasonable value of maintenance, living quarters, housing, lodging, board, meals, food, household supplies, fuel, laundry, domestic servants and other services furnished by the state as an employer to its employees.

The value so determined shall constitute the charges to be made to state employees for any such maintenance or other services furnished by the state, unless the employee is entitled thereto as compensation for his or her services or as actual and necessary expenses incurred in the performance of the state's business. Whenever a state employee is entitled to such maintenance or other services as part or full compensation for services rendered, the value thereof for retirement purposes, as defined by Section 20022, and for salary or wage fixing purposes, shall also be determined in accordance with the values established by the department hereunder. The director, by rule, shall provide for reasonable opportunity to be heard by departments or employees affected by this section.

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

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19822.5. The department shall by rule authorize such expenditures as are reasonably necessary for the meals, lodging, or travel of persons who provide nonsalaried assistance to the State Personnel Board or a designated appointing power in the preparation or conduct of written or oral examinations.

19822.6. There is hereby established a Child Care Fund to which funds shall be allocated from the amount appropriated in the annual Budget Act for employee compensation. The Child Care Fund shall be used to encourage development of child care programs for dependent children of state employees. These programs may include financial assistance to aid in the development of child care centers administered by either nonprofit corporations formed by state employees or other child care providers.

The Child Care Fund shall be administered by the Department of Personnel Administration.

Upon the determination of the department, the funding shall include, but not be limited to, cash grants.

The amount to be allocated and expended annually, from the funds available for compensation increases, shall be determined by the department. Notwithstanding Section 13340, the Child Care Fund shall be available for expenditure without regard to fiscal years through June 30, 1991, unless otherwise extended by statute enacted prior to that date.

Article 2. Employee Awards

19823. The department may make awards to current or retired state employees who:

- (a) Propose procedures or ideas which hereafter have been adopted and which will result in eliminating or reducing state expenditures or improving operations; provided, the proposals are placed in effect; or
- (b) Perform special acts or special services in the public interest; or
- (c) By their superior accomplishments, make exceptional contributions to the efficiency, economy or other improvement in the operations of the state government.

Awards for superior accomplishments shall be made in accordance with procedures and standards established by the department. Any award made by the department under the provisions of this section may be paid from the appropriation available to the state agency affected by the award.

The director may adopt rules and regulations to carry out the provisions of this section, and may appoint merit award boards made up of state officers, employees, or citizens to consider employee proposals, special acts, special services, or superior accomplishments, and to make recommendations to the department as to the merits of the proposals, special acts, special services, or superior accomplishments, and whether or not the proposals, special acts, special services, or superior accomplishments justify an award.

Any award granted under the provisions of this section shall be limited to five thousand dollars (\$5,000) unless a larger award is approved by concurrent resolution of the Legislature.

Any expenditures made or costs incurred heretofore or hereafter by the director for the purposes of this section may be paid from funds available for the support of the department.

Article 3. Salary Classification

19824. (a) Unless otherwise provided by law, the salaries of state officers shall be paid monthly out of the General Fund.

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

19825. (a) Notwithstanding any other provision of law, whenever any state agency is authorized by special or general statute to fix the salary or compensation of an employee or officer, which salary is payable in whole or in part out of state funds, the salary is subject only to the approval of the department before it becomes effective and payable, except as provided in subdivision (b). The Legislature may expressly provide that approval of the department is not required.

(b) Whenever any state court or other judicial agency is authorized by statute to fix the salary of an employee or officer who is exempt from civil service under subdivision (b) of Section 4 of Article VII of the Constitution, the salary is subject to the approval of the Chairman of the Judicial Council before it becomes effective and payable.

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19826. (a) (1) The department shall establish and adjust salary ranges for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. The department may make a change in salary range retroactive to the date of application for these change.

(2) Effective October 1, 1995, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. The department shall establish and adjust salary ranges for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. The department may make a retroactive change in a salary range.

(b) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

(c) On or before January 10 of each year, the department shall submit to the parties meeting and conferring pursuant to Section 3517 and to the Legislature, a report containing the department's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies.

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

19826.1. Notwithstanding Section 19826, effective June 1, 1998, this section shall apply to state employees in State Bargaining Unit 16. Notwithstanding Section 19826, effective January 1, 1999, this section also shall apply to state employees in State Bargaining Unit 6.

(a) The department shall establish and adjust salary ranges or rates for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range or rate shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges or rates, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. The department may make a change in salary range or rate retroactive to the date of application for the change.

(b) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range or rate for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

(c) Notwithstanding Section 7550.5, on or before January 10 of each year, the department shall prepare and submit to the parties meeting and conferring pursuant to Section 3517 and to the Legislature, a report containing the department's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies.

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

19826.3. (a) Notwithstanding Section 19826, effective June 1, 1998, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The department shall establish and adjust salary ranges or rates for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range or rate shall be based on the principle that like salaries shall be paid for comparable duties

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and responsibilities. In establishing or changing these ranges or rates, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. The department may make a change in salary range or rate retroactive to the date of application for the change.

(c) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range or rate for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

(d) Notwithstanding Section 7550.5, on or before January 10 of each year, the department shall prepare and submit to the parties meeting and conferring pursuant to Section 3517 and to the Legislature, a report containing the department's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies.

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

19826.5. Whenever the department finds that pay data was furnished to the department on the basis that the source remain confidential, the source shall not be open to the public or admissible as evidence in any action or special proceeding.

19827. (a) In order for the state to recruit and retain the highest qualified employees for the California Highway Patrol, it is the policy of the state to compensate state traffic officers the estimated average total compensation as of July 1 of the year in which comparisons are made for the rank corresponding to state traffic officer within the Los Angeles Police Department, Los Angeles County Sheriff's Office, San Diego Police Department, Oakland Police Department, and the San Francisco Police Department. Total compensation includes, but is not limited to, salary, retirement, health and dental insurance, educational incentives, longevity pay, night shift differential, and other skill or incentive pay.

Any increase in total compensation resulting from this subdivision shall be implemented through a memorandum of understanding negotiated pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1).

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

(b) When determining compensation for state excluded sworn classifications of the California Highway Patrol, it is the policy of the state to consider total compensation for corresponding ranks within jurisdictions specified in subdivision (a), as well as other factors, including internal comparisons.

19827.1. (a) The state recognizes the historic problem of recruitment and retention of peace officers in the Department of Corrections and the Department of Youth Authority. As evidence of this recognition there has been a trend in recent years to improve salaries and benefits for these correctional peace officers. However, due to the continuing need to recruit new officers to fill vacancies, retain seasoned correctional peace officers to reduce turnover rates, and provide comparability in pay to effectively compete with large peace officer employers and ensure necessary staffing levels, salaries must be improved and maintained by the state for peace officers in the Department of Corrections and the Department of the Youth Authority.

(b) To effect the intent of paragraph (a) the department shall take into consideration the salary and benefits of other large employers of peace officers in California.

19827.2. (a) The Legislature, having recognized December 1980 statistics from the U.S. Department of Labor, finds: that 60 percent of all women 18 to 64 are in the workforce, that two-thirds of all those women are either the head of household or had husbands whose earnings were less than ten thousand dollars (\$10,000), and that most women are in the workforce because of economic need; that the average working woman has earned less than the average working man, not only because of the lack of educational and employment opportunities in the past, but because of segregation into historically undervalued occupations where wages have been depressed; and that a failure to reassess the basis on which salaries in state service are established will perpetuate these pay inequities, which have a particularly discriminatory impact on minority and older women; and, therefore, it is the intent of the

Legislature in enacting this statute to establish a state policy of setting salaries for female-dominated jobs on the basis of comparability of the value of the work.

(b) The department shall review and analyze existing information, including those studies from other jurisdictions relevant to the setting of salaries for female-dominated jobs. This information shall be provided on an annual basis to the appropriate policy committee of the Legislature and to the parties meeting and conferring pursuant to Section 3517.

(c) For the purpose of implementing this section, the following definitions apply:

(1) "Salary" means, except as otherwise provided in Section 18539.5, the amount of money or credit received as compensation for service rendered, exclusive of mileage, traveling allowances, and other sums received for actual and necessary expenses incurred in the performance of the state's business, but including the reasonable value of board, rent, housing, lodging, or similar advantages received from the state.

(2) "Comparability of the value of the work" means the value of the work performed by an employee, or group of employees within a class or salary range, in relation to the value of the work of another employee, or group of employees, to any class or salary range within state service.

(3) "Skill" means the skill required in the performance of the work, including any type of intellectual or physical skill acquired by the employee through experience, training, education, or natural ability.

(4) "Effort" means the effort required in the performance of the work, including any intellectual or physical effort.

(5) "Responsibility" means the responsibility required in the performance of the work, including the extent to which the employer relies on the employee to perform the work, the importance of the duties, and the accountability of the employee for the work of others and for resources.

(6) "Working conditions" means the conditions under which the work of an employee is performed, including physical or psychological factors.

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

19827.3. In order for the state to recruit skilled firefighters for the California Department of Forestry and Fire Protection, it is the policy of the state to consider prevailing salaries and benefits prior to making salary recommendations. In order to provide comparability in pay, the Department of Personnel Administration shall take into consideration the salary and benefits of other jurisdictions employing 75 full-time firefighters or more who work in California.

19827.5. For purposes of Section 18539.5, there is allocated from the salary or wage paid to a minister of the gospel in an amount up to 25 percent of the gross salary, as either of the following:

(a) The rental value of a home furnished to him.

(b) The rental allowance paid to him to rent or provide a home.

19828. (a) Reasonable opportunity to be heard shall be provided by the department to any employee affected by a change in the salary range for the class of his or her position.

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

(c) Effective October 1, 1995, this section shall not apply to state employees in State Bargaining Unit 5.

19829. (a) (1) Salary ranges shall consist of minimum and maximum salary limits. The department shall provide for intermediate steps within these limits to govern the extent of the salary adjustment that an employee may receive at any one time; provided, that in classes and positions with unusual conditions or hours of work or where necessary to meet the provisions of state law recognizing differential statutory qualifications within a profession or prevailing rates and practices for comparable services in other public employment and in private business, the department may establish more than one salary range or rate or method of compensation within a class.

(2) Effective October 1, 1995, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. Salary ranges shall consist of minimum and maximum salary limits. Except where otherwise provided by law, the appointing power or designee may authorize

payment at any salary rate within these limits to govern the extent of a salary adjustment that an employee may receive for situations including, but not limited to, recruitment and retention, extraordinary qualifications, and successful job performance or promotion. Only those employees who are performing successfully as determined by the appointing power or designee shall receive periodic salary increases until the maximum of the salary range is reached to recognize continuous successful performance or value to the organization. Adjustments within the salary range authorized in this paragraph may be either temporary or permanent. The department may establish more than one salary range or rate or method of compensation within a class.

(3) Effective June 1, 1998, notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 16. Effective January 1, 1999, notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 8. Salary ranges shall consist of minimum and maximum salary limits. Except where otherwise provided by law, the appointing power or designee, consistent with the regulations of the department, shall determine the employee's salary rate upon appointment and may authorize subsequent increases in these rates based on considerations including, but not limited to, recruitment and retention, extraordinary qualifications, and successful job performance or promotion. Only those employees who are performing successfully as determined by the appointing power or designee shall receive periodic performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance or value to the organization. Adjustments within the salary range authorized in this section may be either temporary or permanent. The department may establish more than one salary range or rate or method of compensation within a class.

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

(b) Salary ranges shall consist of minimum and maximum salary limits. Except where otherwise provided by law, the appointing power or designee, consistent with the regulations of the department, shall determine the employee's salary rate upon appointment and may authorize subsequent increases in these rates based on considerations including, but not limited to, recruitment and retention, extraordinary qualifications, and successful job performance or promotion. Only those employees who are performing successfully as determined by the appointing power or designee shall receive periodic performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance or value to the organization. Adjustments within the salary range authorized in this section may be either temporary or permanent. The department may establish more than one salary range or rate or method of compensation within a class.

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

19830. (a) The minimum and maximum salary limits for laborers, workers, and mechanics employed on an hourly or per diem basis need not be uniform throughout the state, but the appointing power shall ascertain and report to the department, as to each position, the general prevailing rate of the wages in the various localities of the state.

In fixing the minimum and maximum salary limits within the various localities of the state, the department shall take into account the prevailing rates of wages in the localities in which the employee is to work and other relevant factors, and shall not fix the minimum salary limits below the general prevailing rate so ascertained and reported for the various localities.

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

19831. (a) The department may authorize payments into a private fund to provide health and welfare benefits to nonpermanent employees in classes compensated in accordance with the provisions of Section 19830 where the department finds as to any position that:

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(1) The payments by employers are the prevailing practice in comparable employment in the locality of the work and the payments are for the purpose of providing to employees specified benefits such as, but not limited to, hospital, medical, surgical, and life insurance, sick leave, vacation allowance, pensions, supplementary unemployment and disability compensation, and other similar or related health and welfare benefits, or any combination thereof.

(2) Participation in the benefits provided by the funds is not limited to state employees.

(3) The provisions of the plans which provide the benefits meet the standards established by the department.

(b) Payments made by the state to any fund on behalf of any employee shall be in lieu of benefits such as vacation allowance, sick leave, and retirement which are now or may hereafter be granted directly by the state in accordance with law.

(c) The department is empowered to determine the equitable application of this section to insure that the employees receive benefits comparable to, but not in excess of, those provided in comparable private employment.

(d) The payments authorized by this section shall be a proper charge against any funds available for the support of the employing agency.

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

19832. (a) (1) After completion of the first year in a position, each employee shall receive a merit salary adjustment equivalent to one of the intermediate steps during each year when he or she meets the standards of efficiency as the department by rule shall prescribe.

(2) Effective October 1, 1995, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. Employees whose salary is not at the maximum of the salary range shall receive a salary review and be considered for a salary adjustment at least annually. Only those employees who are performing successfully, as determined by the appointing power, shall receive salary increases until the maximum of the salary range is reached to recognize continuous successful performance. The employee's salary rate may not exceed the maximum of the salary range or fall below the minimum of the salary range except where otherwise provided by law or department rules.

(3) Effective June 1, 1998, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 16. Employees whose salary is not at the maximum of the salary range shall be considered for a performance salary adjustment at least annually. Only those employees who are performing successfully as determined by the appointing power shall receive performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance. The employee's salary rate may not exceed the maximum of the salary range or fall below the minimum of the salary range except where otherwise provided by law or department rules.

(4) Effective January 1, 1999, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Employees whose salary is not at the maximum of the salary range shall be considered for a performance salary adjustment at least annually. Only those employees who are performing successfully as determined by the appointing power shall receive performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance. The employee's salary rate may not exceed the maximum of the salary range or fall below the minimum of the salary range except where otherwise provided by law or department rules.

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

19833. (a) When the compensation of an employee is established at a fixed amount per unit of work with a maximum limit for his or her total annual or monthly compensation as an alternative method of compensation for the salary fixed for the class, the department shall provide for annual increases in the maximum limit equal in amount and payable under the same conditions as for other employees.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of

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understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19834. (a) Automatic salary adjustments shall be made for employees in the state civil service in accordance with this chapter and department rule adopted pursuant hereto, notwithstanding the power now or hereafter conferred on any officer to fix or approve the fixing of salaries, unless there is not sufficient money available for the purpose in the appropriation from which the salary shall be paid and the director shall so certify.

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

(c) Effective October 1, 1995, this section shall not apply to state employees in State Bargaining Unit 5.

(d) Effective June 1, 1998, this section shall not apply to state employees in State Bargaining Unit 16.

(e) Effective January 1, 1999, this section shall not apply to state employees in State Bargaining Unit 8.

19835. (a) The right of an employee to automatic salary adjustments is cumulative for a period not to exceed two years and he or she shall not, in the event of an insufficiency of appropriation, lose his or her right to these adjustments for the intermediate steps to which he or she may be entitled for this period.

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

(c) Effective October 1, 1995, this section shall not apply to state employees in State Bargaining Unit 5.

(d) Effective June 1, 1998, this section shall not apply to state employees in State Bargaining Unit 16.

(e) Effective January 1, 1999, this section shall not apply to state employees in State Bargaining Unit 8.

19835.5. In submitting budgetary requirements to the Director of Finance, each appointing power shall carefully estimate and call attention to the need for money sufficient to provide for appropriate salary adjustments for the employees under his or her jurisdiction.

19836. (a) The department may authorize payment at any step above the minimum salary limit to classes or positions in order to meet recruiting problems, to obtain a person who has extraordinary qualifications, to correct salary inequities resulting from actions by the department or State Personnel Board, or to give credit for prior state service in connection with appointments, promotions, reinstatements, transfers, reallocations, or demotions. Other salary adjustments within the salary range for the class may be made upon the application of the appointing power and with the approval of the director. Adjustments within the salary range authorized by this section may be either permanent or temporary and may be made retroactive to the date of application for this change.

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

(c) Effective October 1, 1995, this section shall not apply to state employees in State Bargaining Unit 5.

19836.1. Effective June 1, 1998, notwithstanding Section 19836, this section shall apply to state employees in State Bargaining Unit 16. Effective January 1, 1999, notwithstanding Section 19836, this section shall apply to state employees in State Bargaining Unit 8.

(a) The appointing power or designee with the approval of the department may authorize payment at any step above the minimum salary limit to classes or positions in order to correct salary inequities.

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

19836.3. (a) Effective June 1, 1998, notwithstanding Section 19836, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The appointing power or designee with the approval of the department may authorize payment at any step above the minimum salary limit to classes or positions in order to correct salary inequities.

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

19837. (a) Employees in a class shall receive a salary within the limits established for that class; provided, that when a position has been allocated to a lower class or the salary range or rate of pay of the class is reduced, the department may authorize the payment of a rate above the maximum of the class; and provided further, that when an employee is moved to a position in a lower class because of reductions in force or other management-initiated changes, the department may, when recommended by the appointing power, authorize the payment of a rate above the maximum of the class for such time as the department may designate to the employee whose service has been fully satisfactory, who has completed a minimum of 10 years of state service, and who meets other eligibility standards established by the department. "State service," for the purpose of this section, may include up to one year during which the employee was off the state payroll while laid off, or on leave of absence for the purpose of lessening the effect of impending layoff or demotion. It is the responsibility of the employee to request credit for such time from the department. Such service shall not be credited for retirement purposes.

The department may, upon recommendation of the appointing power, apply the provisions of this section to employees who, prior to the effective date of the amendments to this section made at the 1971 Regular Session of the Legislature, moved to a position in a lower class because of reductions in force or other management-initiated changes, provided such employees have more than 30 years state service prior to the effective date of such amendments and were so demoted on July 1, 1968.

During such time as an employee's salary remains above the maximum rate of pay for his or her class, the employee shall not receive further salary increases.

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

19838. (a) When the state determines an overpayment has been made to an employee, it shall notify the employee of the overpayment and afford the employee an opportunity to respond prior to commencing recoupment actions. Thereafter, reimbursement shall be made to the state through one of the following methods mutually agreed to by the employee and the state:

(1) Cash payment or payments.

(2) Installments through payroll deduction to cover at least the same number of pay periods in which the error occurred. When overpayments have continued for more than one year, full payment may be required by the state through payroll deductions over the period of one year.

(3) The adjustment of appropriate leave credits or compensating time off, provided that the overpayment involves the accrual or crediting of leave credits (e.g., vacation, annual leave, or holiday) or compensating time off. Any errors in sick leave balances may only be adjusted with sick leave credits.

Absent mutual agreement on a method of reimbursement, the state shall proceed with recoupment in the manner set forth in paragraph (2).

(b) An employee who is separated from employment prior to full repayment of the amount owed shall have withheld from any money owing the employee upon separation an amount sufficient to provide full repayment. If the amount of money owing upon separation is insufficient to provide full reimbursement to the state, the state shall have the right to exercise any and all other legal means to recover the additional amount owed.

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(c) Amounts deducted from payment of salary or wages pursuant to the above provisions, except as provided in subdivision (b), shall in no event exceed 25 percent of the employee's net disposable earnings.

(d) No administrative action shall be taken by the state pursuant to this section to recover an overpayment unless the action is initiated within three years from the date of overpayment.

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

Article 4. Miscellaneous Compensation

19839. (a) Upon separation from service without fault on his or her part, a person is entitled to a lump-sum payment as of the time of separation for any unused or accumulated vacation or annual leave or for any time off to which he or she is entitled by reason of previous overtime work where compensating time off for overtime work is provided for by the appointing power or by rules of the department. This sum shall be computed by projecting the accumulated time on a calendar basis so that the lump sum will equal the amount which the employee would have been paid had he or she taken the time off but not separated from the service.

(b) Persons separated from service through fault of their own are entitled to a lump-sum payment for compensating time off for overtime work, and in addition, the portion, if any, of unused vacation or annual leave as the department may determine. The computation of this sum shall be based on actual accumulated time without projection as provided in subdivision (a).

(c) Lump-sum payment for vacation or annual leave shall not be made to a person who separates from a position for the purpose of accepting another position in the state service except upon movement to a position in which vacation credits or annual leave are neither accrued nor used. However, a lump-sum payment shall not be made to a person who returns to a position in the same class and agency within 15 working days of the date of his or her resignation.

(d) Except for payment authorized or excluded under subdivision (c), an employee who returns to state service during the period through which his or her lump-sum payment was computed may refund the amount of lump-sum payment which exceeds his or her break in service and have the balance of credits restored as though he or she had remained in state service and taken the time off.

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

19839.5. Unless in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, every department shall calculate and forward to the Controller a request for payment of all undisputed amounts due under Section 19839 within 25 days of the date of separation of the employee.

19840. (a) Any time off to which an employee is entitled by reason of overtime worked prior to June 9, 1948, may be compensated by a lump sum payment in the manner provided in Section 19839 at any time prior to the separation of the employee from service or upon such separation. Payment shall be at the rate established for the position as of the date of payment or the date of separation as the case may be.

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

19841. (a) Notwithstanding Section 11030, whenever a state officer or employee is required by the appointing power because of a change in assignment, promotion, or other reason related to his or her duties to change his or her place of residence, the officer, agent, or employee shall receive his or her actual and necessary moving, traveling, lodging, and meal expenses incurred by him or her both before and after and by reason of the change of residence. The maximum allowances for these expenses shall

be as follows: the costs of packing, transporting, and unpacking 11,000 pounds of household effects, traveling, lodging, and meal expenses for 60 days while locating a permanent residence, storage of household effects for 60 days, and additional miscellaneous allowances not in excess of two hundred dollars (\$200). The maximum allowances may be exceeded where the director determines that the change of residence will result in unusual and unavoidable hardship for the officer or employee, and in those cases the director shall determine the maximum allowances to be received by the officer or employee.

(b) If a change of residence reasonably requires the sale of a residence or the settlement of an unexpired lease, the officer or employee may be reimbursed for any of the following expenses:

(1) The settlement of the unexpired lease to a maximum of one year. Upon the date of surrender of the premises by the employee who is the lessee, the rights and obligations of the parties to the lease shall be as determined by Section 1951.2 of the Civil Code.

The state shall be absolved of responsibility for an unexpired lease if the department determines the employee knew or reasonably should have known that a transfer involving a physical move was imminent before entering into the lease agreement.

(2) In the event of residence sale, reimbursement for brokerage and other related selling fees or charges, as determined by regulations of the department, customarily charged for like services in the locality where the residence is located.

(c) This subdivision shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. If the change of residence is caused by a layoff, the application of this section shall be at the discretion of the department based upon the recommendation of the appointing power.

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

(b) Notwithstanding Section 11030, whenever a state officer or employee is required by the appointing power because of a change in assignment, promotion, or other reason related to his or her duties to change his or her place of residence, the officer, agent, or employee shall receive his or her actual and necessary moving, traveling, lodging, and meal expenses incurred by him or her both before and after and by reason of the change of residence. The maximum allowances for these expenses shall be as follows: the costs of packing, transporting, and unpacking 11,000 pounds of household effects, traveling, lodging, and meal expenses for 60 days while locating a permanent residence, storage of household effects for 60 days, and additional miscellaneous allowances not in excess of two hundred dollars (\$200). The maximum allowances may be exceeded where the director determines that the change of residence will result in unusual and unavoidable hardship for the officer or employee, and in those cases the director shall determine the maximum allowances to be received by the officer or employee.

(c) If a change of residence reasonably requires the sale of a residence or the settlement of an unexpired lease, the officer or employee may be reimbursed for any of the following expenses:

(1) The settlement of the unexpired lease to a maximum of one year. Upon the date of surrender of the premises by the employee who is the lessee, the rights and obligations of the parties to the lease shall be as determined by Section 1951.2 of the Civil Code.

The state shall be absolved of responsibility for an unexpired lease if the department determines the employee knew or reasonably should have known that a transfer involving a physical move was imminent before entering into the lease agreement.

(2) In the event of residence sale, reimbursement for brokerage and other related selling fees or charges, as determined by regulations of the department, customarily charged for like services in the locality where the residence is located.

(d) If the change of residence is caused by a layoff, the application of this section shall be at the discretion of the department based upon the recommendation of the appointing power.

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

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19842. (a) For the purpose of facilitating either the recruitment of professional and technically trained persons to fill positions for which there is a shortage of qualified applicants or hiring to achieve goals developed pursuant to Section 19790, the department may authorize payment of all or a part of the travel expense of applicants who are called for interview and all or a part of the travel and moving expense of persons who change their place of residence to accept employment with the state. These payments shall be authorized only upon the certification of the appointing power and the department that the expenditure is necessary in order to recruit qualified persons needed by the state.

If, for reasons that do not meet the approval of the state department concerned, the employee or applicant for employment does not accept or continue the employment for a period of two years, he or she shall reimburse the state department for the moving and travel expenses for the full or proportionate amount.

For the purposes of this section, satisfactory reasons for not completing two years of employment shall be death, prolonged illness, disability, unacceptability of the applicant or employee to the state department, and similar eventualities beyond the control of the applicant or employee.

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

19842.5. For persons employed on an intermittent or irregular time base, the vacation and sick leave privileges, salary, and other conditions of employment governed by this part shall be subject to department rule.

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

19843. (a) For each class or position for which a monthly or annual salary range is established by the department, the department shall establish and adjust workweek groups and shall assign each class or position to a workweek group. The department, after considering the needs of the state service and prevailing overtime compensation practices, may establish workweek groups of different lengths or of the same length but requiring different methods of recognizing or providing compensation for overtime. The department may also provide for the payment of overtime in designated classes for work performed after the normal scheduled workday or normal scheduled workweek.

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

19844. (a) The department shall provide the extent to which, and establish the method by which, ordered overtime or overtime in times of critical emergency is compensated. The department may provide for cash compensation at a rate not to exceed 1 1/2 times the regular rate of pay, and the rate may vary within a class depending upon the conditions of work, or the department may provide for compensating time off at a rate not to exceed 1 1/2 hours of time off for each hour of overtime worked. The provisions made under this section shall be based on the practices of private industry and other public employment, the needs of state service, and internal relationships.

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

19844.5. (a) A state employee who is called into service by the Office of Emergency Services pursuant to a mission assignment number for the purpose of engaging in a search and rescue operation, disaster mission, or other life-saving mission conducted within the state is entitled to administrative time off from his or her appointing power. The appointing power shall not be liable for payment of any disability or death benefits in the event the employee is injured or killed in the course of service to the

Office of Emergency Services, but the employee shall remain entitled to any benefits currently provided by the office.

(b) The period of the duty described in subdivision (a) shall not exceed 10 calendar days per fiscal year, including the time involved in going to and returning from the duty. A single mission shall not exceed three days, unless an extension of time is granted by the office and the appointing power.

(c) This section shall apply only to volunteers participating in the California Explorer Search and Rescue Team, Drowning Accident Rescue Team, Wilderness Organization of Finders, California Rescue Dog Association, and the California Wing of the Civil Air Patrol.

(d) A state employee engaging in a duty as described in this section shall not receive overtime compensation for the hours of time off taken but shall receive normal compensation.

(e) A state employee shall be released to engage in a duty described in this section at the discretion of the appointing power. However, leave shall not be unreasonably denied. The appointing power shall also establish a procedure whereby state employees who receive weekend or evening requests to serve may be released to do so.

19845. (a) Notwithstanding any other provision of this chapter, the department is authorized to provide for overtime payments as prescribed by the Federal Fair Labor Standards Act to state employees.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the provisions of this section shall be controlling unless the memorandum of understanding provides a greater benefit, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19846. (a) It is the policy of the state that the normal workweek of permanent employees in fire suppression classes of the Department of Forestry and Fire Protection shall not exceed 84 hours a week. Work in excess of the designated normal workweek may be compensated for in cash or compensating time off in accordance with the regulations of the department.

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

19847. (a) Every state agency in which there are employees not subject to state civil service shall submit to the department all information necessary for determination of the workweek for each employee.

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

19848. (a) The granting of compensating time off in lieu of cash compensation is not prohibited where compensating time off can be granted within 12 calendar months following the month in which the overtime was worked and without impairing the services rendered by the employing state agency.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19849. (a) The department shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules.

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

19849.1. (a) The department may provide by rule for compensation to employees who are required to report back to work after completion of the normal workday, workweek, or when otherwise off duty. In

determining the rate and method of compensation, the department shall take into consideration the needs of state service and the practices prevailing in private business and other public employment.

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

19849.15. (a) Notwithstanding Section 22777, the state employer shall, upon the death of an employee while in state service, continue to pay employer contributions for health, dental, and vision benefits for a period not to exceed 120 days beginning in the month of the employee's death. The surviving spouse or other eligible family member shall be advised of all rights and obligations during this period regarding the continuation of health and dental benefits as an annuitant by the California Public Employees' Retirement System. The surviving spouse or other eligible family member shall also be notified by the department during this period regarding COBRA rights for the continuation of vision benefits.

(b) This section shall apply to state employees in state bargaining units that have agreed to this section in a memorandum of understanding, state employees excluded from the definition of "state employee" in subdivision (c) of Section 3513, and officers or employees of the executive branch of state government who are not members of the civil service.

19849.2. Any state agency may, subject to rules and regulations of the department, insure its employees against injury or death incurred while flying on state business in any except regularly scheduled passenger aircraft.

19849.3. When a state employee dies while traveling on official state business the state shall, under rules and regulations adopted by the department, pay the approved traveling expenses necessary to return the body to his or her official headquarters or the place of burial. This subdivision shall not be construed to authorize the payment of the traveling expenses, either going or returning, of one accompanying the body.

19849.4. (a) Any state employee when working overtime at his or her headquarters on state business may receive his or her actual and necessary expenses, during his or her regular workweek, subject to rules and regulations adopted by the department limiting the amount of the expenses and prescribing the conditions under which the expenses may be paid; provided, however, that each state agency may determine the necessity for and limit such expenses of its employees in such manner as does not conflict with and is within the limitations prescribed by the department.

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

19849.5. The headquarters of members of all boards and commissions unless fixed by law, shall be determined and fixed by the department, and the headquarters of all other employees shall be determined and fixed by the department.

19849.6. Any person who vacates a position in the state civil service to accept appointment by the Governor or by the Legislature to a position or an office for which the salary is fixed by statute and who thereafter is reinstated to his or her former position as provided by Section 19141 shall be credited only with such accumulated sick leave, and with such unused or accumulated vacation or annual leave for which he or she did not receive a lump-sum payment, as he or she was entitled to at the time he or she vacated the position.

19849.7. Each state agency shall at the time of each payment of salary or wages, whether by direct deposit by electronic fund transfer pursuant to Sections 12480 and 12481 or otherwise, furnish each employee an itemized statement in writing showing all deductions made from his or her salary or wages as required by Section 226 of the Labor Code.

19849.8. The department in which an employee is employed may pay the cost of replacing or repairing eyeglasses, hearing aids, dentures, watches, or articles of clothing necessarily worn or carried when damaged in the line of duty without fault of the employee. If the eyeglasses, hearing aids, dentures, watches or clothes are damaged beyond repair, the department may pay the actual value of such eyeglasses, hearing aids, dentures, watches or clothing. The value of such eyeglasses, hearing aids, dentures, watches or clothing shall be determined as of the time of the damage thereto.

19849.9. Any appointing power may present to an employee who has completed 25 or more years of state service a certificate, plaque, or other suitable memento and the cost of the same shall be a proper charge against the support appropriation of the department or office in which the employee serves. The cost of any such certificate, plaque, or memento shall not exceed the sum of seventy-five dollars (\$75). A presentation may likewise be made to a retired employee who on the date of his or her retirement had completed 25 or more years of state service.

Article 4.5. Management Compensation Incentives

19849.10. It is the purpose of this article to provide for management compensation incentives to promote increased productivity and efficiency in the management of state services, and to enable the state to attract and retain highly qualified managerial employees by providing management compensation incentives similar to those commonly provided in public employment and private industry.

19849.11. The Department of Personnel Administration, subject to such conditions as it may establish, subject to existing statutes governing health benefits and group term life insurance offered through the Public Employees' Retirement System, and subject to all other applicable provisions of state law, may enter into contracts for the purchase of employee benefits with respect to managerial and confidential employees as defined by subdivisions (e) and (f) of Section 3513, and employees excluded from the definition of state employee in subdivision (c) of Section 3513, and officers or employees of the executive branch of government who are not members of the civil service, and supervisory employees as defined in subdivision (g) of Section 3513. Benefits shall include, but not be limited to, group life insurance, group disability insurance, long-term disability insurance, group automobile liability and physical damage insurance, and homeowners' and renters' insurance.

The department may self-insure the long-term disability insurance program if it is cost-effective to do so.

If it is determined that a self-insured long-term disability insurance program will be established, the department shall provide its cost analysis to the Joint Legislative Budget Committee at least 30 days prior to initiating the establishment of the program.

19849.12. (a) The state may contribute all, part, or none of the cost of benefits purchased pursuant to this article. The remainder of the costs, if any, shall be paid by employee contributions.

(b) No contract for employee benefits which requires full or partial funding by the state shall be entered into pursuant to this article until funding is appropriated by the Legislature.

(c) The Legislature shall make necessary adjustments in the annual Budget Act to increase or decrease the state's contribution towards the cost of employee benefits purchased pursuant to this article.

19849.13. Notwithstanding Sections 19839, 19858.1, 19858.3, 19858.4, 19859, and 19859.3, the Department of Personnel Administration may provide for vacation, sick leave, annual leave, and bereavement leave benefits, including the lump-sum payment of any amount of accumulated leave, with respect to each state officer and employee who either is excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service.

19849.14. Effective July 1, 1987, there is hereby established in the State Treasury the Nonrepresented State Employee Long-Term Disability Insurance Fund for the purpose of funding nonrepresented state employee long-term disability insurance benefits. Premiums derived from contributions by the employer or employee shall be credited to the fund. Income of whatever nature, earned on the Nonrepresented State Employee Long-Term Disability Insurance Fund during any fiscal year, shall be credited to the fund. Moneys in this fund are continuously appropriated without regard to fiscal year, notwithstanding Section 13340 of the Government Code. The fund shall be used by the Department of Personnel Administration to pay long-term disability claims and administrative costs.

19849.15. (a) Notwithstanding Section 22777, the state employer shall, upon the death of an employee while in state service, continue to pay employer contributions for health, dental, and vision benefits for a period not to exceed 120 days beginning in the month of the employee's death. The surviving spouse or other eligible family member shall be advised of all rights and obligations during this period regarding the continuation of health and dental benefits as an annuitant by the California Public Employees' Retirement System. The surviving spouse or other eligible family member shall also be notified by the department during this period regarding COBRA rights for the continuation of vision benefits.

(b) This section shall apply to state employees in state bargaining units that have agreed to this section in a memorandum of understanding, state employees excluded from the definition of "state employee" in subdivision (c) of Section 3513, and officers or employees of the executive branch of state government who are not members of the civil service.

19849.16. Notwithstanding Section 18000, the Department of Personnel Administration may provide by rule for the accumulation and use of paid leave, including a lump-sum payment for accumulated leave, with respect to nonelected members of state boards and commissions whose annual salaries are fixed by law. Any rules adopted pursuant to this section shall provide for the reduction of the salary fixed by law of those nonelected members of state boards and commissions when their absences exceed their paid leave. The Department of Personnel Administration shall not provide paid leave benefits greater than the maximum benefits provided the employees designated as managerial by the Department of Personnel Administration. Rules adopted pursuant to this section shall take effect after July 1, 1991.

Article 5. Uniform and Equipment Allowances

19850. As used in this article:

(a) "Uniform" means outer garments, excluding shoes, which are required to be worn exclusively while carrying out the duties and responsibilities of the position and which are different from the design or fashion of the general population. This definition includes items that serve to identify the person, agency, functions performed, rank, or time in service.

(b) "Work clothes" means attire that is worn over, or in place of, regular clothing and is necessary to protect the employee's clothing from damage or stains which would be present in the normal performance of his or her duties, for example, aprons, lab smocks, shop coats, or coveralls; or is necessary for the required sanitary conditions, for example, agriculture inspectors, surgery personnel, or food service.

(c) "Safety equipment" means equipment or attire worn over, in place of, or in addition to, regular clothing, which is necessary to protect the employees' health and welfare, for example, helmets, goggles, safety harnesses, and fireman "turnout gear."

(d) "Police protective equipment" means equipment or attire worn by law enforcement personnel for the purpose of protecting themselves or the public from overt actions of others or to assist in the carrying out of related duties, for example, handgun, baton, billy, handcuffs, flashlight, whistle, leather belt, holster and cases or attachments.

(e) "State employees" means employees of the state and its agencies, but does not include employees of the University of California or the California State University.

Except as provided in Section 19850.7, if the provisions of this article are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19850.1. (a) State employees shall be responsible for the purchase of uniforms required as a condition of employment. The state shall provide for an annual uniform allowance to state employees for the replacement of uniforms worn on a full-time basis, and an annual uniform allowance to state employees for the replacement of uniforms worn on a part-time basis, in amounts agreed upon in a memorandum of understanding reached pursuant to Section 3517.5.

(b) Notwithstanding the provisions of subdivision (a), the state shall provide any employee, who is either excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, an annual uniform allowance for the replacement of uniforms worn on a full-time basis, and an annual uniform allowance for the replacement of uniforms worn on a part-time basis, in amounts determined by the department.

19850.2. Each state employee, including employees having probationary status, employed in a position which is permanent and full time, or employed in a position which is less than full time for the equivalent of one year, shall receive the allowance for uniforms provided for in Section 19850.1, if:

(a) The uniform is clearly necessary for ready visual identification by the public for law enforcement, public safety, or other closely related purposes; and

(b) The employee is required by his or her appointing power to wear the uniform for the regular performance of his or her duties; and

(c) The uniform is authorized for wear only in an official capacity.

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

19850.3. To implement the provisions of Sections 19850.1 and 19850.2, the department shall:

(a) Establish a procedure to determine what articles are to be included in calculating the amount of the uniform allowance.

(b) Determine the average annual replacement cost for each type of uniform based on required standards and taking into consideration normal uniform life. The uniform allowance for employees provided by subdivision (a) of Section 19850.1 shall be the average annual replacement cost as agreed upon in a memorandum of understanding reached pursuant to Section 3517.5. The uniform allowance for employees provided by subdivision (c) of Section 19850.1 shall be the average annual replacement cost as determined by the department.

(c) Annually review uniform allowances and adjust them when necessary.

(d) Determine procedure for and frequency of payment.

(e) Determine when new employees become eligible.

(f) Determine the need for changes in uniforms based on requests from appointing powers.

(g) Determine what degree of need for identification is necessary to support a uniform requirement.

(h) Establish procedures and make determinations as required.

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

19850.4. Subject to the availability of funds appropriated specifically for that purpose, each state employee shall be furnished work clothes if:

(a) The work clothes are required for purposes of sanitation or cleanliness; and

(b) The work clothes are required by the appointing power; and

(c) The work clothes are of a standard size instead of a measured size.

Work clothes provided pursuant to this section will be maintained and owned by the state. Items lost or damaged due to the negligence of the employee, shall be replaced by the employee at his or her expense.

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

19850.5. (a) The state shall furnish the initial issuance of all safety equipment and police protective equipment required by the employing state agency. All safety equipment and police protective equipment provided pursuant to this section shall remain the property of the state. Items lost or damaged due to the negligence of the employee, shall be replaced by the employee at his or her expense.

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

19850.6. The state department in which an employee is employed may pay the cost of replacing personal tools or other equipment required in the employee's work when stolen from the jobsite without fault of the employee. The department shall adopt rules setting forth the criteria under which payment may be made, including the method of payment, determination of cost, and conditions which constitute absence of fault by the employee.

19850.7. In addition to other equipment furnished to peace officers within the Department of Corrections and the California Youth Authority, the department and the California Youth Authority, in accordance with the terms of a memorandum of understanding reached pursuant to Section 3517.5, shall

provide protective vests for peace officers within the department and the California Youth Authority. The protective vests shall be manufactured to specifications as agreed to by the state employer and the employee representative after consultation with appropriate state agencies. The protective vests shall cover the entire torso of a peace officer and shall be designed so that they are capable of protecting an officer against a knife attack.

CHAPTER 2.5. DAYS AND HOURS OF WORK

Article 1. Workweek

19851. (a) It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of state employees eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies. It is the policy of the state to avoid the necessity for overtime work whenever possible. This policy does not restrict the extension of regular working-hour schedules on an overtime basis in those activities and agencies where it is necessary to carry on the state business properly during a manpower shortage.

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

19852. When the Governor determines that the best interests of the state would be served thereby, the Governor may require that the 40-hour workweek established as the state policy in Section 19851 shall be worked in four days in any state agency or part thereof.

19853. (a) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: January 1, the third Monday in January, February 12, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the day after Thanksgiving, December 25, the day chosen by an employee pursuant to Section 19854, and every day appointed by the Governor of this state for a public fast, thanksgiving, or holiday.

If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11th falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed.

Any employee who may be required to work on any of the holidays included in this subdivision, and who does work on any of these holidays, shall be entitled to be paid compensation or given compensating time off for that work in accordance with their classification's assigned workweek group. For the purpose of computing the number of hours worked, time when an employee is excused from work because of holidays, sick leave, vacation, annual leave, or compensating time off, shall be considered as time worked by the employee.

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

(c) Any employee, who is either excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, shall be entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) January 1, the third Monday in January, February 12, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, Thanksgiving Day, the day after Thanksgiving, December 25, and any personal holiday chosen pursuant to Section 19854. The department head or designee may require an employee to provide five working days' advance notice before a personal holiday is taken, and may deny use subject to operational needs.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.

(3) When a holiday, other than a personal holiday or November 11, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, only accrue an additional eight

hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classification's assigned workweek group.

(6) Less than full-time employees shall receive holidays in accordance with Department of Personnel Administration rules.

(d) (1) Any employee, as defined in subdivision (c) of Section 3513, may elect to receive eight hours of holiday credit for March 31, known as "Cesar Chavez Day," or for the fourth Friday in September, known as "Native American Day," in lieu of receiving eight hours of personal holiday credit in accordance with Section 19854.

(2) It is not the intent of the Legislature, by the amendments to this subdivision that add this paragraph, to increase the personal holiday credit that an employee receives pursuant to Section 19854.

19853.1. (a) Notwithstanding Section 19853, this section shall apply to state employees in State Bargaining Unit 5 or 16.

(b) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, the day after Thanksgiving, December 25, and every day appointed by the Governor of this state for a public fast, Thanksgiving, or holiday.

If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11 falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed.

Any employee who may be required to work on any of the holidays included in this section and who does work on any of these holidays shall be entitled to be paid compensation or given compensating time off for that work in accordance with his or her classification's assigned workweek group.

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

(d) Any employee who either is excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, is entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, Thanksgiving Day, the day after Thanksgiving, December 25.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.

(3) When a holiday, other than a personal holiday, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, accrue only an additional eight hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classification's assigned workweek group.

(6) Persons employed on less than a full-time basis shall receive holidays in accordance with the Department of Personnel Administration rules.

(e) Any employee, as defined in subdivision (c) of Section 3513, may elect to use eight hours of vacation, annual leave, or compensating time off consistent with departmental operational needs and collective bargaining agreements for March 31, known as "Cesar Chavez Day."

(f) Any employee, as defined in subdivision (c) of Section 3513, may elect to use eight hours of vacation, annual leave, or compensating time off consistent with departmental operational needs and collective bargaining agreements for the fourth Friday in September, known as "Native American Day."

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(g) This section shall become effective only when the Department of Personnel Administration notifies the Legislature that the language contained in this section has been agreed to by all the parties, and the necessary statutes are amended to reflect this change for employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1).

19854. (a) Every employee, upon completion of six months of his or her initial probationary period in state service, shall be entitled to one personal holiday per fiscal year. The personal holiday shall be credited to each full-time employee on the first day of July. No employee shall lose a personal holiday credit because of the change from calendar to fiscal year crediting. The department head or designee may require the employee to provide five working days' advance notice before a personal holiday is taken, and may deny use subject to operational needs. The department may provide by rule for the granting of this holiday for employees.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act. (c) This section does not apply to state employees in State Bargaining Unit 5 or 16.

(d) Subdivision (c) shall become effective only when the Department of Personnel Administration notifies the Legislature that the language contained in that subdivision has been agreed to by all the parties, and the necessary statutes are amended to reflect this change for employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1).

19855. Any state employee who was laid off from the Department of Employment on the 31st day of December 1941 and thereafter entered the employ of the United States Employment Service and who returned to state service prior to November 16, 1946 and any person who entered the employ of the United States Employment Service after December 31, 1941 and who, prior to November 16, 1946, entered the state service in the Department of Employment may have the department determine the extent, if any, to which such employee shall be entitled to have credited to him in the state civil service, seniority credit, sick leave and accumulated vacation because of service in the United States Employment Service. The department shall limit such determination to the time any such employee was actually employed in the United States Employment Service, including time spent in war service in another federal department if such employee was transferred from the United States Employment Service to another federal department for war service and such employee subsequently entered the employ of the Department of Employment prior to November 16, 1946, and such seniority credits and accumulated sick leave and accumulated vacation shall not exceed that to which each employee would be entitled if he had been continuously employed by the State of California.

The foregoing provisions shall likewise apply to former employees of the Department of Employment who although otherwise entitled to such determinations entered recognized military service from federal employment and were reemployed by the Department of Employment within six months after their release from the military service and within six months from the termination of the state military emergency as proclaimed by the Governor. Such time spent in the military service shall be construed as time spent on military leave from the state civil service.

Article 2. Vacation

19856. (a) The department shall provide by rule for the regulation and accumulation of vacations for civil service employees and may provide for vacations for such employees who are employed less than full time. The department shall prescribe the methods by which employees leaving the employment of one state agency and entering the employment of another state agency may be compensated for, transfer, or otherwise receive proper credit for their accumulated vacation privileges.

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

19856.1. (a) It shall be within the discretion of the department to define the effect of an absence from the payroll of 10 working days or less in any calendar month upon credit for vacation.

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

19857. (a) The appointing power of any officer or employee not a member of the civil service may promulgate regulations governing vacations for these officers or employees. In the absence of these regulations, the rules of the department relating to the regulation and methods of accumulation of vacation for civil service employees shall govern.

(b) Notwithstanding subdivision (a), no paid leave including, but not limited to, vacation, annual leave, and sick leave shall be accrued by state officers in the following positions:

- (1) Executive Director of the California Housing Finance Agency.
- (2) Director of the Office of Administrative Law.
- (3) Director of Emergency Medical Services Authority.
- (4) Director of the Stephen P. Teale Data Center.
- (5) Executive Director of the Office of Criminal Justice Planning.
- (6) Director of the California Conservation Corps.
- (7) Director of the Arts Council.

The department may adopt regulations for the application of this provision to similar positions established in the future.

19858.1. (a) Except as provided in subdivision (c), following completion of six months of continuous service, for each completed calendar month of service, except as provided in Section 19858.2, each state officer and employee who is employed full time shall receive credit for vacation with pay in accordance with the following schedule:

1 month to 3 years	5/6 day per month
37 months to 10 years	1 1/4 days per month
121 months to 15 years	1 5/12 days per month
181 months to 24 years	1 7/12 days per month
289 months and over	1 2/3 days per month

The computation of credit for the month of January 1964, and each month thereafter, shall be based upon the schedule set forth in this subdivision, except that the rate of vacation credit allowed shall not be reduced for any officer or employee employed prior to January 1, 1964. The time when vacation shall be taken shall be determined by the appointing power of the officer or employee.

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

(c) Following completion of six months of continuous service, for each completed calendar month of service, except as provided in Section 19858.2, each state officer and employee who is employed full time and is either excluded from the definition of state employee in subdivision (c) of Section 3513, or is a non-elected officer or employee of the executive branch of government who is not a member of the civil service, shall receive credit for vacation in accordance with the following schedule:

1 month to 3 years	7/8 day per month
37 months to 10 years	1 3/8 days per month
121 months to 15 years	1 5/8 days per month
181 months to 20 years	1 3/4 days per month
241 months to 25 years	1 7/8 days per month
301 months and over	2 days per month

The time when vacation shall be taken shall be determined by the appointing power of the officer or employee.

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19858.2. The department may provide by rule for the regulation and accumulation of vacation credits on an hourly basis to conform to the frequency of the pay period for all or certain designated employees.

For those employees whose vacation credits are accrued on an hourly basis pursuant to this section, the rate of accrual shall be in substantial proportion to the schedule provided in Section 19858.1.

Article 2.5. Annual Leave

19858.3. This article shall apply to all of the following:

(a) Employees designated managerial by the Department of Personnel Administration in accordance with subdivision (e) of Section 3513 and Section 18801.1.

(b) Nonelected officers of the executive branch of government exempt from civil service designated by the department as eligible to receive managerial benefits.

(c) A State Traffic Sergeant in the California Highway Patrol.

(d) Commencing January 1, 1989, employees in a state bargaining unit for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to be subject to this article and has been approved by the Legislature pursuant to law.

19858.4. In lieu of the sick leave and vacation provisions of Sections 19858.1 and 19859, eligible employees, as defined by subdivisions (a), (b), and (c) of Section 19858.3, may make an irrevocable election to participate in an annual leave program. Each employee who has elected to participate in the annual leave program and who is employed full time shall receive credit for annual leave with pay in accordance with the following schedule:

1 month to 3 years	11 hours per month
37 months to 10 years	15 hours per month
121 months to 15 years	17 hours per month
181 months to 20 years	18 hours per month
241 months to 25 years	19 hours per month
301 months and over	20 hours per month

Part-time and hourly employees shall accrue proportional annual leave credits based on the schedule in this section. The time when annual leave shall be taken shall be determined by the appointing power of the officer or employee. Employees shall have use of any accrued sick leave they have accrued at the time they elect the annual leave program under the same conditions as other employees not participating in the program.

The department shall provide by rule for the regulation and accumulation of annual leave, the effect of an absence from the payroll of 10 work days or less in any calendar month upon credit for annual leave, methods by which employees leaving the employment of one state agency and entering the employment of another state agency may be compensated for, transfer, or otherwise receive proper credit for, their accumulated annual leave, and other provisions necessary for the administration of this section.

19858.5. In lieu of sick leave and vacation provisions of Sections 19858.1 and 19859, eligible employees, as defined by subdivision (d) of Section 19858.3, may participate in an annual leave program subject to the conditions of Section 19858.6. Each employee who participates in the annual leave program and who is employed full time shall receive credit for annual leave with pay in accordance with the following schedule:

1 month to 3 years	11 hours per month
37 months to 10 years	14 hours per month
121 months to 15 years	16 hours per month
181 months to 20 years	17 hours per month
241 months and over	18 hours per month

Part-time and hourly employees shall accrue proportional annual leave credits based on the schedule in this section. The time when annual leave shall be taken shall be determined by the appointing power of the officer or employee. Employees shall have use of any accrued sick leave they

have accrued at the time they elect the annual leave program under the same conditions as other employees not participating in the program.

The department shall provide by rule for the regulation and accumulation of annual leave, the effect of an absence from the payroll of 10 work days or less in any calendar month upon credit for annual leave, methods by which employees leaving the employment of one state agency and entering the employment of another state agency may be compensated for, transfer, or otherwise receive proper credit for, their accumulated annual leave, and other provisions necessary for the administration of this section.

19858.7. Notwithstanding Section 19839, upon applying for retirement, a person entitled to a lump-sum payment for any unused or accumulated annual leave may elect to take all or any portion of that annual leave rather than accept the lump-sum payment on or prior to the effective date of retirement.

Article 3. Sick Leave

19859. (a) Following completion of one month of continuous service, except as otherwise provided in Section 19863.1, each state officer and employee who is employed full time shall be allowed one day of credit for sick leave with pay. Thereafter, for each additional calendar month of service, except as provided in Section 19861, one day of credit for sick leave with pay shall be allowed. Each state officer or employee is entitled to this leave with pay, on the submission of satisfactory proof of the necessity for sick leave as provided by rule of the department. For purposes of computing sick leave, each employee shall be considered to work not more than five days each week. The department shall provide by rule for the regulation and method of accumulation of sick leave for civil service employees, and may provide sick leave for those who work less than full time. Subject to department rule sick leave may be granted to employees for the purpose of physical examinations.

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

19859.3. (a) Any permanent employee who is either excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, shall be granted bereavement leave with pay for the death of a person related by blood, adoption, or marriage, or any person residing in the immediate household of the employee at the time of death. The employee shall give advance notice to the employee's immediate supervisor and shall provide substantiation to support the request.

(b) For any one occurrence, the bereavement leave shall not exceed three days. However, if the death occurred outside this state, a request for two additional days of bereavement leave shall be granted, at the option of the employee, as either without pay or as a charge against any accrued sick leave credit.

(c) If additional bereavement leave is necessary, the employee may use accrued vacation, compensating time off, or take an authorized leave without pay, subject to the approval of the appointing power.

19860. The department may provide by rule for the regulation and accumulation of sick leave credits on an hourly basis for all or certain designated employees. The rate of accrual shall be substantially proportionate to eight hours per month, with amounts earned credited at the end of each pay period.

19861. (a) It shall be within the discretion of the department to define the effect of an absence from the payroll of 10 working days or less in any calendar month upon credit for sick leave.

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

19862. (a) Sick leave may be accumulated, and no additional sick leave with pay beyond that accumulated shall be granted, except as provided in Section 19863.1.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be

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controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19862.1. (a) The department may provide by rule for crediting to the sick leave account of an employee formerly employed in a state position exempt from civil service any unused sick leave standing to the employee's credit at the time of separation from such a position; provided, the employee entered other state service not more than six months after separating from his exempt employment; and provided, such credit may not exceed the amount it would have been if such employment had been in the state civil service.

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

19863. (a) Except as provided in Article 4 (commencing with Section 19869), a state officer or employee who is or may be entitled to temporary disability indemnity under Division 4 (commencing with Section 3200) or Division 4.5 (commencing with Section 6100) of the Labor Code shall receive any accumulated sick leave, or accumulated compensable overtime, or accumulated vacation, or accumulated annual leave for the absence. The appointing power shall decrease the charge of sick leave, or compensable overtime, or vacation, or annual leave in the amount of temporary disability payment received so that the state officer or employee shall not receive payment in excess of full salary or wage.

If a state officer or employee does not wish to use his or her accumulated sick leave, or accumulated compensable overtime, or accumulated vacation, or accumulated annual leave, he or she shall notify his or her appointing power within 15 days after the injury is reported to the appointing power. After the 15 days his or her accumulations shall be used until the date he or she notifies the appointing power in writing that he or she no longer wishes to use the accumulations. When computing sick leave, or overtime, or vacation, or annual leave under this section the employee shall be given credit for any holidays that occur during the period of absence hereunder.

He or she is nevertheless entitled to medical, surgical, and hospital treatment as provided in the Labor Code. When his or her accumulated sick leave, or overtime, or vacation, or annual leave, or all, are exhausted, he or she is still entitled to receive disability indemnity.

(b) State officers and employees who are covered by Article 4 (commencing with Section 19869) shall be entitled to industrial and temporary disability benefits only as provided by that article.

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

19863.1. (a) Notwithstanding any other provision of the law to the contrary, a state officer or employee who is entitled to temporary disability indemnity under Division 4 (commencing with Section 3200) or Division 4.5 (commencing with Section 6100) of the Labor Code as a result of an industrial accident occurring during a period of employment for which he or she is not earning sick leave credit shall have sick leave credit of one day for each completed month of service during the time that he or she is not earning sick leave credit. If the employee is disabled because of an industrial injury arising out of said employment during said period the employee may elect to draw sick leave credit during the period of disability, the credit not to exceed one day of sick leave for each completed month of service that he or she is not earning sick leave credit and not to exceed a total of six days.

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

19864. (a) The department may provide by rule for sick leave or annual leave without pay for those employees who have used all sick leave or annual leave with pay to which they are entitled.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, or Chapter 12 (commencing with Section 3560) of

Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19865. No state employee who is an inmate or member of any state institution and who is employed on a full or part time basis shall be entitled to receive pay for any absence attributable to sickness.

19865.1. When an employee uses sick leave, vacation, annual leave, or any combination of these, because of an injury compensable under the Labor Code, and the state is reimbursed by a third person for its damages by reason of such use, there shall be granted, for credit to the employee's sick leave or vacation or annual leave account, sick leave or vacation or annual leave equivalent to the amount so used or proportionately if reimbursement is only in part. If the state does not collect from the third person the full amount of the compensation paid and other damages for which it is liable to the employee and if the amount collected is not itemized so that there may be ascertained the amount collected in reimbursement for the sick leave or vacation or annual leave used, the sick leave or vacation or annual leave to be credited shall be in the same ratio to the sick leave or vacation or annual leave used as the total amount collected bears to the total amount of the state's damages. "Sick leave" or "vacation" or "annual leave" as used in this rule includes sick leave or vacation or annual leave credit used to augment disability indemnity.

19866. (a) The appointing power of any officer or employee not a member of the civil service shall administer the sick leave authorized by this part for the officers or employees in accordance with the rules of the department.

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

19867. (a) The Legislature finds and declares that the interests of the state would be served by the Department of Personnel Administration meeting and conferring with the exclusive representatives of the various bargaining units to discuss the establishment of long-term care benefits for state employees.

(b) If long-term care insurance plans are not available to state employees within one year following the date on which any long-term care plan is first offered for enrollment by the Board of Administration of the Public Employees' Retirement System, state employees may enroll in the long-term care insurance plans offered by the Board of Administration of the Public Employees' Retirement System.

(c) If subdivision (b) is in conflict with a memorandum of understanding entered into pursuant to Section 3517.5, the memorandum of understanding shall prevail and control without further legislative action, except that if the prevailing provisions of a memorandum of understanding require the expenditure of funds, these provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) The Department of Personnel Administration may enter into contracts with the Board of Administration of the Public Employees' Retirement System to allow active eligible state employees, their spouses and their parents to enroll in any long-term care insurance plans offered by the Board of Administration.

(e) The full cost of enrollment, including the cost of administration, in any long-term care insurance plan or in a health care service plan contract covering long-term care offered by the Department of Personnel Administration shall be paid by the enrollees.

19868. Any employee of the State Department of Health performing functions which, prior to July 1, 1973, were vested in the Department of Mental Hygiene and who is transferred on and after July 1, 1972, to county or local mental health programs as a result of state hospital closures or scheduled state hospital closures or as a result of a county undertaking the performance of mental health functions previously performed by the State Department of Health shall be entitled while employed in a county or local mental health program, to use for a period of five years following transfer any unused sick leave balance the employee had accumulated while in state employment and had remaining to his or her credit at the time of termination of state employment. Such sick leave shall be held in a reserve account by the state to be used, if necessary, only at such time as the transferred employee's sick leave benefits accrued as a county employee become exhausted. When county sick leave benefits are exhausted such employee shall be entitled to utilize his or her state reserve account sick leave, until exhausted. The state reserve account for sick leave shall be administered according to the sick leave provisions of Division 5

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(commencing with Section 18000) of Title 2 and corresponding department rules. Upon reemployment with the state, a transferred employee's sick leave credits will be reduced by the number of hours used from the state reserve during his or her employment in the county or local mental health program. The cost of preserving and paying for the state reserve account sick leave shall be totally funded by the state.

19868.1. For the purposes of Sections 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19865.1, 19866, and 19868, sick leave benefits provided to state employees pursuant to the state sick leave system shall be construed to mean compensation paid to employees on approved leaves of absence on account of sickness.

19868.2. Notwithstanding any other provision of law to the contrary, whenever sick leave benefits are provided to state employees pursuant to the state sick leave system, such benefits shall be construed to mean compensation paid to employees on approved leaves of absence on account of sickness.

19868.3. Any employee of the State Department of Developmental Services performing functions which, prior to September 9, 1981, were vested in the State Department of Developmental Services, and who is transferred on or after September 9, 1981, to a regional center for the developmentally disabled as a result of a regional center undertaking the performance of developmental service functions previously performed by the department, shall be entitled, while employed in a regional center, to use for a period of five years following transfer any unused sick leave balance the employee had accumulated while in state employment and had remaining to his or her credit at the time of termination of state employment. This sick leave shall be held in a reserve account by the state to be used, if necessary, only at such time as the transferred employee's sick leave benefits accrued as a regional center employee become exhausted. When regional center sick leave benefits are exhausted, the employee shall be entitled to utilize his or her state reserve account sick leave until exhausted. The state reserve account for sick leave shall be administered according to the sick leave provisions of this article and corresponding department rules. Upon reemployment with the state, a transferred employee's sick leave credits shall be reduced by the number of hours used from the state reserve during his or her employment in the regional center. The cost of preserving and paying for the state reserve account sick leave shall be totally funded by the state.

Article 4. Industrial Disability Leave

19869. This article applies to state officers and employees who are members of the Public Employees' Retirement System or the State Teachers' Retirement System in compensated employment on and after the effective date of this article and to state officers and employees, whether or not members of such systems, who are employees of the Legislature and are not members of the civil service.

This article does not apply to state officers and employees who are included in the provisions of Article 6 (commencing with Section 4800) of Chapter 2 of Part 2 of Division 4 of the Labor Code.

19870. As used in this article:

(a) "Industrial disability leave" means temporary disability as defined in Divisions 4 (commencing with Section 3201) and 4.5 (commencing with Section 6100) of the Labor Code and includes any period in which the disability is permanent and stationary and the disabled employee is undergoing vocational rehabilitation.

(b) "Full pay" means the gross base salary earnable by the employee and subject to retirement contribution if he had not vacated his position.

(c) "Nonrepresented employee" means an employee who is excluded from, or not otherwise subject to, collective bargaining, and who is employed in a class which has been designated by the director as being entitled to the enhanced benefits provided by Section 19871.2 due to the relationship of that class to represented classes who are entitled to the enhanced benefits pursuant to a memorandum of understanding.

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

19871. (a) Except as provided in Section 19871.2, when a state officer or employee is temporarily disabled by illness or injury arising out of and in the course of state employment, he or she shall become entitled, regardless of his or her period of service, to receive industrial disability leave and payments for a period not exceeding 52 weeks within two years from the first day of disability.

These payments shall be in the amount of the employees full pay less withholding based on his or her exemptions in effect on the date of his or her disability for federal income taxes, state income taxes, and social security taxes not to exceed 22 working days of disability subject to Section 19875. Thereafter, the payment shall be two-thirds of full pay. Payments will be additionally adjusted to offset disability benefits, excluding those disability benefits payable from the State Teachers' Retirement System, the employee may receive from other employer-subsidized programs, except that no adjustment will be made for benefits to which the employee's family is entitled up to a maximum of three-quarters of full pay. Contributions to the Public Employees' Retirement System or the State Teachers' Retirement System shall be deducted in the amount based on full pay. Discretionary deductions of the employee including those for coverage under a state health benefits plan in which the employee is enrolled shall continue to be deducted unless canceled by the employee. State employer contribution to the Public Employees' Retirement System and state employer normal retirement contributions to the State Teachers' Retirement System shall be made on the basis of full pay and the state contribution pursuant to Sections 22825.1 and 22826 because of the employee's enrollment in a health benefits plan shall continue.

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

19871.1. (a) A state officer or employee who is receiving industrial disability leave benefits, shall continue to receive all employee benefits which he or she would have received had he or she not incurred disability.

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

19871.2. When a nonrepresented employee is temporarily disabled for more than 22 consecutive working days by an injury or type of injury designated by the director as qualifying an employee for the benefits of this section, he or she shall receive an enhanced industrial disability leave benefit. The enhanced benefit shall be equivalent to the injured employee's net take home salary on the date of occurrence of injury. Eligibility and benefits may continue for no longer than one year after the date of occurrence of the injury. For the purposes of this section, "net salary" means the amount of salary received after federal income tax, state income tax, and the employee's retirement contribution has been deducted from the employee's gross salary.

The final decision as to whether an employee is eligible for, or continues to be eligible for, enhanced benefits shall rest with the appointing authority or his or her designee. The appointing authority may periodically review the employee's condition by any means necessary to determine an employee's continued eligibility for enhanced benefits.

19872. (a) The disabled employee shall not receive temporary disability indemnity or sick leave or annual leave with pay for any period for which he or she receives industrial disability leave.

(b) Notwithstanding subdivision (a), an employee may elect to supplement industrial disability leave payments from the 23rd workday with accrued leave credits including annual leave, vacation, sick leave, or compensatory time off (CTO) in an amount necessary to approximate the employee's full net pay. Partial supplementation shall be allowed, but fractions of less than one hour shall not be permitted. Once the level of supplementation is selected, it may be decreased to accommodate a declining leave balance but it may not be increased. Reductions to supplementation amounts shall be made on a prospective basis only. The department may adopt rules for the administration and enforcement of this subdivision.

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

19873. (a) Division 4.7 (commencing with Section 6200) of the Labor Code shall not apply to employees to which this article applies.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be

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controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19874. (a) If the employee continues to be temporarily disabled after termination of benefits under this article, he or she shall be entitled to the benefits provided by Divisions 4 (commencing with Section 3201) and 4.5 (commencing with Section 6100) of the Labor Code and to payments under Section 19863.

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

19875. (a) If an illness or injury causes temporary disability, the employee shall be placed on industrial disability leave on the fourth calendar day after the injured employee leaves work as a result of the illness or injury, except that in case the injury causes disability of more than 14 days or necessitates hospitalization, the employee shall be placed on industrial disability leave from the first day he or she leaves work or is hospitalized as a result of the injury.

(b) Notwithstanding subdivision (a), in the case of state civil service employees and employees of the Regents of the University of California, the disability payment shall be made from the first day the injured employee leaves work as a result of the injury, if the injury is the result of a criminal act of violence against the employee.

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

19876. (a) Payments shall be contingent on the complete medical certification of the illness or injury including diagnosis and any prognosis of recovery. Further, payments shall be contingent on the employee's agreement to cooperate and participate in a reasonable and appropriate vocational rehabilitation plan when furnished by the state subject to appropriate medical approval as determined by the department.

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

19876.5. State employees in state bargaining units 1, 4, 15, 18, and 20 who suffer a job-related injury or illness and become eligible for vocational rehabilitation under Section 139.5 of the Labor Code on or after January 1, 1993, shall first be subject to an evaluation to determine what type of state employment can be performed. The evaluation shall include vocational rehabilitation when deemed appropriate, based on a medical evaluation and previous experience. Disability benefits shall be contingent on the employee's agreement to cooperate and participate in a reasonable and appropriate vocational rehabilitation plan necessary to continue state employment.

19877. The department shall adopt any rules and regulations necessary for the administration of this article.

The appointing power of any officer or employee not a member of the civil service shall adopt any rules and regulations necessary for the administration of this article for such officers or employees.

19877.1. (a) The provisions of this article shall be effective upon the adoption of applicable rules and regulations, but not later than January 1, 1975.

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

Article 5. Nonindustrial Disability Leave

19878. As used in this article:

(a) "Employee" means any of the following:

(1) A permanent or probationary full-time state officer or employee, regardless of period of service, who is a member of the Public Employees' Retirement System or the State Teachers' Retirement System in compensated employment on and after October 1, 1976. Commencing January 1, 1979, it also means a full-time state officer or employee, whether or not a member of such systems, who is an employee of the Legislature and is not a member of the civil service.

(2) A permanent or probationary part-time or intermittent state officer or employee, with at least the equivalent of six monthly compensated pay periods of service in the 18 months of pay periods immediately preceding the pay period in which the disability begins, who is a member of the Public Employees' Retirement System or the State Teachers' Retirement System, in compensated employment on or after January 1, 1979, or a part-time or intermittent employee of the Legislature, whether or not a member of the Public Employees' Retirement System, in compensated employment on or after January 1, 1984.

(b) "Full pay" means the gross base salary earnable by the employee, and subject to retirement contribution on the date of the commencement of his or her disability.

(c) "Disability" or "disabled" includes mental or physical illness and mental or physical injury, including any illness or injury resulting from pregnancy, childbirth, or related medical condition. An employee is deemed disabled on any day in which, because of his or her physical, mental, or medical condition, he or she is unable to perform his or her regular or customary work.

(d) "Disability benefit period", with respect to any individual, means the continuous period of disability beginning with the first day with respect to which the individual files a valid claim for nonindustrial disability benefits. For the purposes of this article, 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.

(e) "Appeals board" means the California Unemployment Insurance Appeals Board.

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

19879. (a) When an employee is disabled, whether temporarily or permanently, the employee shall become entitled, subject to the provisions of this article, to receive nonindustrial disability benefits in an amount equal to one-half full pay, but not to exceed one hundred twenty-five dollars (\$125) per week, payable monthly for a period not exceeding 26 weeks for any one disability benefit period, but in no case shall benefits be payable for any day on and after death or separation or retirement from state service.

(b) For purposes of this section, the "full pay" of a part-time or intermittent employee only shall be established in accordance with the following:

(1) Where the part-time employment is regularly scheduled and is a fixed proportion of the established workweek, the payments shall be determined on the basis of that proportionate part of the monthly rate.

(2) Where employment is intermittent or irregular, the payments shall be determined on the basis of the proportionate part of a monthly rate established by the total hours actually employed in the 18 monthly pay periods immediately preceding the pay period in which the disability begins as compared to the regular rate for a full-time employee in the same group or class.

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

(d) This section shall also apply to employees who are either excluded from the definition of a state employee in subdivision (c) of Section 3513, or are nonelected officers or employees of the executive branch of government who are not members of the civil service, except that the maximum weekly payment shall be established by regulation adopted by the department.

19879.1. (a) For the purpose of this section, an eligible employee is an employee defined by Section 19858.3.

(b) Notwithstanding any other provision of this article, an eligible employee who has enrolled in the annual leave program under Article 2.5 (commencing with Section 19858.3) shall receive nonindustrial disability leave benefits in accordance with all of the following:

(1) A disabled employee shall be eligible to receive Nonindustrial Disability Insurance benefits in an amount equal to one-half full pay, 50 percent of gross salary.

(2) A disabled employee shall be eligible to receive Nonindustrial Disability Insurance benefits without being required to use any sick leave accrued under Article 3 (commencing with Section 19859) or annual leave accrued under Article 2.5 (commencing with Section 19858.3) unless the employee, in his or her sole discretion, elects to use sick leave or annual leave in lieu of receiving benefits.

(3) If the employee elects to use sick leave or annual leave credits prior to receiving Nonindustrial Disability Insurance payments, he or she shall not be required to exhaust the accrued leave balance.

(4) Following the start of Nonindustrial Disability Insurance payments, an employee may at any time change from the receipt of Nonindustrial Disability Insurance payments to the utilization of sick leave or annual leave. Once such an election is made, the employee may not recommence receiving Nonindustrial Disability Insurance payments until that leave is exhausted.

(5) In accordance with the state's return to work policy, an employee who is eligible to receive Nonindustrial Disability Insurance benefits and who is medically certified as unable to return to his or her full-time work during the period of his or her disability, may, with medical approval, and at the discretion of his or her appointing power, work up to the number of hours, in hour increments, which when combined with his or her Nonindustrial Disability Insurance benefits will result in a salary which does not exceed 100 percent of his or her regular full pay.

(6) If an employee refuses to return to work in a position offered by the employer under the state's Injured State Worker Assistance Program, Nonindustrial Disability Insurance benefits shall be terminated effective as of the date of the offer.

(7) An employee may with his or her department head's approval elect to supplement Nonindustrial Disability Insurance benefits with sick or annual leave up to 100 percent of his or her regular full pay.

19880. A disabled employee is eligible to receive nonindustrial disability benefits under this article equal to one-seventh of his or her weekly benefit amount specified in Section 19879 for each full day during which he or she is unemployed due to a disability only if the Director of Employment Development finds that:

(a) He or she has made a claim for disability benefits as required by authorized regulations.

(b) He or she has been disabled for a waiting period of seven consecutive days during each disability benefit period, with respect to which waiting period no benefits under this article are payable, except for confinement in a hospital or nursing home for at least one day.

(c) He or she has exhausted all the leave to which he or she was entitled under Article 3 (commencing with Section 19859). A person who elects to use vacation credits or sick leave credits prior to receiving nonindustrial disability benefits is not required to exhaust the leave, as described in this subdivision, if he or she is a permanent employee who meets any of the following criteria:

(1) Is excluded from the definition of state employee contained in subdivision (c) of Section 3513.

(2) Is a nonelected officer or employee of the executive branch of state government and is not a member of the civil service.

(d) Except for an individual described in Section 2709 of the Unemployment Insurance Code, he or she has submitted to any reasonable examinations as the Director of Employment Development may require for the purpose of determining his or her mental or physical disability.

(e) He or she has filed a certificate described in Section 2708 or 2709 of the Unemployment Insurance Code.

(f) Except as otherwise provided, he or she meets, in all other respects, the eligibility requirements imposed on individuals by Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code for receipt of unemployment compensation disability benefits.

In case of any conflict between Part 2 (commencing with Section 2601) of the Unemployment Insurance Code and this chapter, this chapter shall prevail.

If the provisions of this section conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the

expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19880.1. (a) A disabled employee shall be eligible to receive nonindustrial disability benefits under this article without being required to use any vacation leave accrued under Article 2 (commencing with Section 19856) of this part, unless the employee, in his or her sole discretion, elects to use such vacation leave in lieu of receiving benefits under this article, in which case benefits under this article shall not commence until the employee has exhausted such accrued vacation leave.

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

19881. (a) An employee is not eligible for disability benefits under this article with respect to any period for which the Director of Employment Development finds that he or she has received or is entitled to receive unemployment compensation benefits under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code or under an unemployment compensation act of any other state or of the federal government.

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

19882. (a) Except as provided in this section, an individual is not eligible for disability benefits under this article for any day of unemployment and disability for which he or she has received, or is entitled to receive "other benefits" in the form of cash payments.

(b) "Other benefits" as used in this section means:

(1) Temporary disability indemnity under a workers' compensation law of this state or of any other state or of the federal government or under Article 4 (commencing with Section 19869) of this part.

(2) Temporary disability benefits under any employer's liability law of this state or of any other state or of the federal government.

(c) If such "other benefits" are less than the amount an individual would otherwise receive as disability benefits under this article, he or she shall be entitled to receive, for such day, if otherwise eligible, disability benefits under this article reduced by the amount of such "other benefits." If after receipt of, or determination of entitlement to receive, such other benefits, a claim for disability benefits under this article is filed during the same continuous period of disability, because of a disability for which a claim for such other benefits was made, the maximum amount of disability benefits payable under this article during the disability benefit period thereby established shall be reduced by the amount of such "other benefits" which the claimant has received or has been determined to be entitled to receive.

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

19883. (a) Discretionary deductions of the employee, including those for coverage under a state health benefits plan in which the employee is enrolled, shall be deducted from the disability benefits under this article unless canceled by the employee. If an employee deduction under a state health benefits plan is continued, the state employer contribution shall also continue.

An employee shall not receive service credit under the Public Employees' Retirement System or the State Teachers' Retirement System during the period of receipt of disability benefits under this article and contributions to the Public Employees' Retirement System or the State Teachers' Retirement System shall not be deducted. State employer contributions shall also not be made to either system during such period.

An employee shall not accrue sick leave or vacation credit or service credit for any other purpose during the period of receipt of disability benefits under this article, except, when provided by a rule or regulation adopted by the department, an employee receiving nonindustrial disability insurance benefits pursuant to Section 19879.1 may accrue these credits to the extent that annual leave or sick leave credits are used to supplement nonindustrial disability insurance benefits.

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

19884. (a) Filing, determination, and payment of disability benefit claims under this article shall be made in accordance with the procedures prescribed by Article 4 (commencing with Section 2701) of Chapter 2 of Part 2 of Division 1 of the Unemployment Insurance Code.

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

19885. The department shall adopt any rules and regulations necessary for the administration of this article.

The appointing power of any officer or employee of the Legislature, who is not a member of the civil service, shall adopt any rules and regulations necessary for the administration of this article for such officers or employees.

Article 6. Firefighters

19886. As used in this article the term "firefighter of the state" or "firefighter" shall be deemed to include a member of a fire department or fire service of the state, including the University of California, whether these members are volunteer, partly paid, or fully paid, excepting those whose principal duties are clerical, such as stenographers, telephone operators and other workers not engaged in fire-suppression or rescue operations or the protection or preservation of life or property. These firefighters shall be regularly employed, or in the case of a volunteer, shall be regularly enrolled as such.

19886.1. Whenever any firefighter of the state dies or is disabled from performing his or her duties as a firefighter by reason of his or her proceeding to or engaging in a fire-suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, including the jurisdiction in which he or she is employed, but is not at the time acting under the immediate direction of his or her employer, he or she, or his or her dependents, as the case may be, shall be accorded by his or her employer all of the same benefits of the workers' compensation law, which he, she, or they would have received had that firefighter been acting under the immediate direction of his or her employer. Any injury, disability or death incurred under the circumstances described in this section shall be deemed to have arisen out of and been sustained in the course of employment for purposes of workers' compensation and all other benefits.

19886.2. Nothing in this article shall be deemed to:

(a) Require the extension of any benefits to a firefighter who at the time of his or her injury, death, or disability is acting for compensation from one other than the state.

(b) Require the extension of any benefits to a firefighter employed by the state where by state departmental regulation, whether now in force or hereafter enacted or promulgated, the activity giving rise to the injury, disability, or death, is expressly prohibited.

Article 7. The Clerical Pool

19887. (a) The department may establish a clerical pool in any locality where the demand for temporary clerical help warrants it. Such pool shall be established by the employment of sufficient clerical employees by the office to fill the needs of various appointing powers for temporary help from time to time.

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

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19887.1. (a) Upon a request from any appointing power for temporary help which can be filled from those employed by the department in the clerical pool, the department shall assign such persons as are needed.

Upon such assignment the appointing power may be charged pursuant to Section 11253 or Sections 11256 to 11263, inclusive, for the cost of the services.

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

19887.2. (a) For all purposes of this part such persons are employees of the department and not of the appointing power to which they are assigned. The department shall make all necessary rules to carry out the purposes of this article. The procedure authorized by this article for procuring temporary clerical help is an alternative to other procedures for that purpose authorized by this part or department rule and nothing in this article, nor in the rules made hereunder, prevents an appointing power from following such other procedures.

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

Article 8. Emergency

19888. Service under emergency appointment shall be credited for purposes of vacation, sick leave, annual leave, and salary adjustment only if and as provided by department rule.

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

19888.1. The appointing power, to prevent the stoppage of public business when an actual emergency arises, or because the work will be of limited duration, not to exceed 60 working days, may make emergency appointments without utilizing persons on employment lists and, if necessary, without regard to existing classes. The method of selection and the qualification standards for an emergency employee shall be determined by the appointing power. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of an individual under emergency appointments shall be restricted by the State Personnel Board by rule so as to prevent the use of emergency appointments to circumvent employment lists.

Service under emergency appointment shall be credited for purposes of layoff only if and as provided by department rule.

Article 9. Career Executive Assignment

19889. It is the purpose of this article to encourage the development and effective use in the civil service of well-qualified and carefully selected executives. In order to carry out this purpose the State Personnel Board shall establish by rule a system of merit personnel administration specifically suited to the selection and placement of executive personnel. The department shall be responsible for salary administration, position classification, and for the motivation and training of executive personnel. For the purpose of administering this system there is established herewith a category of civil service appointment called "career executive assignments." The department shall designate positions of a high administrative and policy influencing character for inclusion in or removal from this category subject to review by the State Personnel Board, except that the department shall not so designate a position in which there is an incumbent already appointed under the provisions of this part governing employees other than career executives.

19889.2. The provisions of this part governing the selection, classification, and tenure of employees in the regular civil service shall not apply in administering executive personnel through a merit system

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utilizing "career executive assignments" unless the application is provided by State Personnel Board rule. The provisions of this part relating to punitive actions shall apply to employees serving in career executive assignments, except that termination of a career executive assignment as provided for in Section 19889.3 is not a punitive action. With reference to termination of career executive assignments, the State Personnel Board rules shall, as a minimum, afford an employee a right of appeal to the State Personnel Board for restoration of his or her assignment when he or she alleges that his or her termination was for reasons prohibited in Chapter 10 (commencing with Section 19680) of Part 2.

19889.3. Eligibility for appointment to positions in the career executive assignment category shall be established as a result of competitive examination of persons with permanent status in the civil service who meet such minimum qualifications as the State Personnel Board may determine are requisite to the performance of high administrative and policy influencing functions. No person employed in a career executive assignment shall be deemed to acquire as a result of such service any rights to or status in positions governed by the provisions of this part relating to the civil service other than the category of career executive assignment, except as provided by State Personnel Board rule. The State Personnel Board shall provide by rule that an employee shall, if he or she so desires, at the termination of his or her appointment to a career executive assignment, be reinstated to a civil service position that is (a) not a career executive assignment and (b) that is at least at the same salary level as the last position that he or she held as a permanent or probationary employee. If the employee has completed a minimum of five years of state service, he or she may return to a position that is (a) at substantially the same salary level as the last position in which he or she had permanent or probationary status or (b) at a salary level that is at least two steps lower than that of the career executive position from which the employee is being terminated. For the purpose of this section "employee" means a permanent employee, or an employee serving under another appointment who previously had permanent status and who, since such permanent status, has had no break in the continuity of his or her state service.

19889.4. Notwithstanding any other provision of law, any person who, prior to March 30, 1977, was reinstated to a career executive assignment position, or appointed to an exempt position, after a break in service, and who held such position on May 31, 1977, shall upon termination of such career executive assignment or exempt position have the right to return to the last regular civil service position in which the person had permanent status prior to such a break in service.

Article 9.5. Benefits

19889.6. The department, in accordance with Section 125 of the Internal Revenue Code shall authorize any member of Bargaining Unit 6 to elect to receive one or more employee benefits, in lieu of a portion of the compensation provided to the employee.

Any such benefit shall satisfy the requirements of Section 125 of the Internal Revenue Code. The exclusive representative of Bargaining Unit 6 shall choose an administrator to administer the benefit. The administrator shall have a demonstrable record of administering employee benefit programs which are in compliance with Section 125 of the Internal Revenue Code and with the federal Employee Retirement Income Security Act of 1974. All costs of administering this benefit shall be paid by members of Bargaining Unit Six.

19889.7. The department may charge an administrative fee to employees participating in a group legal services plan established through regulation for excluded employees and memoranda of understanding reached pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) for represented employees.

Article 10. Activities

19990. A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.

Each appointing power shall determine, subject to approval of the department, those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all of the following:

(a) Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.

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- (b) Using state time, facilities, equipment, or supplies for private gain or advantage.
- (c) Using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.
- (d) Receiving or accepting money or any other consideration from anyone other than the state for the performance of his or her duties as a state officer or employee.
- (e) Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.
- (f) Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.
- (g) Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.

The department shall adopt rules governing the application of this section. The rules shall include provision for notice to employees prior to the determination of proscribed activities and for appeal by employees from such a determination and from its application to an employee. Until the department adopts rules governing the application of this section, as amended in the 1985 -86 Regular Session of the Legislature, existing procedures shall remain in full force and effect.

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

19990.5. Notwithstanding Sections 18000 and 19990, state officers and employees may render services during their office hours, or hours of work for the state, if compensation for these services may be made pursuant to Section 18000.5.

Article 11. Absences

19991. (a) Upon giving two days' notice to his or her immediate superior, any state employee otherwise qualified shall be permitted to take any state civil service examination during working hours, if the examination is scheduled during such period, or to attend a meeting of the department or State Personnel Board at which is scheduled for consideration a matter specifically affecting his or her position concerning which he or she has requested to be heard, without deduction of pay or other penalty. Employment interviews for eligibles on employment lists shall be considered part of the examination process under this part.

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

19991.1. (a) Subject to department rule an appointing power may grant a leave of absence without pay, to any employee under his or her jurisdiction for a period not exceeding one year. An extension to an unpaid leave of absence may be granted by the appointing power upon the prior approval of the department. A leave so granted assures to the employee the right to return under the provisions of Section 19143.

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

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19991.2. (a) The appointing power may grant to an employee under his or her jurisdiction who has permanent civil service status or a probationer who immediately preceding his or her appointment to his or her position held permanent civil service status in the same or some other class a leave of absence without pay for not to exceed two years for service in a technical cooperation program as a temporary employee of another governmental agency, a nonprofit organization, or a recognized college or university upon the request of the agency. Within three months of termination of this service, the employee shall be reinstated to his or her former position pursuant to Section 19143.

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

19991.3. (a) Leaves of absence granted for jury duty may be with or without pay.

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

19991.4. Any period of time during which an employee is required to be absent from his or her position by reason of an injury or disease for which he or she is entitled to receive temporary disability compensation under the provisions of Division 4 or 4.5 of the Labor Code is not a break in his or her continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, annual leave, or seniority.

If an employee is unable to return to work at the time or during the period he or she is entitled to permanent disability compensation under Division 4 or 4.5 of the Labor Code, he or she shall be paid any sick leave balance, vacation balance, annual leave balance, or accumulated compensable overtime. The payment shall be computed by projecting the accumulated time on a calendar basis as though the employee was taking time off. If during the period of projection the employee is able to return to work, he or she shall be returned to his or her former position as defined in Section 18522.

If a permanent or probationary employee is still not able to return to his or her former position and continues to receive permanent disability compensation, the appointing power shall take at least one of the actions described in Section 19253.5 or grant a leave of absence for the period during which the employee receives permanent disability compensation or is being retrained through rehabilitation.

If the employee is demoted or transferred pursuant to Section 19253.5 he or she shall receive the maximum of the salary range provided that salary is not greater than the salary he or she received on the date his or her accumulated time was exhausted.

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

19991.5. (a) The department may permit the Commandant of the Veterans' Home of California to authorize members of the medical staff and medical technicians, to include X-ray, clinical laboratory, and dental laboratory technicians, of the Veterans' Home of California to attend medical and scientific meetings and medical and refresher courses, for a period not to exceed 30 days in any one calendar year, in recognized schools or colleges held in California. Any member so attending such schooling shall bear his or her own expenses but there shall be no interruption of normal salary or pay.

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

19991.6. (a) Except as provided in subdivision (c), an appointing power shall grant a leave of absence without pay for the purposes of pregnancy, childbirth or the recovery therefrom for a period as determined by the employee not exceeding one year to any permanent female employee under the jurisdiction of the appointing power. When the employee has notified the appointing power as to the

period of the leave of absence required, any change in the length of the period of leave shall not be effective unless approved by the appointing power.

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

(c) For an employee who is excluded from the definition of state employee in subdivision (c) of Section 3513, the following shall apply:

(1) An appointing power shall grant a female permanent employee's request for a leave of absence without pay for the purposes of pregnancy, childbirth, or the recovery therefrom, for a period not to exceed one year. When the employee has notified the appointing power as to the period of the leave of absence required, any change in the length of the period of leave shall not be effective unless approved by the appointing power.

(2) An appointing power shall grant the request of a male spouse who is a permanent employee or a male parent who is a permanent employee for a leave of absence without pay for a period not to exceed one year to care for his newborn child. When the employee has notified the appointing power as to the period of the leave of absence required, any change in the length of the period of leave shall not be effective unless approved by the appointing power.

(3) An appointing power may grant a permanent employee's request for a leave of absence without pay for the adoption of a child for a period not to exceed one year. The employee shall provide substantiation to support the employee's request for adoption leave. When the employee has notified the appointing power as to the period of the leave of absence required, any change in the length of the period of leave shall not be effective unless approved by the appointing power.

19991.7. (a) For civil service employees employed in positions requiring teaching certification qualifications appointing powers may grant educational leave to attend study sessions at accredited schools, colleges or programs recommended by a trade advisory council for the purpose of receiving further instruction in pedagogy, vocational education, mental health or related fields. Such educational leave shall be granted with pay and credited to the employee by accumulation at the rate of 11/4 days for each month worked. Employees on educational leave shall maintain their merit salary adjustment date and shall receive credit for vacation, sick leave, educational leave or any other benefit which would normally accrue during such work period. The time when educational leave shall be taken shall be determined by the appointing power of the employee. The department shall provide by rule for the regulation, accumulation and transfer of educational leave and shall prescribe the methods by which employees leaving the employment of one state agency and entering the employment of another state agency may receive proper credit for their accumulated educational leave privileges.

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

19991.8. During any state military emergency and subject to department rule, an appointing power may grant a leave of absence without pay to a permanent or probationary employee under his or her jurisdiction to:

(a) Engage in civilian warwork pursuant to mandatory order of the agency of the United States or of the state having authority to make that order.

(b) Assume active duty in the United States merchant marine.

(c) Assume other duty rather than active duty to fulfill a military obligation pursuant to mandatory order of the agency of the United States or of the state having authority to make such order.

(d) Assume active full-time duty for the American Red Cross. Such a leave shall not exceed the period authorized in the order.

Such a leave assures to the employee reinstatement pursuant to Section 19143.

19991.9. Any permanent state civil service employee or an employee serving under another appointment who previously had permanent status and who, since that permanent status, has had no break in the continuity of his or her state service, who served in the armed forces, and who is eligible because of that service for education or training under applicable state or federal law shall upon application to his or her appointing power be granted an educational leave of absence without pay for the

period during which he or she receives that education or training and for three months thereafter. In order for that leave to be granted or to remain in effect, the employee must enroll for a minimum of 10 credit hours of post-high-school grade or the equivalent amount of work on high school level each school year. No such leave shall remain in effect for longer than four years and three months of school attendance. A leave so granted assures to the employee a right of return pursuant to Section 19143.

19991.10. Where there exists no statutory authority to grant a paid leave of absence, no paid leave of absence shall exceed five working days without prior approval of the department. This section shall not be construed to provide or create any classification of paid leave of absence.

For the purposes of this section, a paid leave of absence does not include a paid leave authorized by Sections 1230.1, 3518.5, 3522.7, 19252, 19253.5, 19775, 19775.1, 19848, 19853, 19854, 19858.1, 19859, 19863, 19871, 19886.1, 19991.3, and 19991.7 of this code or Section 4800 of the Labor Code.

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

CHAPTER 3. PERFORMANCE REPORTS

19992. (a) After consultation with appointing powers and other supervising officials the department shall assist and encourage state agencies to establish standards of performance for each class of position and shall provide a system of performance ratings. Such standards shall insofar as practicable be established on the basis of the quantity and quality of work which the average person thoroughly trained and industriously engaged can turn out in a day.

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

19992.1. (a) The system of performance reports shall be designed to permit as accurately and fairly as is reasonably possible, the evaluation by his or her appointing power of each employee's performance of his or her duties. The evaluation shall be set forth in a performance report, the form for which shall be prescribed or approved by the department. The department may investigate administration of the system and enforce adherence to appropriate standards.

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

19992.2. (a) Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule.

The rules shall provide that employees be shown the performance report covering their own service and are privileged to discuss it with the appointing power before it is filed. The extent to which such ratings or performance reports shall be open to inspection by the public shall be prescribed by department rule.

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

19992.3. (a) Performance reports shall be considered, in the manner prescribed by department rule, in determining salary increases and decreases, the order of layoffs, and the advisability of transfers, demotions, and dismissals.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of

understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19992.4. (a) The department may establish rules under which records of unsatisfactory service may lead to reduction in class and compensation, and providing for the manner in which persons falling below the standards of efficiency fixed by its rules may be removed from their positions by the department, substantially as in the case of removals for cause. The department shall report such unsatisfactory records to the appointing power.

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

CHAPTER 3.5. PERFORMANCE REPORTS FOR MANAGERIAL EMPLOYEES

19992.8. After consultation with appointing powers and other supervising officials the department shall assist and encourage state agencies to establish standards of performance for managerial employees and may provide training in developing performance appraisal systems. Such standards shall be mutually developed by managerial employees and their appointing powers. These standards shall be based on individual and organizational requirements established, in writing, for the reporting period. The reporting period shall be no more than 12 months from the date of the last report following the end of the employee's probationary period.

19992.9. The system of performance appraisal reports shall be designed by managerial employees and their appointing powers to permit the evaluation by appointing powers of each employee's work performance as accurately and fairly as is reasonably possible. The evaluation shall be set forth in a written performance appraisal report, the form for which shall be approved by the department. The department may investigate administration of the system and enforce adherence to appropriate standards.

19992.10. Appointing powers shall prepare performance appraisal reports and keep them on file as prescribed by department rule.

The rules shall provide that managerial employees be shown the performance appraisal report covering their own service and are privileged to discuss it and sign it with the appointing power before it is filed. The extent to which the reports shall be open to inspection by the public shall be prescribed by department rule.

19992.11. Performance reports shall be considered, in the manner prescribed by department rule, for purposes of employee development, in determining salary increases and decreases, the order of layoffs, the advisability of transfers, demotions, and dismissals. Performance reports shall be considered in promotional examinations in the manner prescribed by State Personnel Board rule. On or before July 1, 1988, performance appraisal reports for managers shall be used to award merit salary increases on a flexible basis so that each such employee may receive up to a 10-percent increase provided that this does not increase the employee's salary beyond the highest step of the range for the class of position occupied by the employee. The total amount awarded by the appointing power for merit salary increases through this practice shall not exceed the amount which otherwise would be available under current methods.

19992.12. The department may establish rules under which records of unsatisfactory service may lead to reduction in class and compensation, and providing for the manner in which persons falling below the standards of efficiency may be removed from their positions by the appointing powers, substantially as in the case of removals for cause.

19992.13. The department shall establish a procedure whereby a managerial employee may appeal his or her performance appraisal report to the appointing power. At a minimum, these procedures shall permit appeals on the basis that the performance appraisal report was used to abuse, harass, or discriminate against the employee.

19992.14. Each state agency shall establish a system of performance appraisal reports which shall form the basis for awarding merit salary increases to managers on or before July 1, 1988. Any agency which fails to establish such a system on or before July 1, 1988, shall forfeit 50 percent of merit salary funds otherwise available for eligible managerial employees during that fiscal year. Any agency which fails to establish such a system on or before July 1, 1989, shall forfeit 75 percent of merit salary funds

otherwise available for eligible managerial employees during that fiscal year. Any agency which fails to establish such a system on or before July 1, 1990, shall forfeit all merit salary funds otherwise available for eligible managerial employees during that fiscal year, and during each subsequent fiscal year during which such a system is not established.

CHAPTER 4. DEFERRED COMPENSATION

19993. (a) The department may establish for officers and employees a deferred compensation plan. Participation in such plan shall be by written agreement between such officers and employees and the state which shall provide for deferral of a portion of such officers' or employees' wages. Officers and employees may authorize deductions to be made from their wages for the purpose of participating in such deferred compensation plan.

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

19993.05. (a) This section shall be known and may be cited as the Freedom of Financial Choice Act.

(b) The department shall permit officers and employees participating in a tax-deferred savings plan established by the department under this chapter or Chapter 9 (commencing with Section 19999.5) to invest in a range of investment options including, but not limited to, stocks and bonds listed with and traded on the New York Stock Exchange, the American Stock Exchange, or the National Market System sponsored by the National Association of Securities Dealers (NASD) and the National Association of Securities Dealers Automated Quotations system (NASDAQ), or any successor association, annuities, and shares or units of open-ended registered investment companies. However, the department may limit the number of banks, mutual fund companies, investment brokers, life insurance companies, and other financial institutions offering investments under the plans as necessary to ensure the continued qualification of the plan under the Internal Revenue Code and the cost-efficient and timely administration of the plans.

(c) No fiduciary of a plan established by the department under this chapter or Chapter 9 (commencing with Section 19999.5) shall be liable for any loss that results from any individual investment choice made by a participant of a plan, except that this subdivision shall not extend to any malfeasance or misfeasance by any fiduciary of a plan established by the department under this chapter or Chapter 9 (commencing with Section 19999.5).

(d) Notwithstanding any other provision of law, the Deferred Compensation Plan Fund (0915) is exempt from the application of Article 2 (commencing with Section 11270) of Chapter 3 of Part 3 of Division 3.

(e) Notwithstanding Sections 7550.5 and 9795, the director shall prepare and submit to the Legislature on or before April 15, 1999, a report on the department's plan to implement this section.

CHAPTER 4.5. STATE-OWNED MOTOR VEHICLES

19993.1. State-owned motor vehicles shall be used only in the conduct of state business. State business shall include the operation of state-owned vehicles as commute vehicles in a carpool or vanpool program authorized by a state agency, provided that a daily, weekly, or monthly fee is charged that is adequate to reimburse the state for the cost of providing such vehicles for such purpose. No state officer or employee shall use, or permit the use of, any state-owned motor vehicle other than in the conduct of state business.

19993.2. The department shall prescribe rules and regulations which:

(a) Define the use of state-owned motor vehicles which constitutes use in the conduct of state business and distinguish such use from misappropriation for private use;

(b) Prescribe the procedure for determining and collecting from the employee responsible for the misuse the actual costs to the state attributable to misuse of state-owned motor vehicles and the disposition of such collections;

(c) Prescribe the records and reports to be kept and made by state agencies relating to the use of state-owned motor vehicles to the end that misuse may be discovered with a minimum of recordkeeping;

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(d) Govern the storage of state-owned motor vehicles in those locations where storage space, under the jurisdiction of the Department of General Services, is available for storage of state-owned motor vehicles;

(e) Prescribe the procedures to be used in the operation of state-owned vehicles as commute vehicles in a state carpool or vanpool program.

19993.3. The provisions of this chapter shall not apply to the incumbents of elective state offices.

19993.4. The Department of General Services shall administer the provisions of this chapter and the rules and regulations adopted pursuant thereto; provided, however, that it shall be the duty of the head or governing body of each state agency to carry out and enforce this chapter and said rules and regulations within such state agency.

19993.5. Any violation by a state officer or employee of this chapter or the rules and regulations adopted pursuant thereto shall constitute misuse of state property under Section 19572 of this code.

19993.6. The department, upon its own initiative, may suspend from state service without pay for a period not exceeding 30 days, any officer or employee of this state exempt from civil service for violating this chapter or the rules and regulations adopted pursuant thereto.

Such suspension is valid only if a written notice is served on the officer or employee prior to the effective date of the suspension and a copy of such notice filed with the State Personnel Board not later than 15 days after the effective date of such suspension. The notice shall be served upon the employee either personally or by mail and shall include: (a) a statement of the nature of the punitive action; (b) the effective date of the action; (c) a statement of the causes therefor; and (d) a statement advising the employee of his or her right to answer the notice and the time within which that must be done if the answer is to constitute an appeal.

The officer or employee against whom such punitive action is taken shall have the right to file an answer with the State Personnel Board as provided in Section 19575, and request a hearing. If the answer requests a hearing the State Personnel Board shall conduct a hearing. The board shall consider carefully the evidence submitted in the hearing and render a decision sustaining, modifying or revoking such suspension.

19993.7. The provisions of this chapter shall not apply to members of the California Highway Patrol nor to a peace officer defined in subdivision (a) of Section 830.36 of the Penal Code.

19993.8. Section 89008 of the Education Code, and not this chapter, shall govern use of state-owned motor vehicles by employees of the California State University.

CHAPTER 5. TRANSFERS

19994. (a) (1) When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency. Granting of seniority credit under this section is subject to review by the State Personnel Board pursuant to Section 19816.2.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency.

(b) The department shall limit that determination to the time any transferred employees were employed in the specific function or a function substantially similar while in the former agency and the seniority credits and accumulated sick leave and accumulated vacation shall not exceed that to which each employee would be entitled if he or she had been continuously employed by the State of California. This section is applicable to any function heretofore transferred to the state, whether by state action or otherwise, as well as to any future transfers of a function to the state, whether by state action or otherwise.

19994.1. (a) An appointing power may transfer any employee under his or her jurisdiction: (1) to another position in the same class; or (2) from one location to another whether in the same position, or in a different position as specified above in (1) or in Section 19050.5.

(b) (1) When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer. Unless the employee waives this right, the appointing power shall provide to the employee 60 days prior to the effective date of the transfer a written notice setting forth in clear and concise language the reasons why the employee is being transferred.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer unless the transfer is in lieu of layoff, in which case the notice shall be 30 days in advance of the effective date of the transfer. Unless the employee waives this right, the written notice shall set forth in clear and concise language the reasons why the employee is being transferred.

(c) If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

19994.2. (a) (1) When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to be selected for transfer. These methods may include seniority and other considerations.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to be selected for transfer. These methods may include seniority and other considerations, including special skills.

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

19994.3. (a) If a transfer is protested to the department by an employee as made for the purpose of harassing or disciplining the employee, the appointing power may require the employee to transfer pending approval or disapproval of the transfer by the department.

If the department disapproves the transfer, the employee shall be returned to his or her former position, shall be paid the regular travel allowance for the period of time he or she was away from his or her original headquarters, and his or her moving costs both from and back to the original headquarters shall be paid in accordance with the department rules.

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

19994.4. (a) At the time it is filed with the department a copy of the protest shall be filed with the appointing power. Such a protest shall be made within 30 days of the time the employee is notified of the transfer.

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

CHAPTER 5.5. ACCIDENT REDUCTION INCENTIVE PROGRAM

19994.20. (a) The department may meet and confer with representatives of the recognized employee organization for any appropriate unit pursuant to the Ralph C. Dills Act on the implementation of an accident prevention incentive award program covering employees in that unit. The purpose of the program shall be to reduce, through the cooperative effort of labor and management, the number of on-the-job injuries to, and the use of sick leave by, state employees.

(b) The department may fix the cost or pro rata share, or in its discretion an amount it considers equivalent to the cost or pro rata share, and collect from each state agency in advance or upon any other basis it may determine, the cost of administering the workers' compensation insurance program.

(c) The department shall report to the Legislature annually on the success of any programs implemented pursuant to this section.

CHAPTER 5.6. SMOKING IN STATE BUILDINGS

19994.30. As used in this chapter:

(a) "Building" means a building owned and occupied, or leased and occupied, by the state.

(b) (1) "Inside a state-owned and state-occupied building" includes all indoor areas of the building, except for covered parking lots, residential space, and state prison yard areas.

(2) "Inside a state-leased and state-occupied building" includes any indoor space leased to the state, except for covered parking lots, and residential space.

(3) "Residential space" means a private living area, but it does not include common areas such as lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of a multicomplex building such as a dormitory.

(c) "State" or "state agency" means a state agency, as defined pursuant to Section 11000, the Legislature, the Supreme Court and the courts of appeal, and each California Community College campus and each campus of the California State University and the University of California.

(d) "State employee" means an employee of a state agency.

19994.31. Commencing January 1, 1994, no state employee or member of the public shall smoke any tobacco product inside a state-owned and state-occupied or a state-leased and state-occupied building, or, in an outdoor area within five feet of a main exit or entrance to such a building, or in a passenger vehicle, as defined by Section 465 of the Vehicle Code, owned by the state.

19994.32. Except as specified in Section 19994.31, a state employee or other person may smoke in any outdoor area of a state-owned and state-occupied or a state-leased and state-occupied building unless otherwise prohibited by state law and a sign describing the prohibition is posted by the state agency or other appropriate entity.

19994.33. (a) The State Department of Health Services may develop guidelines for the content and effective presentation of tobacco smoking control programs designed to assist an individual in either a self-help or group environment. The guidelines may be distributed to state agencies. The State Department of Health Services may provide a copy of the guidelines to any individual or group, upon request, and may charge a fee that shall not exceed the actual cost of producing a copy.

(b) State agencies may offer tobacco smoking control programs to their employees. A state agency may use existing employee training funds to pay for the presentation of tobacco smoking control programs offered to state employees at a state-owned or state-leased building during normal work hours.

(c) Not later than January 31, 1994, and thereafter upon initial employment, each state agency shall inform its employees about the smoking prohibition contained in Section 19994.31, areas where smoking is permitted, and the availability of tobacco smoking control programs.

(d) Enrollment in a tobacco smoking control program by any state employee shall be voluntary.

19994.34. Notwithstanding any other provision of law, an agency specified in Division 3 (commencing with Section 3001) of the Food and Agricultural Code may accommodate the smoking public where it is economically feasible, provided state employees are not required to work in enclosed areas where the probability of exposure to secondhand smoke exists and the nonsmoking public is provided with a smoke-free environment in all enclosed buildings.

19994.35. (a) No tobacco product advertising shall be allowed in any state-owned and state-occupied building excepting advertising contained in a program, leaflet, newspaper, magazine, or other written material lawfully sold, brought, or distributed within a state building.

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(b) "Advertise," for purposes of this section, means the display of any poster, sign, or other written or visual material that is intended to communicate commercial information or images to the public.

(c) "Tobacco product," for purposes of this section, means any product containing tobacco, the prepared leaves of plants of the nicotiana family, including, but not limited to, cigarettes, loose tobacco, cigars, snuff, chewing tobacco, or any other preparation of tobacco.

CHAPTER 6. TRAINING

19995. (a) The department shall devise plans for and cooperate with appointing powers and other supervising officials in the conduct of employee training programs so that the quality of service rendered by persons in the state civil service may be continually improved.

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

19995.1. For the purpose of meeting the needs of the state service for continuing employee educational development, the upgrading of employee skills, and improving productivity and quality service, the department may prescribe regulations and conditions for the administration of this chapter. The conditions prescribed by the department may include, but not be limited to, the requirements that the training shall be cost-effective, of value to the state, and relevant to the employee's career development in state service. The department may further prescribe the conditions under which an employee may be required to reimburse the state for the costs of out-service training in the event he or she fails to remain in state service for a reasonable time after receiving the training.

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

19995.2. (a) To such extent as practicable and within available resources for this purpose, the appointing power shall arrange for such counseling and training of employees as may be reasonably needed to prepare them for placement in other state civil service positions when their positions have been or are about to be changed substantially or eliminated by automation, technological changes, or other management-initiated changes and the department shall devise plans for and cooperate with appointing powers and other supervising officials in the administration of counseling, training, and placement programs for employees so affected.

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

19995.3. (a) The department and the Department of Rehabilitation shall jointly formulate procedures for the selection and orderly referral of disabled state employees who can be benefited by rehabilitation services and might be retrained for other appropriate positions within the state service. The Department of Rehabilitation shall cooperate in devising training programs for the disabled employees.

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

19995.35. Each state department shall report to the Department of Personnel Administration by no later than July 1, 1986, on its level of compliance with the Injured State Worker Assistance Program guidelines issued by the Department of Personnel Administration. The reports shall detail how the program has been implemented, whether or not and in what fashion return-to-work coordinators have fulfilled their responsibilities, whether or not Return to Work Councils have been formed, how they are composed, how often they have met, and whether or not the return-to-work coordinator has been informed on a timely basis of all vacant positions in the department. Each department shall report: the

number of employees disabled in the reporting period; the kind of disablement (job or nonjob); the number who were provided information and counseling in person by a vocational rehabilitation counselor or other appropriate specialist; the number of disabled employees provided with reasonable accommodations or special equipment or both; the number retrained for a new position and the number successfully returned to work at the same or some other position, either within the department or in some other state agency; the number who were eligible for and accepted disability retirement within the reporting period; the number eligible for temporary disability benefits (job or nonjob) who left employment and engaged in retraining and rehabilitation, if that information can be obtained.

Each department shall provide, if possible, and by mail if necessary, each employee engaged in a rehabilitation program or a retraining program, within the last 12 months with a copy of this section and the opportunity to comment on the level of effective retraining and rehabilitation provided by the department. Representative samples of disabled employee comment shall be included in the report.

The Department of Personnel Administration shall coordinate departmental responses to this section, to assess the relative success of the program on a department-by-department basis, and make recommendations to the Legislature by December 2, 1986, on how the state can more successfully return to productive work in state service individual state workers who suffer job and nonjob-related disabilities, avoiding the General Fund costs of disability retirement, and the human costs of wasted lives. The Department of Personnel Administration shall also recommend whether legislation giving a revised Injured State Worker Assistance Program statutory status is advisable.

19995.4. (a) The department shall devise plans for, and cooperate with appointing powers in the conduct of, supervisory employee training programs so that the quality of supervisory services rendered by persons in those positions may be continually improved.

(b) Each supervisory employee, upon the employee's initial appointment to a designated supervisory position, shall be provided a minimum of 80 hours of training, at least 40 hours of which shall be structured and be provided by a qualified instructor. The training shall consist of the role of the supervisor, techniques of supervision, planning, organizing, staffing and controlling, performance standards, performance appraisal, affirmative action, discipline, labor relations, and grievances. Every supervisor shall have access to a copy of each bargaining agreement covering the employees he or she supervises. The additional 40 hours of training may be provided on-the-job by a qualified higher level supervisor or manager.

(c) The entire 80 hours of training shall be completed within the term of the probationary period or within 12 months of appointment to a supervisory classification. The training shall be completed within the term of the probationary period unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during the probationary period due to the limited availability of training courses.

CHAPTER 6.5. THE GOVERNOR'S AWARDS

19995.5. The Governor may make each year awards which shall be known as the Governor's Awards to employees or groups of employees who distinguished themselves by outstanding service to the state during the preceding year.

19995.6. Employees shall be nominated for the award by the directors of the various state departments and agencies and the Governor shall select from the persons so nominated the persons to whom he or she shall make the award.

19995.7. The award shall consist of a suitable medal or trophy.

CHAPTER 7. SEPARATIONS FROM SERVICE

Article 1. General

19996. The tenure of every permanent employee holding a position is during good behavior. Any such employee may be temporarily separated from the state civil service through layoff, leave of absence, or suspension, permanently separated through resignation or removal for cause, or permanently or temporarily separated through retirement or terminated for medical reasons under the provisions of Section 19253.5.

19996.1. (a) Resignations from the state civil service are subject to department rules. A resignation, except as provided in this section, does not jeopardize any rights and privileges of the

employee except those pertaining to the position from which he or she resigns. A written resignation may expressly waive all or any rights or privileges provided for by this chapter, including but not limited to, accumulated vacation, and in such event the records of the department shall be made to conform therewith. No resignation shall be set aside on the ground that it was given or obtained pursuant to or by reason of mistake, fraud, duress, undue influence or that for any other reason it was not the free, voluntary and binding act of the person resigning, unless a petition to set it aside is filed with the department within 30 days after the last date upon which services to the state are rendered or the date the resignation is tendered to the appointing power, whichever is later. In the event a resignation is set aside pursuant to this section, the person resigning shall be reinstated to his or her former position and paid his or her salary for the period he or she was removed from state service as the result of such resignation. From any such salary due there shall be deducted compensation that the employee earned, or might reasonably have earned, during any period commencing more than six months after the initial date of resignation.

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

19996.2. (a) Absence without leave, whether voluntary or involuntary, for five consecutive working days is an automatic resignation from state service, as of the last date on which the employee worked.

A permanent or probationary employee may within 90 days of the effective date of such separation, file a written request with the department for reinstatement; provided, that if the appointing power has notified the employee of his or her automatic resignation, any request for reinstatement must be made in writing and filed within 15 days of the service of notice of separation. Service of notice shall be made as provided in Section 18575 and is complete on mailing. Reinstatement may be granted only if the employee makes a satisfactory explanation to the department as to the cause of his or her absence and his or her failure to obtain leave therefor, and the department finds that he or she is ready, able, and willing to resume the discharge of the duties of his or her position or, if not, that he or she has obtained the consent of his or her appointing power to a leave of absence to commence upon reinstatement.

An employee so reinstated shall not be paid salary for the period of his or her absence or separation or for any portion thereof.

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

Article 1.5. Excluded Employees Leave Program

19996.3. (a) Effective July 1, 1992, the department shall implement a personal leave program for state officers and employees excluded from, or otherwise not subject to, the Ralph C. Dills Act, contained in Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

(b) (1) The department shall implement the personal leave program through regulations adopted pursuant to Section 3539.5.

(2) Regulations adopted pursuant to paragraph (1) shall ensure that the program for employees subject to this section is generally equitable and is consistent with the personal leave program provided to employees covered by memoranda of understanding reached under Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

Article 1.6. Reduced Worktime Act

19996.19. (a) The Legislature finds and declares all of the following:

(1) Many individuals in our society possess great productive potential which goes unused because they cannot meet the requirements of a standard workweek.

(2) An increasing proportion of workers have family responsibilities which include the care of dependent elders and the rearing of children.

(3) There is a lack of adequate, affordable adult or childcare to accommodate the growing need for such services.

(4) The state is benefited by exploring and encouraging cost-saving supplements to latchkey programs, out-of-home child care services, and adult dependent care.

(5) Disabled employees or persons with special health needs may benefit from voluntary reduced worktime.

(6) Voluntary reduced worktime benefits both employers and employees, by increasing flexibility and decreasing absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations.

(7) Society is benefited by offering a needed alternative for those individuals who require or prefer shorter hours, despite the reduced income, thus increasing jobs available to reduce unemployment while retaining the skills of individuals who have training and experience.

(8) Employment opportunities are maximized by providing for voluntary reduced worktime options to a standard workweek.

(b) It is the intent of the Legislature in adopting this section to pursue all of the following objectives:

(1) To provide for maximum employment opportunities.

(2) To encourage the realization of individual potential.

(3) To increase the numbers and kinds of public and private sector voluntary reduced worktime options.

(4) To support the creation of a healthy balance between work and family needs, including the need for additional income.

(5) To encourage voluntary reduced worktime opportunities within the private as well as public sector.

(6) To develop policies and procedures which support the growth of voluntary reduced worktime positions.

(7) To promote job stability.

(8) To strengthen the family and promote domestic tranquility and to benefit the family and society by promoting a balance between work and home.

(9) To provide for alternative solutions to the growing need for adequate child care, care for dependent adults, and care for the disabled.

(c) Nothing in this section shall be construed as superseding Sections 19996.20 and 19996.21 which provide that the reduced worktime option shall be made available only to the extent feasible and as the department finds consistent with maximum employment opportunity.

19996.20. "Reduced worktime," as used in this article, means employment of less than 40 hours of work per week, and includes arrangements involving job sharing, four-, five-, or six-hour workdays, jobs which provide eight hours of employment or less for one, two, three, four or five days per week, and such other arrangements which the department finds consistent with maximum employment opportunity to employees desiring other than a standard worktime.

19996.21. (a) It is the policy of the state that to the extent feasible, reduced worktime be made available to employees who are unable, or who do not desire, to work standard working hours on a full-time basis. Further, it is the intent of the Legislature that nothing in this act shall be used to reduce the number of full-time equivalency positions authorized to any department.

(b) If the department determines that a reduction in the personnel of departments or agencies of state government equivalent to 1 percent or more of full-time equivalent jobs is contemplated in a single fiscal year, the director may conduct or may direct each affected department or agency to conduct a survey of either all permanent full-time employees or those permanent full-time employees most likely to be affected by the personnel reduction. The purpose of the survey shall be to determine the extent of the desire of employees to participate in voluntary reduced worktime.

The survey shall contain information clearly informing employees of potential worktime options, the effect reduced worktime would have on benefits, and the right to return to full-time work as specified in Section 19996.24.

19996.22. (a) Any employee who is being coerced, or who has been required, by the appointing power, a supervisor, or another employee, to involuntarily reduce his or her worktime contrary to the intent of this article, or who has been unreasonably denied the right to participate in this program, may file a grievance with the department.

(b) Any employee of the California State University system who is being coerced, or who has been required by the appointing power, a supervisor, or another employee, to involuntarily reduce his or her worktime contrary to the intent of this article, or who has been unreasonably denied the right to participate in this program, may file a grievance pursuant to the procedures established by the Trustees of the California State University.

(c) Nothing in this article shall impair the employment or employment rights or benefits of any employee.

(d) This article shall not apply to employees who are full-time state peace officers unless approved by the peace officers' appointing power.

19996.23. In counting the number of employees any state agency employs for purposes of any personnel ceiling, an employee employed on a reduced worktime basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours that an employee works each week.

19996.24. (a) Permanent employees who voluntarily reduce their worktime shall, upon request, be given first priority for returning to a full-time work schedule to the extent that such full-time work is available. Such permanent employees shall return to full-time employment at the request of the appointing authority pursuant to regulations adopted by the department which shall define the conditions under which such a request by the appointing authority is appropriate and provide a reasonable grace period for allowing an employee to make the necessary personal arrangements for returning to full-time employment.

(b) If a layoff becomes unavoidable, persons employed on a reduced worktime basis shall not routinely be subject to the layoff ahead of full-time employees. These employees shall be subject to the same seniority and other similar considerations as full-time employees in determining the order of layoffs.

19996.25. If the provisions of this article are in conflict with the provisions of a memorandum of understanding reached pursuant to Sections 3517.5 and 3572, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19996.26. All persons employed in reduced worktime positions pursuant to Section 19996.21, shall receive, on a pro rata basis, except for benefits provided under the Public Employees' Retirement Law and under the Public Employees' Medical and Hospital Care Act, all benefits customarily available to full-time employees of state agencies in similar classes or positions. With regard to benefits provided under the Public Employees' Retirement Law and under the Public Employees' Medical and Hospital Care Act, persons employed in reduced worktime positions shall receive such benefits as are provided by law for persons employed for less than full time.

19996.27. The department shall adopt appropriate rules and guidelines relating to reduced worktime implementation.

19996.28. The Trustees of the California State University shall adopt the appropriate rules and guidelines relating to the implementation of the reduced worktime program for the employees of the California State University system.

19996.29. This article shall be known and may be cited as the "Reduced Worktime Act."

Article 1.7. Reduced Worktime for Partial Service Retirement

19996.30. This article shall be known and may be cited as the "Partial Service Retirement Act."

19996.31. It is the intent of the Legislature in adopting this article to pursue the following objectives:

(a) To protect the fiscal soundness of the Public Employees' Retirement System.

(b) To increase the number and kinds of retirement options available to members of the system.

(c) To enhance the quality of service to the general public by retaining longer, on the average, the skill and expertise of our most experienced public servants.

(d) To reduce insofar as possible by this indirect means the social costs attributable to inappropriate or premature severance of connection with the labor market by retirees.

(e) To conduct and disseminate studies determining the extent to which the concepts embodied in this article are effective in achieving such objectives in hopes that, if successful, the program established under this article may be useful as a guide for extension of the concept to other retirement systems, public and private.

19996.32. Any state employee, or legislative employee, who is a state miscellaneous or industrial member working standard hours on a full-time basis, other than a university member, of the Public Employees' Retirement System and who is eligible to retire pursuant to Section 20953 may elect to participate in reduced worktime for partial service retirement pursuant to this article, provided that the participation may be modified only pursuant to Section 19996.37.

19996.33. "Reduced worktime for partial service retirement" means any arrangement of worktime agreeable to both the appointing authority and the employee which aggregates no less, on a monthly basis, than a 20 percent reduction nor more than a 60 percent reduction from what would in that classification be considered full-time employment, combined with the concurrent payment of proportionally reduced compensation and proportionally reduced retirement benefits. As used in this section, and Section 19996.37, "appointing authority" means, with respect to legislative employees, the Joint Rules Committee, the Joint Legislative Budget Committee, the Joint Legislative Audit Committee, the Senate Rules Committee, and the Assembly Rules Committee.

19996.34. It is the policy of the state that reduced worktime for partial service retirement shall be made available to state employees and legislative employees eligible pursuant to Section 19996.32 who do not desire to work standard working hours on a full-time basis. Further, it is the intent of the Legislature that nothing in this act shall be used to reduce the number of full-time equivalency positions authorized to any department.

19996.35. (a) Any employee who is being coerced, or who has been required, by the appointing power, a supervisor, or another employee, to involuntarily reduce his or her worktime for partial service retirement contrary to the intent of this article, or who has been unreasonably denied the right to participate in this program, may file a grievance in accordance with either the applicable memorandum of understanding or rules and regulations of the department.

(b) Nothing in this article shall impair the employment or employment rights or benefits of any employee.

19996.36. In counting the number of employees any state agency employs for purposes of any personnel ceiling, an employee employed on a reduced worktime basis for partial service retirement shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours that an employee works each week.

9996.37. (a) A permanent state employee or legislative employee who voluntarily reduces his or her worktime for partial service retirement pursuant to this article shall, upon request and subject to subdivision (b), be given priority for returning to a full-time work schedule to the extent that such full-time work is available; provided, that any employee who so voluntarily returns to full-time work shall be ineligible for five years thereafter to again participate pursuant to this article. The appointing authority may require a participating employee to return to full-time employment only if a state of emergency has been declared pursuant to Section 8558 which affects the area of the state in which the employee works.

(b) A state employee or a legislative employee who is participating pursuant to this article in reduced worktime for partial service retirement may: (1) elect only once in each fiscal year to further reduce his or her worktime; (2) elect only once in five years to increase his or her worktime to another less than full-time schedule.

19996.38. If the provisions of this article are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19996.39. All persons employed in reduced worktime positions for partial service retirement pursuant to this article, shall receive proportionally reduced compensation and, on a pro rata basis, except for benefits provided under the Public Employees' Medical and Hospital Care Act, the State Employees' Dental Care Act, and the California Dental Service program, all benefits customarily available to full-time employees of state agencies in similar classes or positions. With regard to benefits provided under the Public Employees' Medical and Hospital Care Act, persons employed in reduced worktime positions for partial service retirement shall receive the same benefits as are provided by law for employees under the same circumstances who are employed, full time. The department may, for purposes of administrative efficiency, treat the class of partially retired employees as fully employed with respect to health care benefits, provided that such administrative treatment does not impair the level of benefits to which the class would be entitled if treated administratively another way.

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19996.40. The department, in cooperation with the Public Employees' Retirement System, shall prepare and submit to the Legislature, for referral to the appropriate policy and fiscal committees of each house, a report by June 30 of the calendar year after this article becomes effective, and a follow-up report by June 30, of every even-numbered year thereafter. Such reports shall include, but not be limited to, the following:

- (a) The extent that reduced worktime programs for partial service retirement are in use.
- (b) The cost effectiveness of reduced worktime programs for partial service retirement.
- (c) The actuarial impact of reduced worktime programs for partial service retirement.
- (d) Recommendations on continuation of reduced worktime programs for partial service retirement and suggested statutory changes.

Article 2. Layoff and Demotion

19997. (a) Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule. All layoff provisions and procedures established or agreed to under this article shall be subject to State Personnel Board review pursuant to Section 19816.2.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule.

19997.1. The duties performed by any employee laid off may be assigned to any other employee or employees in the state agency holding positions in appropriate classes.

19997.2. (a) With the approval of the department, only the employees of a designated geographical, organizational or functional subdivision of a state agency need be considered for layoff, and reemployment lists shall be established for such subdivision. Such lists take priority over the departmental and other reemployment or employment lists.

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

19997.3. (a) (1) Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

- (A) The extent to which seniority credits may be granted for less than full-time service.
- (B) The seniority credit to be granted for service in a class that has been abolished, combined, divided, or otherwise altered under the authority of Section 18802.
- (C) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.
- (D) Any other matters as are necessary or advisable to the operation of this chapter.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

- (A) The extent to which seniority credits may be granted for less than full-time service.
 - (B) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.
 - (C) Any other matters as are necessary or advisable to the operation of this chapter.
- (3) For state employees in State Bargaining Unit 8 or 16, less than full-time service shall be prorated.

(b) For professional, scientific, administrative, management, and executive classes, the department shall prescribe standards and methods by rule whereby employee efficiency shall be combined with seniority in determining the order of layoffs and the order of names on reemployment lists.

These standards and methods may vary for different classes, and shall take into consideration the needs of state service and practice in private industry and other public employment.

(c) For state employees in State Bargaining Unit 8 or 16, prior to laying off, transferring, or demoting permanent or probationary employees, employment for other employees who did not formerly have permanent status shall be terminated in the following sequence: student assistants, retired annuitants, temporary intermittent, limited term, and permanent intermittent appointments. No distinction shall be made between a probationary and permanent employee or between full-time and part-time employees when making layoffs. For layoff purposes employees on leaves of absences shall be treated the same as other employees.

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

19997.4. (a) For the purposes of determining seniority pursuant to paragraph (1) of subdivision (a) of Section 19997.3, the term "state service" shall include all service that is exempt from state civil service.

(b) Notwithstanding subdivision (a), this subdivision shall apply only to state employees in State Bargaining Unit 5. For the purposes of determining seniority pursuant to paragraph (2) of subdivision (a) of Section 19997.3, the term "state service" shall include service that is exempted from state civil service by subdivisions (e), (f), (g), (i), and (m) of Section 4 of Article VII of the California Constitution.

(c) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 6, 8, or 16. For the purposes of determining seniority pursuant to paragraph (2) of subdivision (a) of Section 19997.3, the term "state service" shall include service that is exempted from the state civil service by any of the following:

(1) Subdivision (e), (f), (g), (i), or (m) of Section 4 of Article VII of the California Constitution.

(2) Subdivision (a) of Section 4 of Article VII of the California Constitution if an employee provides to the appointing power a copy of his or her official employment history record by July 1, 1999, or within six months of appointment to the state civil service.

19997.5. (a) Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In making these separations, the regular method of determining the order of layoff shall be used unless this would result in the layoff of an employee who has been reinstated in the class and subdivision of layoff under Section 19780, and in the retention of an employee who was appointed in the class and subdivision of layoff during the time that a reinstated employee was on military leave. Under these circumstances, seniority shall not be counted as provided in Section 19997.3. Instead, service in the subdivision of layoff that qualifies under Section 19997.3 for credit is the only state service that shall be counted.

Whenever such a layoff results in the demotion to a lower class of an employee who has been reinstated after recognized military service as provided in Section 19780, the resulting layoff, if any, in the lower class shall be made as though that reinstated employee had been in that lower class at the time he or she went on military leave.

Any layoff occurring within one year after reinstatement of an employee after recognized military service shall be presumed to have been necessary by reason of reinstatement of an employee or employees under Section 19780 unless the department determines that the reason for layoff is clearly not related to the reinstatement.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In making these separations, the regular method of determining the order of layoff shall be used.

19997.6. (a) A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive seniority credit for recognized military service if the veteran entered the state service after discharge, the end of the national emergency, or the end of the state military emergency.

(b) Seniority credit for recognized military service shall be computed as if it were service in the class to which the employee was first given permanent civil service or exempt appointment after his or her entry into the state service following recognized military service.

(c) Seniority credit for recognized military service shall not exceed one year's credit if the veteran had no state service prior to entering the military service.

(d) This section shall become operative on July 1, 1993.

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(e) Notwithstanding subdivisions (a), (c), and (d), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive a maximum of one year's seniority credit for recognized military service if the veteran entered the state service after discharge, the end of the national emergency, or the end of the state military emergency. For purposes of this subdivision, "recognized military service" means service in a military campaign or expedition for which a medal was authorized by the government of the United States in accordance with Section 300.1 of Title 12 of the California Code of Regulations.

19997.7. (a) Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more of these employees who have the same score, veterans shall have preference in retention. Other ties shall be resolved according to department rule that shall take into consideration other matters of record before names are drawn by lot.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more employees who have the same score, veterans shall have preference in retention. Other ties shall be determined by lot.

19997.8. (a) (1) In lieu of being laid off an employee may elect demotion to: (A) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (B) a class in the same line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class. The appointing power shall inform the employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. In lieu of being laid off an employee may elect demotion to: (A) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (B) a class in the same class series as the class of layoff, but of lesser responsibility, or (C) a class in a related line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class if necessary. The appointing power shall inform the employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(b) Demotions in lieu of layoff, and layoffs resulting therefrom, shall be governed by this article and shall be made within the subdivisions approved by the department for this purpose. These subdivisions need not be the same as those used to determine the area of layoff under Section 19997.2.

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

19997.9. (a) Any employee replaced by such demotion has the same option of demotion afforded by Section 19997.8 as if his or her position had been abolished or discontinued.

Except as authorized by the department under the provisions of Section 19837, any employee demoted pursuant to this article shall receive the maximum of the salary range of the class to which he or she is demoted; provided, that such salary is not greater than the salary he or she received at the time of demotion.

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

19997.10. (a) Any officer or employee, directly or indirectly, entitled to or having permanent status under the provisions of Article VII of the Constitution or the State Civil Service Act, who is displaced by one having a right to return shall be accorded the same rights to elect demotion in lieu of layoff as though he or she had had permanent status at all times in any previous position.

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

19997.11. (a) (1) The names of employees to be laid off or demoted shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated, upon the departmental reemployment list and upon the general reemployment list, for the class from which the employees were laid off or demoted. The department may also place these names upon the general reemployment list for any other appropriate classes as the department determines.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. The names of employees to be laid off, demoted in lieu of layoff, or transferred in lieu of layoff shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated, upon the departmental reemployment list and upon the general reemployment list, for the class from which the employees were laid off, demoted in lieu of layoff, or transferred in lieu of layoff. The department may also place these names upon the general reemployment list for any other appropriate classes as the department determines.

(3) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 6, 8, or 16. The names of employees to be laid off, demoted in lieu of layoff, or transferred in lieu of layoff shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated and upon the departmental reemployment list, for the class from which the employees were laid off, demoted in lieu of layoff, or transferred in lieu of layoff. The department shall also place these names upon the general reemployment list only for the entry level class within the employee's primary demotional pattern. This general reemployment list shall be a rule of one name.

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

19997.12. (a) An employee who is certified to a position in a class after layoff, or demotion in lieu of layoff, shall receive not less than the same step in the salary range as he or she received in the position in that class prior to such layoff or demotion.

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

19997.13. (a) (1) An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff and not more than 60 days after the date of the seniority computation. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be laid off may elect to accept this layoff prior to the effective date thereof.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16. An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be laid off may elect to accept this layoff prior to the effective date thereof.

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

19997.14. (a) An employee may appeal to the department within 30 days after receiving notice of layoff on the ground that the required procedure has not been complied with or that the layoff has not

been made in good faith or was otherwise improper. Within 30 days after such an appeal, the department shall hold such hearing or investigation as it deems necessary.

On its own motion the department may also conduct such a hearing or investigation within 30 days after receiving a notice of layoff.

In rendering a decision on a layoff, the department may order the reinstatement of the employee with or without pay if it appears that the required procedure was not followed or that the layoff was not made in good faith or was otherwise improper.

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

1997.15. (a) In order to provide state civil service employees of the California Maritime Academy with an opportunity to remain in the state civil service system, there shall be a transition period from January 1, 1994, to June 30, 1995, inclusive. Any civil service employee of the California Maritime Academy who does not transfer with the California Maritime Academy to the California State University system shall be eligible for all job placement provisions available pursuant to Sections 19998 and 19998.1. Any civil service employee who does not intend to transfer with the academy to the California State University system prior to July 1, 1995, must file a statement, on or before December 30, 1994, in the form as the Director of the Department of Personnel Administration shall prescribe rejecting employment in the California State University. Those employees shall be subject to state civil service layoff and reemployment in accordance with Part 2 (commencing with Section 18500), regulations adopted pursuant to those provisions, provisions of applicable memoranda of understanding, or any other provision governing layoff and reemployment within the state civil service. Any employee who does not file the statement rejecting California State University employment shall be considered an employee of the California State University, effective July 1, 1995.

(b) In order to provide for the orderly transition of California Maritime Academy employees from the state civil service to the California State University, the following shall apply:

(1) The terms of any memorandum of understanding shall remain in effect until the memorandum of understanding expires or is amended or replaced.

(2) After January 1, 1994, employees of the California Maritime Academy, with the agreement of the exclusive representative and the Trustees of the California State University, may petition the Public Employment Relations Board to effect a bargaining unit modification; however, any modification ordered by the board shall not be effective until July 1, 1995, at the earliest.

(3) If no modification is effected, the state classifications used by the California Maritime Academy on June 30, 1995, shall, on July 1, 1995, be placed in new bargaining units under the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1) for the California Maritime Academy parallel to the bargaining units as they exist on June 30, 1995, and shall continue unless and until a unit modification is ordered by the Public Employment Relations Board.

(4) The exclusive representatives for each state bargaining unit representing California Maritime Academy employees, as those representatives and units exist on June 30, 1995, shall continue as the exclusive representatives for their respective bargaining units unless an election is called, but in no case may any such change in exclusive representative occur prior to July 1, 1995. An election is not required to be held, and if no election occurs, the exclusive representatives shall continue as the exclusive representatives with responsibility to meet and confer with the Trustees of the California State University or their designees on collective bargaining issues.

Notwithstanding any provision of the act that added this section to the Government Code, and to the extent authorized by law, the scope of representation shall at least include any subject matter contained in the current memoranda of understanding.

Article 3. Layoff Reemployment

1998. (a) It is the policy of the state that when an employee is to be separated from state service because the tasks he or she was assigned are to be eliminated or substantially changed due to management-initiated changes, including but not limited to automation or other technological changes, steps should be taken on an interdepartmental basis to assist such employee in locating, preparing to

qualify for, and being placed in other positions in the state civil service. This provision shall not be construed to restrict the authority of the executive branch or the Legislature to effect economies or make organizational or other changes to increase efficiency in state government.

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

19998.1. (a) The department may temporarily restrict the choice of methods of appointment available to an appointing power if such restriction is deemed necessary in the placement in other state civil service positions of employees whose positions have been or are about to be changed substantially or eliminated by such management-initiated changes.

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

Article 4. Reentry to State Service .

19998.3. Notwithstanding any other provision of law to the contrary, an employee whose continuity of employment in the state service as either an exempt or civil service employee is broken for six months or longer by a permanent separation such as resignation, dismissal, or rejection during a probationary period, and who is subsequently reemployed after December 31, 1949, shall not be credited for service prior to that separation for purposes of sick leave, nor shall the employee be credited with any sick leave which the employee had accumulated prior to his or her separation and he or she shall again serve the months required to qualify for vacation credit. The department shall adopt rules governing the crediting of service before and after a break in service for purposes of vacation as specified in Section 19858.1 and the keeping of service records related thereto.

When an employee has a break in the continuity of his or her state employment because of a temporary separation such as layoff, suspension, leave of absence, military leave, disability retirement, or medical termination, his or her prior service shall be counted upon his or her return to state service for purposes of layoff, sick leave, and vacation.

If an employee had a break in the continuity of his or her state employment because of absence occasioned by his or her evacuation and relocation pursuant to orders issued by the commanding officer of the Western Defense Command in March 1942, for the evacuation of persons of Japanese descent from the area, where that employee was in state service on March 5, 1942, and returned to state service on or before December 31, 1949, the time of absence during which those orders were in effect shall be counted for purposes of layoff.

19998.4. (a) An employee who entered county employment pursuant to a resolution or agreement effecting the transfer of that employee by the State Department of Mental Health to a local mental health services program in accordance with Chapter 1330 of the Statutes of 1984, shall, upon reentry into state service, be credited with vacation and sick leave owed to that employee by the county, except as provided by subdivisions (b) and (c).

(b) Any hours of vacation and sick leave for which the employee receives monetary compensation upon separation from the county, shall be deducted from the total hours of vacation and sick leave to which the employee is entitled. The credit for accumulated vacation and sick leave shall not exceed that to which each employee would be entitled if he or she had been continuously employed by the State of California in the classification in which he or she held permanent status at the time of separation from state service.

(c) The separation from state service shall be considered permanent for purposes of subdivision (a) and no vacation or sick leave credit for time employed by the county shall be granted by the state if either of the following has occurred:

- (1) The employee permanently separated from county service for six months or longer.
- (2) More than five years elapsed since the employee was transferred by the department to the county.

CHAPTER 7.5. STATE EMPLOYEE ASSISTANCE PROGRAM

19998.5. The department shall provide a report to the Legislature and the Governor, on or before March 1, 1988, on the utilization and operations of the State Employee Assistance Program as administered by the department.

This report shall address the cost-efficiency and effectiveness of the program, and shall include, but not be limited to, all of the following:

- (a) Statistics on sick leave, on-the-job accidents, health care claims, workers' compensation claims, termination, grievances, and tardiness for the years of 1984, 1985, and 1986.
- (b) Types of services provided by the program and utilization of these services, such as alcohol, drugs, family, marital, medical, legal, financial, and other services.
- (c) Delineation of state agencies which contract out for these services and those which have in-house programs, and a comparison of services provided and utilized by these programs.
- (d) The average cost to contract out services, per employee, on an annual basis, and the same analysis for in-house programs.
- (e) The amount of resources, both staff and fiscal, employed by the department in the administration of the program.
- (f) Comparison of supervisory performance-related referrals to other types of referrals, such as self or union referrals.
- (g) The number of supervisory consultations.
- (h) Employee satisfaction with the program.
- (i) Recommendations for improving the program.

The department shall develop data gathering instruments in order to ensure the collection of information for the cost effectiveness and efficiency studies required under this section.

CHAPTER 8. TWO-TIERED RETIREMENT SYSTEM

19999. The Legislature hereby finds and declares that retirement costs to the state and its employees would be reduced by the establishment of a two-tiered retirement system which would improve the coordination of benefits between Social Security and the Public Employees' Retirement System.

It is therefore the intent of the Legislature to authorize the development of a two-tiered retirement system.

19999.1. The Department of Personnel Administration, in conjunction with the Board of Administration of the Public Employees' Retirement System, shall develop legislation which will implement a two-tiered retirement system.

CHAPTER 8.5. RETIREMENT PLAN FOR EMPLOYEES EXCLUDED FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

19999.2. (a) The Legislature hereby finds and declares that this chapter is intended to satisfy the requirements prescribed by the Omnibus Budget Reconciliation Act of 1990 (OBRA). Section 3121(b)(7) (F) of the Internal Revenue Code requires that state employees who are not members of the Public Employees' Retirement System must be covered by social security, or, in the alternative, be provided benefits through a qualified pension or annuity program, effective with compensated services rendered on or after July 2, 1991. Therefore, the Legislature hereby authorizes the development of a retirement program under the State's Deferred Compensation Plan, the Savings Plan, or any other acceptable defined contribution plan in which state employees can defer compensation at 7.5 percent of wages, as the term "wages" is defined for social security purposes.

(b) "State employees," as used in subdivision (a), includes the employees defined in Section 19815, as well as employees of the California State University, who are not covered by social security or by the Public Employees' Retirement System.

(c) This section shall not apply to employees of the California State University unless and until the trustees authorizes their coverage in this retirement program.

(d) In the event that the retirement program authorized by this section is inconsistent with federal laws or rules or becomes unnecessary under the state or federal law, this section shall become inoperative.

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19999.21. The Department of Personnel Administration shall administer the retirement program established by this chapter. The department shall provide by rule for the regulation of the retirement program and the method by which the benefit payments would be made to eligible recipients. The department shall by rule establish the level of employee deferrals to the plan, cessation of, or transfer of membership to the Public Employees' Retirement System upon qualification, continued participation in the plan, and other provisions necessary for the implementation of this retirement program. The department may assess each state agency a fee for the costs associated with administration of this program.

The regulations shall not be subject to the review and approval of the Office of Administrative Law, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. The regulations shall become effective immediately upon filing with the Secretary of State.

CHAPTER 9. TAX-DEFERRED SAVINGS PLANS

19999.5. In order to encourage savings and increase the savings options available to state employees, the department may establish and administer tax-deferred savings plans in accordance with Section 401(k) of the Internal Revenue Code. The department may develop specifications and contract for the administration of the plans to the extent necessary to carry out this section. These plans shall be provided in addition to the retirement and deferred compensation programs currently authorized, shall offer the maximum flexibility available under current federal law, and may provide for employer as well as employee contributions.

CHAPTER 10. ANNUITY CONTRACTS

19999.7. (a) The department may establish and administer the purchase of annuity contracts which meet the requirements of Section 403(b) of the Internal Revenue Code and shall prescribe regulations in connection thereto which, among other things, specify standards to be met by companies or other persons or entities which offer annuity contracts for sale, including standards to ensure that providers are rated by a nationally recognized rating service as being within the three highest rating categories for financial condition and operating performance. The provisions of Section 770.3 of the Insurance Code shall not be applicable to the department.

(b) This section shall apply only to the purchase of annuity contracts on and after the effective date of this section.

OTHER STATUTES AFFECTING PUBLIC EMPLOYMENT IN THE STATE OF CALIFORNIA (Listed Alphabetically by Subject)

CHILD CARE

Government Code.

4560. (a) The Legislature finds and declares that there is a substantial need to provide adequate child care facilities for state employees.

(b) When the state constructs, acquires, or receives as a gift any office building that can accommodate 700 or more state employees, or when additions, alterations, or repairs are made to any existing state-owned office building that can accommodate 700 or more state employees, and the additions, alterations, or repairs both change and affect the use of 25 percent of the net square feet area of the building and include the addition to, alteration of, or repair of the first floor, adequate space shall be designated within the building to meet the child care needs of those employees, if a review of those employees slated to occupy the new or renovated building shows sufficient need for child care services for 30 or more children. The review shall be conducted by the Department of General Services and the Child Development Programs Advisory Committee established pursuant to Section 8286 of the Education Code.

(c) The Director of General Services may secure space in any adequate facility for the same purposes if funds for the offsite facilities are made available and the director determines that any of the following conditions exist:

(1) All other physical requirements controlling the development of the child care facilities within the office building cannot be utilized.

(2) It is more cost-efficient for the state to provide for equivalent child care facilities within a reasonable distance of the place of employment.

(3) Locating the child care center within a reasonable distance offsite would provide an enhanced facility for the children or would mitigate security concerns.

(d) It is the intent of the Legislature that existing state office buildings, at the discretion of the Director of General Services, may be retrofitted to accommodate a child care facility. State funds required for the retrofitting shall be subject to regular budgetary procedures and approvals.

(e) Space designed within a state-owned office building for the child care facility shall comply with the prevailing local and state safety building codes for child care facilities.

(f) The indoor area shall not exceed 2,100 square feet, nor be less than that required to accommodate 30 children, excluding space for restrooms, kitchen facilities, storage areas, and teacher offices. Outdoor play area space shall correspond with the indoor play area as set forth in Title 22 of the California Code of Regulations.

(g) Utilization of the space shall be subject to terms and conditions as set forth by the Director of General Services. The terms shall include payment of rent, proof of financial responsibility, and maintenance of space. The space shall be made available to the employees who wish to establish child care facilities at a rate to be established by the Director of General Services based upon the actual cost to the state, the average cost of state-owned space in the area, or the statewide average cost of state-owned space, whichever is less. If, however, the director determines that a lower rent must be charged to ensure the viability of a child care facility, the director may charge a lower rate.

(h) (1) The employee-occupants shall be notified in writing by the department or departments occupying the building, of the availability of space to be used for a child care facility no earlier than 180 days prior to the projected date of occupancy of a new building or space provided as the result of additions, alterations, or repairs to an existing state-owned building, and the additions, alterations, or repairs that both change and affect the use of 25 percent of the net square feet area of the building and include the addition to, alteration of, or repair of the first floor. If, within 30 days after full occupancy of a new office building or 30 days after the completion of additions, alterations, or repairs to an existing state-owned office building, the employee-occupants so desiring have not filed an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care center, deposited two months' rent in a commercial or savings account, and entered into a contract with the Department of General Services, the space may be used for any other purpose, as long as no permanent alteration of the space occurs. Other purposes may include, but are not limited to, conference rooms, storage areas, or offices. The space for child care shall be held for the employee-occupants' nonprofit corporation only as long as they pay the monthly rent and meet the terms set forth in the contract. Payment of rent shall commence 30 days after full occupancy of a new office building or 30 days after completion of additions, alterations, or repairs, as specified in this section.

(2) If at a later date, the employee-occupants so desiring (A) file an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care facility, (B) deposit two months' rent in a commercial or savings account, and (C) notify the Director of General Services of those actions, then the space shall be reconverted for child care purposes within 180 days of the notice.

(i) Children of whom at least one parent or guardian is a state employee shall be given priority admission, over other children, to the child care facility.

(j) When a child care center within a state-owned office building has been operative for five years, the Director of General Services shall assess the child care needs of the state employees using the center and the office space needs of the building within which the center is located. If the assessment demonstrates a greater need for office space than for child care, the Director of General Services may close the child care center. Ninety days' written notice shall be given to the director or head teacher of the center of the closure.

(k) This section does not apply to buildings that provide care or 24-hour residential care for patients, inmates, or wards of the state, such as state hospitals and correctional facilities.

DENTAL BENEFITS

Government Code.

22950. This part may be cited as the State Employees' Dental Care Act.

22951. It is the purpose of this part:

- (a) To promote increased economy and efficiency in the state service;
- (b) To enable the state to attract and retain qualified employees by providing dental care plans similar to those commonly provided in private industry;
- (c) To recognize and protect the state's investment in each permanent employee by promoting and preserving good health among state employees.

22952. The State of California, through the Department of Personnel Administration, and the Trustees of the California State University and the Regents of the University of California, directly or through the Department of Personnel Administration, may contract, upon negotiations with employee organizations, with carriers for dental care plans for employees and annuitants, including eligible dependents, provided the carriers have operated successfully in the area of dental care benefits for a reasonable period prior to contracting for such plans, or have a contract to provide benefit plans under Section 22790 of the Government Code, as amended by Chapter 403 of the Statutes of 1979. The dental care plans may include a monthly premium copayment to be paid by the employees and annuitants. Dental care plans provided under this authority may be self-funded by the employer if it is cost-effective to do so.

No contract for any dental care plan may be entered into unless funds for a dental care plan contract are appropriated by the Legislature in a subsequently enacted statute. Notwithstanding Section 13340, where a dental care plan is self-funded, funds used for that plan shall be considered continuously appropriated.

22952.1. Funds appropriated for self-funded dental care plans for state employees other than employees of the California State University, shall be maintained in the State Employees' Dental Care Fund which is hereby created in the State Treasury. Moneys in this fund shall be used by the Department of Personnel Administration to pay dental claims and other administrative costs. Income of whatever nature earned on the moneys in the State Employees' Dental Care Fund during any fiscal year shall be credited to the fund. Notwithstanding Section 13340, moneys in this fund are continuously appropriated in accordance with this section and Section 22952.

22952.2. Funds appropriated for self-funded dental care plans for employees of the California State University, shall be maintained in the California State University Employees' Dental Care Fund, which is hereby created in the State Treasury. Moneys in this fund shall be used by the Trustees of the California State University to pay dental claims and other administrative costs.

Income of whatever nature earned on the moneys in the California State University Employees' Dental Care Fund during any fiscal year shall be credited to the fund. Notwithstanding Section 13340, moneys in this fund are continuously appropriated in accordance with this section and Section 22952.

22953. (a) An annuitant who retired from the state and (1) who is not enrolled in a health benefits plan or a dental care plan, but who was eligible as an employee at the time of separation for retirement for enrollment in a health benefits plan, and who retired within 120 days of the date of separation or (2), who is receiving an allowance pursuant to Article 6 (commencing with Section 9359) of Chapter 3.5 of Part 1 of Division 2, may enroll in a dental care plan offered under this part.

(b) The Board of Administration of the Public Employees' Retirement System has no duty to locate or notify any annuitant who may be eligible to enroll, or to provide the name or address of any annuitant to any person, agency, or entity for the purpose of notifying annuitants who may be eligible.

22954. Any annuitant who, at the time he or she became an annuitant, or who on January 1, 1992, was enrolled in a dental care plan under state or federal provisions, may continue his or her enrollment, including eligible dependents, without discrimination as to premium rates or benefit coverage. The dental care plans may require a monthly premium copayment to be paid by the annuitant, not to exceed the copayment paid for the state-sponsored indemnity dental plan by represented employees, or excluded employees, whichever is less. The premium copayment amount shall be deducted by the Public Employees' Retirement System from the annuitant's monthly allowance.

22955. (a) Notwithstanding Sections 22953 and 22954, an employee in State Bargaining Unit 6, 8, or 16 who becomes a state member of the Public Employees' Retirement System after January 1, 1999, and who is included in the definition of state employee in subdivision (c) of Section 3513 shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Sections 22953 and 22954,

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unless the employee is credited with 10 years or more of state service, as defined by this section, at the time of retirement.

(b) The percentage of employer's contribution amount payable for post retirement dental care benefits for an employee subject to this section shall be based on the funding provision of the plan and the member's completed years of state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contributions
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20	100

(c) This section shall only apply to state employees who retire for service.

(d) Benefits provided to an employee subject to this section shall be applicable to all future state service

(e) For purposes of this section, "state service" means service rendered as an employee or an appointed or elected officer of the state for compensation. In those cases where the state assumes or has assumed from a public agency a function and the related personnel, service rendered by that personnel for compensation as employees or appointed or elected officers of that local public agency shall not be credited, at retirement, as state service for the purposes of this section, unless the former employer has paid or agreed to pay the state agency the amount actuarially determined to equal the cost for any employee dental benefits that were vested at the time that the function and the related personnel were assumed by the state. For noncontracting local public agencies the state department shall certify the completed years of local agency service to be credited to the employee to the Public Employees' Retirement System at the time of separation for retirement.

(f) Whenever the state contracts to assume a local public agency function, completed years of service rendered by the personnel for compensation as employees or appointed or elected officers of the local public agency shall be credited as state service only upon a finding by the Department of Finance that the contract contains a benefit factor sufficient to reimburse the state for the amount necessary to compensate the state fully for post retirement dental benefit costs for those personnel.

(g) This section shall not apply to employees of the California State University or the Legislature.

22957. (a) The state, through the Department of Personnel Administration or the Board of Trustees of the California State University, may contract, upon negotiations with employee organizations, with health care service plans licensed and authorized to provide dental plan contracts, under the Knox-Keene Health Care Service Plan Act of 1975, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, which have a contract to provide benefit plans under Section 22790 or a federally qualified health maintenance organization licensed under Chapter 11 (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code which has a contract to provide benefit plans under Section 22790, for dental care plans comparable to those contracted for pursuant to Section 22952. The Department of Personnel Administration or the Board of Trustees of the California State University shall determine the state's contribution for these plans in the same manner as it determines contributions for dental plans pursuant to Section 22952. A state employee or annuitant may enroll in a dental plan pursuant to this section only if he or she is enrolled in a health care plan provided by the same carrier, provided that nothing in this section shall be construed to require a state employee or annuitant who is a member of a health maintenance organization to enroll in a dental plan provided by the health maintenance organization. No state employee or annuitant may enroll in a dental plan pursuant to this section prior to the next open enrollment period as determined by the Department of Personnel

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Administration or the Board of Trustees of the California State University or prior to August 1, 1983, whichever occurs first.

22958. The Department of Personnel Administration shall administer all dental plans provided by Sections 22952 and 22957 for civil service employees and annuitants. The Board of Trustees of the California State University shall administer dental care plans provided by Sections 22952 and 22957 for employees and annuitants of the California State University.

ELECTIONS

Elections Code.

12312. No person shall be suspended or discharged from any service or employment because of absence while serving as an election officer on election day.

EMPLOYEE'S TIME OFF TO VOTE

Elections Code.

14000. (a) If a voter does not have sufficient time outside of working hours to vote at a statewide election, the voter may, without loss of pay, take off enough working time that, when added to the voting time available outside of working hours, will enable the voter to vote.

(b) No more than two hours of the time taken off for voting shall be without loss of pay. The time off for voting 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.

(c) If the employee on the third working day prior to the day of election, knows or has reason to believe that time off will be necessary to be able to vote on election day, the employee shall give the employer at least two working days' notice that time off for voting is desired, in accordance with this section.

EMPLOYER'S NOTICE POSTING

Elections Code.

14001. Not less than 10 days before every statewide election, every employer shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.

14002. Sections 14000 and 14001 shall apply to all public agencies and the employees thereof, as well as to employers and employees in private industry.

EMPLOYEE BENEFITS AND WAGES -- PRINTING TRADES

Government Code.

14876. (a) Pressmen, typographers, linotypers, compositors, bookbinders, lithographers, engravers, apprentices and assistants and all other employees of the Office of State Printing employed in allied work shall be paid on an hourly wage basis. The basic wage of such employees shall be the prevailing hourly wage paid to persons identified by the Department of Personnel Administration to be in similar and comparable employment by private printers in the major metropolitan areas in California. The Department of Personnel Administration shall accept and give validity to certified copies of agreed upon contracts submitted by either the employer, the employer group, or the employee organization.

The Department of Personnel Administration shall survey only major employers where there are agreed upon contracts. Where any such contract contains any provision or provisions which do not reflect the actual practice of the employer, the Department of Personnel Administration shall disregard such provision or provisions.

If the Department of Personnel Administration finds that salary relationships between surveyed classes do not accurately reflect relationships in duties and responsibilities of employees of the Office of State Printing, the department shall adjust such wage rates on an equitable basis notwithstanding the survey findings.

As used in this section, prevailing wages and prevailing benefits means wages and benefits arrived at through negotiation between an employer or employer organization, and an employee organization which is the bona fide representative of the employer's employees and certified as such by the Director of

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Industrial Relations. In order to be so certified, the employee organization shall be free from employer influence and domination.

(b) In addition to such wages, and the rights and privileges afforded state employees under the provisions of the State Civil Service Act, and other statutes, there shall be paid to each such employee of the Office of State Printing, either directly or to a health and welfare fund on his or her behalf, an amount equal to the prevailing individual contributions paid to health and welfare plans for employees in similar and comparable employment by private printers in the major metropolitan areas. Where such contracts do not disclose the dollar value of health and welfare benefits, the state shall provide the same or substantially the same level of benefits as provided for in such agreed upon contracts. Any adjustments made pursuant to subdivisions (a) and (b) of this section shall be effective as of March 1, 1977, and each March 1, thereafter.

(c) As an alternative to subdivision (b), persons employed and retired from employment in the Office of State Printing may elect within 90 days of October 1, 1977, to be covered under the Public Employees' Medical and Hospital Care Act pursuant to Section 22754.2.

A person first employed to any position described in subdivision (a) after October 1, 1977, may elect to become an "employee" as defined in Section 22754.2 within 90 days of commencing such employment.

Any person who is a member of a health and welfare plan described in subdivision (b) who loses eligibility for participation in such plan, or if the plan of which the person is a member ceases to exist, such person may elect to become an "employee" as defined in Section 22754.2 within 90 days of the date such eligibility is lost or the plan ceases to exist.

(d) In no instance shall the wages and the health and welfare contributions paid by the state to the persons covered under this section be less than the dollar amount paid as of the effective date of this section.

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

FIREFIGHTERS

Labor Code.

1960. Neither the State nor any county, political subdivision, incorporated city, town, nor any other municipal corporation shall prohibit, deny or obstruct the right of firefighters to join any bona fide labor organization of their own choice.

1961. As used in this chapter, the term "employees" means the employees of the fire departments and fire services of the State, counties, cities, cities and counties, districts, and other political subdivisions of the State.

1962. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to present grievances and recommendations regarding wages, salaries, hours, and working conditions to the governing body, and to discuss the same with such governing body, through such an organization, but shall not have the right to strike, or to recognize a picket line of a labor organization while in the course of the performance of their official duties.

1963. The enactment of this chapter shall not be construed as making the provisions of Section 923 of this code applicable to public employees.

GRIEVANCES

Government Code.

18714. (a) Nothing in this part shall preclude the Department of Personnel Administration from providing by rule for a system of adjusting employee grievances which shall be administered within the departments before recourse to any remedy provided in this part.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of

understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

HEALTH AND SAFETY

Government Code.

19261. (a) The Department of Personnel Administration may establish standards of health and safety in state agencies and may develop a comprehensive health and safety program designed to improve the efficiency and raise the morale of state employees.

Nothing in this section or in the standards established thereunder shall discriminate against treatment by prayer or spiritual means nor require physical examination of any employee who files with the board an affidavit setting forth that he or she depends exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination or organization and that he or she is to the best of his or her knowledge and belief in good health and that he or she claims exemption on such grounds, except that when there is probable cause to believe that such employee is not physically able to perform the duties of his or her employment, the board may require a physical examination of the employee sufficient to indicate whether or not he or she is able to perform the duties of his or her employment.

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

INDUSTRIAL DISABILITY LEAVE

Insurance Code.

11870. The state, any agency, department, division, commission, board, bureau, officer or other authority thereof, and each county, city and county, city, school district, irrigation district, any other district established by law, or other public corporation or quasi public corporation within the state, including any public utility operated by a private corporation may insure against its liability for compensation with the State Compensation Insurance Fund. Where the state or any agency, department, division, commission, board, bureau, officer or authority thereof is the insured, the premium for that insurance shall be a proper charge against any moneys appropriated for the support of or expenditure by the insured, except that in the case of an insured supported by or authorized to expend moneys appropriated out of more than one fund, the insured, with the approval of the Director of Finance, may determine the proportion of the premium to be paid out of each fund. In that case the insured, with the approval of the Director of Finance, may pay the entire premium out of any of those funds and thereafter the funds used for payment shall be reimbursed in proper proportion out of the other funds. In case a county, city and county, city, school district, irrigation district, or other district established by law, or other public corporation or quasi public corporation within the state is the insured, the premium therefor shall be a proper charge against the general fund of the insured.

11871. The State Compensation Insurance Fund may enter into a master agreement with the Department of Personnel Administration to render services in the adjustment and disposition of claims for workers' compensation to any state agencies, including any officer, department, division, bureau, commission, board or authority, not insured with the fund.

The master agreement shall provide for rendition of services at a uniform rate to all agencies, except that the rate for the California Highway Patrol may be fixed independently of the uniform rate.

The fund may, in accordance with the agreement, adjust and dispose of claims for workers' compensation made by an officer or employee of any state agency not insured with the fund.

The fund may make all expenditures, including payment to claimants for medical care or for adjustment or settlement of claims, necessary to the adjustment and final disposition of claims. The agreement shall provide that the state agency whose officer or employee is a claimant shall reimburse the fund for the expenditures and for the actual cost of services rendered.

The fund may in its own name, or in the name of the state agency for which the services are performed, do any and all things necessary to recover on behalf of the state agency for which it renders service any and all amounts which an employer might recover from third persons under Chapter 5

(commencing with Section 3850) of Part 1 of Division 4 of the Labor Code, or which an insurer might recover pursuant to Section 11662 including the right to commence and prosecute actions, to file, pursuant to Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code, liens for whatever sums would be recoverable by suit against a third person, to intervene in other court proceedings, and to compromise claims and actions before or after commencement of suit or after entry of judgment when in the opinion of the fund full collection cannot be enforced.
Labor Code.

139.5. (a) The administrative director shall establish a vocational rehabilitation unit, which shall include appropriate professional staff, and which shall have the following duties:

(1) To foster, review, and approve vocational rehabilitation plans developed by a qualified rehabilitation representative of the employer, insurer, state agency, or employee. Plans agreed to by the employer and employee do not require approval by the vocational rehabilitation unit unless the employee is unrepresented.

(2) To develop rules and regulations, to be promulgated by the administrative director, providing for a procedure in which an employee may waive the services of a qualified rehabilitation representative where the employee has been enrolled and made substantial progress toward completion of a degree or certificate from a community college, California State University, or the University of California and desires a plan to complete the degree or certificate. These rules and regulations shall provide that this waiver as well as any plan developed without the assistance of a qualified rehabilitation representative must be approved by the rehabilitation unit.

(3) To develop rules and regulations, to be promulgated by the administrative director, which would expedite and facilitate the identification, notification and referral of industrially injured employees to vocational rehabilitation services.

(4) To coordinate and enforce the implementation of vocational rehabilitation plans.

(5) To develop a fee schedule, to be promulgated by the administrative director, governing reasonable fees for vocational rehabilitation services provided on and after January 1, 1991. The initial fee schedule promulgated under this paragraph shall be designed to reduce the cost of vocational rehabilitation services by 10 percent from the level of fees paid during 1989. On or before July 1, 1994, the administrative director shall establish the maximum aggregate permissible fees that may be charged for counseling. Those fees shall not exceed four thousand five hundred dollars (\$4,500) and shall be included within the sixteen thousand dollar (\$16,000) cap. The fee schedule shall permit up to (A) three thousand dollars (\$3,000) for vocational evaluation, evaluation of vocational feasibility, initial interview, vocational testing, counseling and research for plan development, and preparation of the Division of Workers' Compensation Form 102, and (B) three thousand five hundred dollars (\$3,500) for plan monitoring, job seeking skills, and job placement research and counseling. However, in no event shall the aggregate of (A) and (B) exceed four thousand five hundred dollars (\$4,500).

(6) To develop standards, to be promulgated by the administrative director, for governing the timeliness and the quality of vocational rehabilitation services.

(b) The salaries of the personnel of the vocational rehabilitation unit shall be fixed by the Department of Personnel Administration.

(c) When an employee is determined to be medically eligible and chooses to participate in a vocational rehabilitation program, he or she shall continue to receive temporary disability indemnity payments only until his or her medical condition becomes permanent and stationary and, thereafter, may receive a maintenance allowance. Rehabilitation maintenance allowance payments shall begin after the employee's medical condition becomes permanent and stationary, upon a request for vocational rehabilitation services. Thereafter, the maintenance allowance shall be paid for a period not to exceed 52 weeks in the aggregate, except where the overall cap on vocational rehabilitation services can be exceeded under this section or Section 4642 or subdivision (d) or (e) of Section 4644.

The employee also shall receive additional living expenses necessitated by the vocational rehabilitation services, together with all reasonable and necessary vocational training, at the expense of the employer, but in no event shall the expenses, counseling fees, training, maintenance allowance, and costs associated with, or arising out of, vocational rehabilitation services incurred after the employee's request for vocational rehabilitation services, except temporary disability payments, exceed sixteen thousand dollars (\$16,000). The administrative director shall adopt regulations to ensure that the continued receipt of vocational rehabilitation maintenance allowance benefits is dependent upon the injured worker's regular and consistent attendance at, and participation in, his or her vocational rehabilitation program.

(d) The amount of the maintenance allowance due under subdivision (c) shall be two-thirds of the employee's average weekly earnings at the date of injury payable as follows:

(1) The amount the employee would have received as continuing temporary disability indemnity, but not more than two hundred forty-six dollars (\$246) a week for injuries occurring on or after January 1, 1990.

(2) At the employee's option, an additional amount from permanent disability indemnity due or payable, sufficient to provide the employee with a maintenance allowance equal to two-thirds of the employee's average weekly earnings at the date of injury subject to the limits specified in subdivision (a) of Section 4453 and the requirements of Section 4661.5. In no event shall temporary disability indemnity and maintenance allowance be payable concurrently.

If the employer disputes the treating physician's determination of medical eligibility, the employee shall continue to receive that portion of the maintenance allowance payable under paragraph (1) pending final determination of the dispute. If the employee disputes the treating physician's determination of medical eligibility and prevails, the employee shall be entitled to that portion of the maintenance allowance payable under paragraph (1) retroactive to the date of the employee's request for vocational rehabilitation services. These payments shall not be counted against the maximum expenditures for vocational rehabilitation services provided by this section.

(e) No provision of this section nor of any rule, regulation, or vocational rehabilitation plan developed or promulgated under this section nor any benefit provided pursuant to this section shall apply to an injured employee whose injury occurred prior to January 1, 1975. Nothing in this section shall affect any plan, benefit, or program authorized by this section as added by Chapter 1513 of the Statutes of 1965 or as amended by Chapter 83 of the Statutes of 1972.

(f) The time within which an employee may request vocational rehabilitation services is set forth in Sections 5405.5, 5410, and 5803.

(g) An offer of a job within state service to a state employee in State bargaining unit 1, 4, 15, 18, or 20 at the same or similar salary and the same or similar geographic location is a prima facie offer of vocational rehabilitation under this statute.

(h) It shall be unlawful for a qualified rehabilitation representative or rehabilitation counselor to refer any employee to any work evaluation facility or to any education or training program if the qualified rehabilitation representative or rehabilitation counselor, or a spouse, employer, coemployee, or any party with whom he or she has entered into contract, express or implied, has any proprietary interest in or contractual relationship with the work evaluation facility or education or training program. It shall also be unlawful for any insurer to refer any injured worker to any rehabilitation provider or facility if the insurer has a proprietary interest in the rehabilitation provider or facility or for any insurer to charge against any claim for the expenses of employees of the insurer to provide vocational rehabilitation services unless those expenses are disclosed to the insured and agreed to in advance.

(i) Any charges by an insurer for the activities of an employee who supervises outside vocational rehabilitation services shall not exceed the vocational rehabilitation fee schedule, and shall not be counted against the overall cap for vocational rehabilitation or the limit on counselor's fees provided for in this section. These charges shall be attributed as expenses by the insurer and not losses for purposes of insurance rating pursuant to Article 2 (commencing with Section 11730) of Chapter 3 of Division 2 of the Insurance Code.

(j) Any costs of an employer of supervising vocational rehabilitation services shall not be counted against the overall cap for vocational rehabilitation or the limit on counselor's fees provided for in this section.

5408. If an injured employee or, in the case of the employee's death, any of the employee's dependents, is under 18 years of age or incompetent at any time when any right or privilege accrues to such employee or dependent under this division, a guardian or conservator of the estate appointed by the court, or a guardian ad litem or trustee appointed by the appeals board, may, on behalf of the employee or dependent, claim and exercise any right or privilege with the same force and effect as if no disability existed.

No limitation of time provided by this division shall run against any person under 18 years of age or any incompetent unless and until a guardian or conservator of the estate or trustee is appointed. The appeals board may determine the fact of the minority or incompetency of any injured employee and may appoint a trustee to receive and disburse compensation payments for the benefit of such minor or incompetent and his family.

LOAN OF PERSONNEL

Government Code.

11253. Upon written request approved by the Department of General Services, a department shall furnish to another department such assistance as it is able to render without detriment to its administration, including the deputizing of agents and inspectors, when consistent with law, and the temporary reassignment of employees.

Any traveling or other expense incurred by an employee in the performance of his duties while he is reassigned or loaned to another department may be paid in accordance with law by the department to which he is reassigned or loaned from funds available for support of that department.

MANAGERIAL DESIGNATIONS

Government Code.

18801.1. The Department of Personnel Administration shall designate managerial positions, as defined in subdivision (e) of Section 3513, and shall report those designations to the board annually. Any disputes as to the managerial classification or position designations may be appealed to the State Personnel Board.

MILITARY SERVICE (For Exempt Employees Only)

Military and Veterans Code.

389. (a) As used in this chapter, "temporary military leave of absence" means a leave of absence from public employment to engage in ordered military duty for a period which by the order is not to exceed 180 calendar days including travel time for purposes of active military training, encampment, naval cruises, special exercises or like activity as a member of the reserve corps or force of the armed forces of the United States, or the National Guard, or the Naval Militia.

(b) "Public employee" means any officer or employee of a public agency, except for those officers or employees of the state subject to the provisions of Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code.

(c) "Public agency" means the state, or any county, city and county, city, municipal corporation, school district, irrigation district, water district, or other district.

(d) "Armed forces" or "armed forces of the United States" means the "armed forces" as defined in Section 18540 of the Government Code.

(e) "Recognized military service" means service as defined in Section 18540.3 of the Government Code.

395. Any public employee who is a member of the reserve corps of the armed forces of the United States or of the National Guard or the Naval Militia shall be entitled to a temporary military leave of absence as provided by federal law while engaged in military duty ordered for purposes of active military training, encampment, naval cruises, special exercises or like activity, providing that the period of ordered duty does not exceed 180 calendar days, including time involved in going to and returning from that duty, and provided that paid military leave of absence is not required for periods of inactive military duty.

The employee shall have an absolute right to be restored to the former office or position and status formerly had by him or her in the same locality and in the same office, board, commission, agency, or institution of the public agency upon the termination of temporary military duty. If the office or position has been abolished or otherwise has ceased to exist during his or her absence, he or she shall be reinstated to a position of like seniority, status, and pay if a position exists, or if no position exists the employee shall have the same rights and privileges that he or she would have had if he or she had occupied the position when it ceased to exist and had not taken temporary military leave of absence.

Any public employee who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the date upon which a temporary military leave of absence begins, shall receive the same vacation, sick leave, and holiday privileges and the same rights and privileges to promotion, continuance in office, employment, reappointment to office, or reemployment that the employee would have enjoyed had he or she not been absent therefrom; excepting that an uncompleted probationary period, if any, in the public agency, must be completed upon reinstatement as provided by law or rule of the agency. For the purposes of this section, in determining

the one year of service in a public agency all service of the employee in recognized military service shall be counted as public agency service.

If this section is in conflict with a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

395.01. (a) Any public employee who is on temporary military leave of absence for military duty ordered for purposes of active military training, encampment, naval cruises, special exercises, or like activity as such member, provided that the period of ordered duty does not exceed 180 calendar days including time involved in going to and returning from the duty, but not for inactive duty such as scheduled reserve drill periods, and who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the day on which the absence begins shall be entitled to receive his salary or compensation as such public employee for the first 30 calendar days of any such absence. Pay for such purposes shall not exceed 30 days in any one fiscal year. For the purposes of this section, in determining the one year of public agency service, all service of said public employee in the recognized military service shall be counted as public agency service.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4, of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

395.02. Every officer and employee of a public agency who is on military leave other than temporary military leave of absence who has been in the service of such public agency for a period of not less than one year immediately prior to the date on which the absence begins shall be entitled to receive his salary or compensation as such officer or employee for the first 30 calendar days while engaged in the performance of ordered military duty.

As used in this section only, the terms "officer" and "employee" mean an officer or employee who

(a) Is ordered into active military duty as a member of a reserve component of the armed forces of the United States;

(b) Is ordered into active federal military duty as a member of the National Guard or Naval Militia;

or
(c) Is inducted, enlists, enters or is otherwise ordered or called into active duty as a member of the armed forces of the United States.

395.03. No more than the pay for a period of 30 calendar days shall be allowed under the provisions of Sections 395.01 and 395.02, or both, for any one military leave of absence or during any one fiscal year.

395.04. During the time that as an officer or enlisted man or woman of the California National Guard, who is on full-time active duty in the military service of the state, and is engaged, with the approval of the Adjutant General, in the military service of the state in attendance at drills, camps, or special exercises, sponsored by federal authority or by the War Department, as a member of the National Guard of the United States, he or she shall receive salary, pay, and compensation as provided in Sections 320 and 321 of this code.

395.05. (a) Any public employee who is a member of the National Guard, shall be entitled to absent himself from his duties or service, without regard to the length of his public service, while engaged in the performance of ordered military or naval duty and while going to and returning from such duty, provided such duty is performed during such time as the Governor may have issued a proclamation of a state of extreme emergency or during such time as the National Guard may be on active duty in one or more of the situations described or included in Section 146 of this code provided such absence does not exceed the duration of such emergency. During the absence of such officer or employee while engaged in such military service during such emergency and while going to and returning from such duty, and for a period not to exceed 30 calendar days, he shall receive his salary or compensation as such officer or employee and shall not be subjected by any person directly or indirectly by reason of such absence to any loss or diminution of vacation or holiday privilege or be prejudiced by reason of such absence with reference to promotion or continuance in office, employment, reappointment to office, or reemployment.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

395.06. (a) Every officer and enlisted member of the California National Guard who, in order to undertake active military duty in the service of the state when the Governor has issued a proclamation of a state of insurrection pursuant to Section 143, or a proclamation of a state of extreme emergency or when the California National Guard is on active duty pursuant to Section 146, has left a position, other than a temporary position, in private employment, receives a certificate of satisfactory service in the California National Guard, is still qualified to perform the duties of that position, and makes application within 40 days after release from service shall be considered as on leave of absence during that period and shall be restored by the former employer to the former position or to a position of similar seniority, status, and pay without loss of retirement or other benefits, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so, and shall not be discharged from the position without cause within one year after being restored to the position.

(b) Every officer and enlisted member who has left a part-time position in private employment for purposes of service pursuant to subdivision (a), receives a certificate of satisfactory service in the California National Guard, is still qualified to perform the duties of that position, and makes application within five days after release from service shall be considered as on leave of absence during that period and shall be restored by the former employer to the former position, or to a position of similar seniority, status, and pay, if any exist, and shall not be discharged from the position without cause within one year after being restored to the position.

(c) If any employer fails or refuses to comply with this section, the superior court of the county in which the employer maintains a place of business may, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of this section, specifically require the employer to comply with this section and compensate the person for any loss of wages or benefits suffered by reason of the employer's unlawful action. The court shall order a speedy hearing and shall advance it on the calendar. Upon application to the district attorney of the county in which the employer maintains a place of business by any person claiming to be entitled to the benefits of this section, the district attorney, if reasonably satisfied that the person is entitled to these benefits, shall appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the employer to comply with this section. No fees or court costs are required to be paid by the person applying for these benefits.

395.07. (a) In addition to the benefits provided pursuant to Sections 395.01 and 395.02, any officer or employee of the legislative, executive, or judicial department of the state, who, as a member of the California National Guard or a United States Military Reserve organization, is called into active duty as a result of the Iraq-Kuwait crisis on or after August 2, 1990, shall have the benefits provided for in subdivision (b).

(b) Any officer or employee to which subdivision (a) applies, while on active duty, shall, with respect to active duty served on or after August 2, 1990, receive from the state, for a period not to exceed 180 calendar days, as part of his or her compensation, both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the officer or employee would have received as a state officer or employee, including any merit raises which would otherwise have been granted during the time the individual was on active duty.

(2) All benefits which he or she would have received had he or she not been called to active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not return to state service within 60 days of being released from active duty shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This subdivision shall not apply to compensation received pursuant to Section 395.02.

(d) This section shall not apply to any active duty served voluntarily after the close of the Iraq-Kuwait crisis.

395.08. (a) In addition to the benefits provided pursuant to Sections 395.01 and 395.02, any officer or employee of the legislative, executive, or judicial department of the state, who, as a member of the California National Guard or a United States Military Reserve organization, is called into active duty as a

result of the Bosnia crisis on or after November 21, 1995, shall have the benefits provided for in subdivision (b).

(b) Any officer or employee to which subdivision (a) applies, while on active duty, shall, with respect to active duty served on or after November 21, 1995, as a result of the Bosnia crisis, receive from the state, for a period not to exceed 180 calendar days, as part of his or her compensation, both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the officer or employee would have received as a state officer or employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty.

(2) All benefits that he or she would have received had he or she not been called to active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not return to state service within 60 days of being released from active duty shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This subdivision shall not apply to compensation received pursuant to Section 395.02.

(d) This section shall not apply to any active duty served voluntarily after the close of the Bosnia crisis.

(e) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to an employee who was not eligible to participate in the federal Ready Reserve Mobilization Income Insurance Program (10 U.S.C. Sec. 12521 et seq.) or a successor federal program that, in the determination of the Director of Personnel Administration, is substantively similar to the federal Ready Reserve Mobilization Income Insurance Program. For an employee eligible to participate in the federal Ready Reserve Mobilization Income Insurance Program or a successor program, and whose monthly salary as a state employee was higher than the sum of his or her military pay and allowances and the maximum allowable benefit under the federal Ready Reserve Mobilization Income Insurance Program or a successor program, the employee shall receive the amount payable under paragraph (1) of subdivision (b), but that amount shall be reduced by the maximum allowable benefit under the federal Ready Reserve Mobilization Income Insurance Program or a successor program. For individuals who elected the federal Ready Reserve Mobilization Income Insurance Program the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 180 calendar days.

395.1. (a) Notwithstanding any other provision of law to the contrary, any officer or employee of the state not subject to Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, or any public officer, deputy, assistant, or employee of any city, county, city and county, school district, water district, irrigation district, or any other district, political corporation, political subdivision, or governmental agency thereof who, in time of war or national emergency as proclaimed by the President or Congress, or when any of the armed forces of the United States are serving outside of the United States or their territories pursuant to order or request of the United Nations, or while any national conscription act is in effect, leaves or has left his or her office or position prior to the end of the war, or the termination of the national emergency or during the effective period of any order or request of this type of the United Nations or prior to the expiration of the National Conscription Act, to join the armed forces of the United States and who does or did without unreasonable and unnecessary delay join the armed forces or, being a member of any reserve force or corps of any of the armed forces of the United States or of the militia of this state, is or was ordered to duty therewith by competent military authority and served or serves in compliance with those orders, shall have a right, if released, separated or discharged under conditions other than dishonorable, to return to and reenter upon the office or position within six months after the termination of his or her active service with the armed forces, but not later than six months after the end of the war or national emergency or military or police operations under the United Nations or after the Governor finds and proclaims that, for the purposes of this section, the war, national emergency, or United Nations military or police operation no longer exists, or after the expiration of the National Conscription Act, if the term for which he or she was elected or appointed has not ended during his or her absence; provided, that the right to return to and reenter upon the office or position shall not extend to or be granted to any officer or employee of the state not subject to Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, or any public officer, deputy, assistant, or employee of any city, county, city and county, school district, water district, irrigation district or any other district, political corporation, political subdivision or governmental agency thereof, who shall fail to return to and reenter upon his or her office or position within 12 months after the first date upon which he or she could terminate or could cause to have terminated his or her active service with the

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armed forces of the United States or of the militia of this state. He or she shall also have a right to return to and reenter upon the office or position during terminal leave from the armed forces and prior to discharge, separation or release therefrom.

(b) Upon return and reentry to the office or employment the officer or employee shall have all of the rights and privileges in, connected with, or arising out of the office or employment which he or she would have enjoyed if he or she had not been absent therefrom; provided, however, the officer or employee shall not be entitled to sick leave, vacation or salary for the period during which he or she was on leave from that governmental service and in the service of the armed forces of the United States.

If the office or position has been abolished or otherwise has ceased to exist during his or her absence, he or she shall be reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant position for which he or she is qualified.

(c) Any officer or employee other than a probationer who is restored to his or her office or employment pursuant to this act shall not be discharged from that office or position without cause within one year after the restoration, and shall be entitled to participate in insurance or other benefits offered by the employing governmental agency pursuant to established rules and practices relating to those officers or employees on furlough or leave of absence in effect at the time the officer or employee left his or her office or position to join the armed forces of the United States.

(d) Notwithstanding any other provisions of this code, any enlisted person who was involuntarily ordered to active duty (other than for training) for a stated duration shall not lose any right or benefit conferred under this code if he or she voluntarily elects to complete the period of that duty.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

395.3. In the event that any public officer or employee has resigned or resigns his or her office or employment to serve or to continue to serve in the armed forces of the United States or in the armed forces of this state, he or she shall have a right to return to and reenter the office or employment prior to the time at which his or her term of office or his or her employment would have ended if he or she had not resigned, on serving a written notice to that effect upon the authorized appointing power, or if there is no authorized appointing power, upon the officer or agency having power to fill a vacancy in the office or employment, within six months of the termination of his or her active service with the armed forces; provided, that the right to return and reenter upon the office or position shall not extend to or be granted to any public officer or employee, who shall fail to return to and reenter upon his or her office or position within 12 months after the first date upon which he or she could terminate or could cause to have terminated his or her active service with the armed forces of the United States or of the militia of this state.

As used in this section, "public officers and employees" includes all of the following:

(a) Members of the Senate and of the Assembly.

(b) Justices of the Supreme Court and the courts of appeal, judges of the superior courts and of the municipal courts, and all other judicial officers.

(c) All other state officers and employees not within Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, including all officers for whose selection and term of office provision is made in the Constitution and laws of this state.

(d) All officers and employees of any county, city and county, city, township, district, political subdivision, authority, commission, board, or other public agency within this state.

The right of reentry into public office or employment provided for in this section shall include the right to be restored to the civil service status as the officer or employee would have if he or she had not so resigned; and no other person shall acquire civil service status in the same position so as to deprive the officer or employee of his or her right to restoration as provided for herein.

This section shall be retroactively applied to extend the right of reentry into public office or employment to public officers and employees who resigned prior to its effective date.

This section does not apply to any public officer or employee to whom the right to reenter public office or employment after service in the armed forces has been granted by any other provision of law.

If any provision of this section, or the application of this section to any person or circumstance, is held invalid, the remainder of this section, or the application of this section to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

395.4. Whenever the United States is engaged in war or whenever the Governor finds and proclaims that an emergency exists in preparing for the National defense, any employee or officer, other than an elected officer, of a county, city, political subdivision, school, irrigation, public district, or other local authority or public body whatsoever who enters the armed forces of the United States shall be entitled to a leave of absence for service with such armed forces for the duration of the war or until the Governor finds and proclaims that the emergency no longer exists, and for 90 days thereafter, or until 90 days after the termination of such service.

395.9. Any public employee and any employee of a corporation, company, firm, or other person who is a member of the State Military Reserve is entitled to a temporary military leave of absence without pay while engaged in military duty for purposes of military training, drills, unit training assemblies, or similar inactive duty training for not to exceed 15 calendar days annually, including time involved in going to and returning from that duty.

NONINDUSTRIAL DISABILITY INSURANCE FOR STATE EMPLOYEES

Unemployment Insurance Code.

2781. Except as provided in this chapter and Chapter 3.6 (commencing with Section 18135) of Part of Division 5 of Title 2 of the Government Code, a state employee shall be eligible for nonindustrial disability benefits on the same terms and conditions as are specified by this part. Except as inconsistent with the provisions of this chapter and Chapter 3.6 (commencing with Section 18135) of Part 1 of Division 5 of Title 2 of the Government Code, the provisions of this division and authorized regulations shall apply to any matter arising pursuant to this chapter.

2782. (a) The provisions of Chapter 4 (commencing with Section 2901), Chapter 5 (commencing with Section 3001), and Chapter 6 (commencing with Section 3251) of Part 2 do not apply to this chapter.

(b) The provisions of Article 2 (commencing with Section 2652), Article 6 (commencing with Section 2765) and Article 7 (commencing with Section 2775) of Chapter 2 of Part 2 do not apply to this chapter.

(c) Sections 2609, 2610, 2611, 2625, 2712, and 2712.5 do not apply to this chapter.

2783. (a) Nonindustrial disability benefits are payable by the Controller upon authorization by the Employment Development Department to individuals who are eligible to receive such benefit payments under this chapter.

(b) In lieu of the contributions required of employees, the State of California shall pay into the Disability Fund in the State Treasury at the times and in the manner provided in subdivision (c), an amount equal to the additional cost to the Disability Fund for added administrative work arising out of nonindustrial disability insurance for state employees.

(c) In making the payments prescribed by subdivision (b), there shall be paid or credited to the Disability Fund, either in advance or by way of reimbursement, as may be determined by the director, such sums as he estimates the Disability Fund will be entitled to receive from the State of California under this section for each fiscal year, reduced or increased by any sum by which he finds that his estimates for any prior fiscal year were greater or less than the amounts which should have been paid to the fund. Such estimates may be made upon the basis of statistical sampling, or other method as may be determined by the director.

Upon making such determination, the director shall certify to the Controller the amount determined with respect to the State of California. The Controller shall pay to the Disability Fund the contributions due from the State of California.

(d) The director may require from each state agency such employment, wage, financial, statistical, or other information and reports, properly verified, as may be deemed necessary by the director to carry

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out his duties under this chapter, which shall be filed with the director at the time and in the manner prescribed by him.

(e) The director may tabulate and publish information obtained pursuant to this chapter in statistical form and may divulge the name of the employing unit.

(f) Each state agency shall keep such work records as may be prescribed by the director for the proper administration of this chapter.

OFFICE HOURS

Government Code.

11020. (a) Unless otherwise provided by law, all offices of every state agency shall be kept open for the transaction of business from 8 a.m. until 5 p.m. of each day from Monday to Friday, inclusive, other than legal holidays, but the office of Treasurer shall close one hour earlier. However, any state agency or division, branch or office thereof may be kept open for the transaction of business on other hours and on other days than those specified in this subdivision.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Subdivision (a) shall not apply to any fair or association specified under Division 3 (commencing with Section 3001) of the Food and Agricultural Code.

11021. (a) When a state agency is open or operates on Saturday such state agency may operate with a skeleton crew from 9 a.m. to 12 noon of each Saturday if the total number of hours per week of its employees is not less than the total number of office hours established in this article.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

11022. Each state agency shall establish a procedure pursuant to which incoming telephone calls on any public line shall be answered within 10 rings during regular business hours as set forth in Section 11020, except where emergency or illness require adjustments to normal staffing levels. This requirement shall be met in every office where staff is available, unless compliance would require overtime or compensating time off.

PAYROLL DEDUCTIONS

Government Code.

1150. As used in this article:

(a) "State employee" means all persons who receive wages for services through the uniform payroll system established and administered by the Controller under Section 12470.

(b) "Public agency" includes counties, cities, municipal corporations, political subdivisions, public districts, and other public agencies of the state.

(c) "Employee organization" means an organization which represents employees of the state or the California State University in their employer-employee relations, and which is registered with the Department of Personnel Administration or the Trustees of the California State University, or which has been recognized or certified by the Public Employment Relations Board.

(d) "Bona fide association" means an organization of employees and former employees of an agency of the state and the California State University, and which does not have as one of its purposes representing these employees in their employer-employee relations.

(e) "Deduction" does not include direct deposit by electronic fund transfer, as authorized by Sections 7506 and 12480.

1151. State employees may authorize deductions to be made from their salaries or wages for payment of one or more of the following:

(a) Insurance premiums or other employee benefit programs sponsored by a state agency under appropriate statutory authority.

- (b) Premiums on National Service Life Insurance or United States Government Converted Insurance.
- (c) Shares or obligations to any regularly chartered credit union.
- (d) Recurrent fees or charges payable to a state agency for a program which has a purpose related to government, as determined by the Controller.
- (e) The purchase of United States savings bonds in accordance with procedures established by the Controller.
- (f) Payment of charitable contributions under any plan approved by the Board of Control in accordance with procedures established by the Controller.
- (g) Passes, tickets, or tokens issued for a period of one month, or more, by a public transportation system.
- (h) Deposit into an employee's account with a state or federal bank or savings and loan association located in this state, for services offered by that bank or savings and loan association.
- (i) The purchase of any investment or thrift certificate issued by an industrial loan company licensed by this state.

1151.5. In addition to deductions authorized pursuant to Section 1151, a state employee may authorize deductions to be made from salaries or wages for payment for the support, maintenance, or care of the employee's child, children, family, or former spouse for whom the employee has a duty of support. A service charge may be assessed for this deduction.

1152. Deductions may be requested by employee organizations and bona fide associations from the salaries and wages of their members, as follows:

(a) Employee organizations may request membership dues, initiation fees, and general assessments, as well as payment of any other membership benefit program sponsored by the organization.

(b) Bona fide associations may request membership dues and initiation fees.

The Controller shall not be required to make any benefit deductions for an employee member whose membership dues are not deducted.

1153. The Controller shall provide for the administration of payroll deductions as set forth in Sections 1151, 1151.5, and 1152, salary reductions pursuant to Section 12420.2, and may establish, by rule or regulation, procedures for that purpose.

In administering these programs the Controller shall:

(a) Make, cancel, or change a deduction or reduction at the request of the person or organization authorized to have the deduction or reduction. All requests shall be made on forms approved by the Controller.

(b) Obtain a certification from any state agency, employee organization, or business entity requesting a deduction or reduction that they have and will maintain an authorization, signed by the individual from whose salary or wages the deduction or reduction is to be made.

(c) Provide for an agreement from individuals, organizations, and business entities receiving services to relieve the state, its officers and employees, of any liability that may result from making, canceling, or changing requested deductions or reductions. However, no financial institution receiving a payroll service pursuant to this section shall be required to reimburse the state for any error in the payroll service received by that financial institution after 90 days from the month in which the payroll service was deducted from an individual's paycheck.

(d) Determine the cost of performing the requested service and collect that cost from the organization, entity, or individual requesting or authorizing the service. Services requested which are incidental, but not necessary, to making the deduction may be performed at the Controller's discretion with any additional cost to be paid by the requester. At least 30 days prior to implementation of any adjustment of employee costs pursuant to Section 12420.2, the Controller shall notify in writing any affected employee organization.

(e) Prior to making a deduction for an employee organization or a bona fide association, determine that the organization or association has been recognized, certified, or registered by the appropriate authority.

(f) Decline to make salary services for any individual, organization, or entity if the Controller determines that it is not administratively feasible or practical, or if the Controller determines that the individual, organization, or entity requesting or receiving the salary service has failed to comply with any statute, rule, regulation, or procedure for the administration of salary services.

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(g) Make, cancel, or change a deduction or reduction not later than the month subsequent to the month in which the request is received. Except as provided in subdivision (c), all cancellations or changes shall be effective when made by the Controller.

(h) At the request of a state agency, transfer employee deduction authorization for a state-sponsored benefit program from one provider to another if the benefit and the employee contribution remain substantially the same. Notice of the transfer shall be given by the Controller to all affected employees.

1156. (a) Any eligible employee who is participating in a flexible benefits program may elect to receive one or more benefits that qualify to be excluded from gross income in lieu of a portion of his or her salary.

(b) For purposes of this section, an "eligible employee" means any of the following:

(1) An employee excluded from the definition of "state employee" in subdivision (c) of Section 3513.

(2) A "managerial employee" as defined in subdivision (e) of Section 3513.

(3) A "confidential employee" as defined in subdivision (f) of Section 3513 and subdivision (e) of Section 3562.

(4) A "supervisory employee" as defined in Sections 3522.1 and 3580.3.

(5) An officer or employee of the State of California in the executive or judicial branch of government who is not a state civil service employee pursuant to Part 2 (commencing with Section 18500) of Division 5 of Title 2.

(6) A "state employee," as defined by subdivision (c) of Section 3513 or employed by the state as provided for in Article VI of the Constitution.

(c) Any eligible employee participating in the flexible benefits program shall be subject to federal laws and implementing regulations of the Department of Personnel Administration which affects the flexible benefit program throughout the period of the employee's enrollment.

(d) Unless the trustee or the administrator of the state's flexible benefit program is the Controller or another state officer, that program shall be administered in compliance with the federal Employee Retirement Income Security Act of 1974 (ERISA: 29 U.S.C.A. Sec. 1001 et seq.).

(e) As a condition of participating in a flexible benefits program, each eligible employee shall provide evidence in a manner satisfactory to the Department of Personnel Administration that the employee is covered by a basic health benefits plan, and his or her agreement to remain covered for the period of participation in the flexible benefits plan.

(f) There is in the State Treasury the Flexelect Benefit Fund which, notwithstanding Section 13340, is continuously appropriated without regard to fiscal years to the Department of Personnel Administration for expenditure to implement the flexible benefits program and to pay the related administrative costs. The fund shall consist of the amounts received from state employee compensation excluded from gross income and transmitted to the Flexelect Benefit Fund, income of whatever nature earned on the money in the Flexelect Benefit Fund during any fiscal year and credited to the fund, and amounts appropriated therefor in the annual Budget Act and other statutes.

(g) On or after July 1, 1990, any funds remaining in the State Employees' Dependent Care Assistance and Health Care Assistance Fund shall be transmitted into the account in the Flexelect Benefit Fund for the administrative expenses of the Controller's office to pay the related administrative costs.

1157. (a) Officers and employees of a public agency, other than those under the uniform payroll system provided for in Article 5 (commencing with Section 12470) of Chapter 5 of Part 2 of Division 3 of Title 2, may authorize the governing body of the public agency to make deductions from their salaries or wages for the payment of premiums on life, accident, health, disability, legal expense, or automobile liability insurance, or on any two or more, under a system of insurance approved by or adopted and carried into effect by the governing body, or for the payment of premiums on National Service Life Insurance or United States Government Converted Insurance. Officers and employees of the public agency may authorize the governing body of the public agency to make deductions from their salaries or wages for the payment of dues or subscription charges of nonprofit membership corporations for defraying the cost of medical service (including services rendered by doctors of medicine, doctors of osteopathic medicine, or doctors of chiropractic), or hospital care, or legal services, or, any of them, under system of medical service, or hospital care, or legal services, or, any of them, approved by or adopted and carried into effect by the governing body.

(b) The board of supervisors may, by resolution, permit officers and employees of a county to authorize deductions from their salaries or wages for the premiums on long-term care insurance

established pursuant to Article 8.8 (commencing with Section 31696.1) of Chapter 3 of Part 3 of Division 4 of Title 3 or pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2 and approved by, or adopted and carried into effect by, the retirement association. Materials offering that long-term care insurance shall specify that the long-term care insurance is approved by, or adopted and carried into effect by, the retirement association and not by the county.

1157.3. Employees, including retired employees, of a public agency in addition to any other purposes authorized in this article, on approval of the governing body of such public agency, may also authorize deductions to be made from their salaries, wages, or retirement allowances for the payment of dues in, or for any other service provided by, any bona fide organization whose membership is comprised, in whole or in part, of employees of such agency and employees of such organization and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of such employees, such deductions to be made in accordance with the provisions made by the governing body of the public agency.

1157.7. Employees of a public agency employing more than 20,000 persons, other than a city and county, may authorize dues deductions for membership in an ethnic employee organization operating within the public agency prior to January 1, 1981, which includes ethnic minority employees and which has as its primary purpose representing those employees in their employment civil rights with the employer. This purpose shall not include meeting and conferring with the public agency concerning matters within the scope of representation pursuant to Chapter 10 (commencing with Section 3500).

1157.8. Officers and employees of public agencies may authorize deductions to be made from their salaries or wages for the purchase of United States savings bonds in accordance with provision made by the governing body of the public agency.

All auditors, treasurers, and other disbursing officers of public agencies are authorized to recognize and act upon these requests for salary or wage deductions and to establish special accounts for each officer or employee so that sufficient funds may be accumulated to the credit of the officer or employee for the purchase of United States savings bonds. All funds so accumulated are trust funds.

1157.9. Officers and employees of public agencies may authorize wage and salary deductions for deposit into an account with a state or federal bank or savings and loan association located in this state, or for the purchase of shares in, or the payment of money to, any regularly chartered credit union, or for the purchase of any investment or thrift certificate issued by an industrial loan company licensed by this state. Auditors, treasurers, and other disbursing officers of any public agency other than a state agency are authorized to recognize and act upon these wage or salary assignments.

1157.10. Payroll deductions for state employees of public agencies, other than those under the uniform payroll system, shall be administered by the appropriate officer of the public agency. In administering payroll deductions the officer shall do all of the following:

- (a) Make, cancel, or change a deduction at the request of the person or organization authorized to have the deduction. All requests shall be on forms approved by the public agency.
- (b) Obtain a certification from any state agency, employee organization, or business entity requesting a deduction that they have, and will maintain, an authorization to make the deduction, signed by the individual from whose salary or wages the deduction is to be made.
- (c) Provide for an agreement from organizations and business entities receiving deductions to relieve the public agency, its officers and employees, of any liability that may result from making, canceling, or changing requested deductions.
- (d) Determine the cost of performing the requested deduction service and collect that cost from the organization, entity, or individual requesting or authorizing the deduction. Services requested which are incidental, but not necessary, to making the deduction may be performed at the public agency's discretion, with any additional cost to be paid by the requester.
- (e) Prior to making a deduction for an employee organization or a bona fide association, determine that the organization or association has been recognized or registered by the appropriate authority.
- (f) Decline to make deductions for any individual, organization, or entity if the public agency determines that it is not administratively feasible or practical to make the deduction.
- (g) Make, cancel, or change a deduction not later than the month subsequent to the month in which the request is received. All deductions, cancellations, or changes shall be effective when made by the public agency.

DPA Laws

1157.11. (a) Officers and employees of a county with a population of over 8,000,000, may authorize deductions to be made from their salaries or wages for the purchase of securities issued by any of the following:

- (1) The county.
- (2) Any joint powers authority created pursuant to an agreement to which the county is a party entered into pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7.
- (3) Any public district which is governed by the governing body of the county.
- (4) Any nonprofit public benefit corporation created by the governing body of the county for the purpose of assisting the county in financing capital projects and equipment purchases, provided the corporation is deemed to be an instrumentality of the county for federal income tax purposes.

(b) In each case, the deductions shall be made in accordance with provisions made by the governing body of the county.

(c) For purposes of this section, "securities" includes bonds, notes, warrants, lease or installment sale obligations represented by certificates of participation, or other evidences of indebtedness.

(d) The auditor, the treasurer, and other disbursing officers of the county are authorized to recognize and act upon the requests for wage or salary deductions and to establish special accounts for each officer or employee so that sufficient funds may be accumulated to the credit of the officer or employee for the purchase of securities as authorized by this section. All funds so accumulated are trust funds.

13923. The board may approve plans for payroll deduction from the salaries or wages of state officers and employees under subdivision (f) of Section 1151 for charitable contributions to the agency handling the principal combined fund drive in any area. The board shall establish necessary rules and regulations, including the following:

- (a) Standards for establishing what constitutes the principal combined fund drive in an area.
- (b) A requirement that the agency to receive these contributions shall pay, for deposit in the General Fund, the additional cost to the state of making these deductions and remitting the proceeds, as determined by the Controller.
- (c) Provisions for standard amounts of deductions from which each state officer or employee may select the contribution that he or she desires to make, if any.
- (d) A prohibition upon state officers or employees authorizing more than one payroll deduction for charitable purposes to be in effect at the same time.
- (e) A provision authorizing the Controller to combine in his or her records deductions for employee association dues, if authorized, and charitable deductions, if authorized.

The State Board of Control, in addition, may approve requests of any charitable organization qualified as an exempt organization under Section 23701d of the Revenue and Taxation Code, and paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, which is not an affiliated member beneficiary of the principal combined fund drive to receive designated deductions from the principal fund drive.

The principal combined fund drive agency, any charitable organization which is an affiliated member beneficiary of the principal combined fund drive, and any charitable organization approved by the State Board of Control to receive designated deductions on the payroll authorization form of the principal fund drive, shall certify under penalty of perjury to the State Board of Control that it is in compliance with the Fair Employment and Housing Act, Part 2.8 (commencing with Section 12900), as a condition of receiving these designated deductions.

The principal combined fund drive shall obtain from the State Board of Control the list of approved nonaffiliated beneficiaries, eligible for designated deductions in its approved drive area, and shall provide this information to each employee at the time of the principal fund drive. The principal combined drive agency shall provide a designation form for the employee to indicate those amounts to be contributed to affiliated and nonaffiliated beneficiaries. The designation form shall consist of a copy for each of the following: (1) the employee, (2) the employee's designated beneficiary agency, and (3) the principal combined fund drive agency.

The principal combined fund drive agency shall pay the amount collected for the employee designated beneficiary agency less the amount necessary to reimburse the principal combined fund drive agency for fundraising and administrative expenses. The fee charged for fundraising and administrative cost reimbursement shall be determined by the State Board of Control, published in campaign literature and made available to the employee during the solicitation process.

Nothing contained in this section shall preclude a principal fund drive agency from giving a percentage of the undesignated funds to charities which are not members of the agency handling the principal drive, or honoring an employee's designated deduction to any charitable organization.

PEACE OFFICER BILL OF RIGHTS

Government Code.

3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301. For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

3302. (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct

occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

- (1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
- (2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.
- (3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
- (4) If the investigation involves more than one employee and requires a reasonable extension.
- (5) If the investigation involves an employee who is incapacitated or otherwise unavailable.
- (6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.
- (7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
- (8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (c), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (e) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

3304.5. An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

3307. (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical,

that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

3307.5 (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

POLITICAL ACTIVITIES OF PUBLIC EMPLOYEES

Government Code.

3201. The Legislature finds that political activities of public employees are of significant statewide concern. The provisions of this chapter shall supersede all provisions on this subject in the general law of this state or any city, county, or city and county charter except as provided in Section 3207.

3202. This chapter applies to all officers and employees of a state or local agency.

(a) "Local agency" means a county, city, city and county, political subdivision, district other than a school district, or municipal corporation. Officers and employees of a given local agency include officers and employees of any other local agency whose principal duties consist of providing services to the given local agency.

(b) "State agency" means every state office, department, division, bureau, board, commission, superior court, court of appeal, the Supreme Court, the California State University, the University of California, and the Legislature.

3203. Except as otherwise provided in this chapter, or as necessary to meet requirements of federal law as it pertains to a particular employee or employees, no restriction shall be placed on the political activities of any officer or employee of a state or local agency.

3204. No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

3205. (a) An officer or employee of a local agency shall not, directly or indirectly, solicit a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency.

(b) A candidate for elective office of a local agency shall not, directly or indirectly, solicit a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency.

(c) This section shall not prohibit an officer or employee of a local agency, or a candidate for elective office in a local agency, from requesting political contributions from officers or employees of that agency if the solicitation is part of a solicitation made to a significant segment of the public which may include officers or employees of that local agency.

(d) Violation of this section is punishable as a misdemeanor. The district attorney shall have all authority to prosecute under this section.

(e) For purposes of this section, the term "contribution" shall have the same meaning as defined in Section 82015.

3205.5. No one who holds, or who is seeking election or appointment to, any office shall, directly or indirectly, offer or arrange for any increase in compensation or salary for an employee of a state or local agency in exchange for, or a promise of, a contribution or loan to any committee controlled directly or indirectly by the person who holds, or who is seeking election or appointment to, an office. A violation of this section is punishable by imprisonment in a county jail for a period not exceeding one year, a fine not exceeding five thousand dollars (\$5,000), or by both that imprisonment and fine.

3206. No officer or employee of a local agency shall participate in political activities of any kind while in uniform.

3207. Any city, county, or city and county charter or, in the absence of a charter provision, the governing body of any local agency and any agency not subject to Section 19251 by establishing rules and regulations, may prohibit or otherwise restrict the following:

(a) Officers and employees engaging in political activity during working hours.

(b) Political activities on the premises of the local agency.

3208. Except as provided in Section 19990, the limitations set forth in this chapter shall be the only restrictions on the political activities of state employees.

3209. Nothing in this chapter prevents an officer or employee of a state or local agency from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of such state or local agency, except that a state or local agency may prohibit or limit such activities by its employees during their working hours and may prohibit or limit entry into governmental offices for such purposes during working hours.

PROBATIONARY REPORTS OF PERFORMANCE

Government Code.

19172. During the probationary period the appointing power or his or her officially delegated representative shall evaluate the work and efficiency of a probationer in the manner and at such periods as the Department of Personnel Administration rules may require.

PUBLIC RECORDS

Government Code.

6254.3. (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

- (1) To an agent, or a family member of the individual to whom the information pertains.
- (2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.
- (3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.
- (4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

RETRAINING AND REHABILITATION

Labor Code.

6200. Every public agency, its insurance carrier, and the State Department of Rehabilitation shall jointly formulate procedures for the selection and orderly referral of injured full-time public employees who may be benefited by rehabilitation services and retrained for other positions in public service. The State Department of Rehabilitation shall cooperate in both designing and monitoring results of rehabilitation programs for the disabled employees. The primary purpose of this division is to encourage public agencies to reemploy their injured employees in suitable and gainful employment.

6201. The employer or insurance carrier shall notify the injured employee of the availability of rehabilitation services in those cases where there is continuing disability of 28 days and beyond. Notification shall be made at the time the employee is paid retroactively for the first day of disability (in cases of 28 days of continuing disability or hospitalization) which has previously been uncompensated. A copy of said notification shall be forwarded to the State Department of Rehabilitation.

6202. The initiation of a rehabilitation plan shall be the joint responsibility of the injured employee, and the employer or the insurance carrier.

6203. If a rehabilitation plan requires an injured employee to attend an educational or medical facility away from his home, the injured employee shall be paid a reasonable and necessary subsistence allowance in addition to temporary disability indemnity. The subsistence allowance shall be regarded neither as indemnity nor as replacement for lost earnings, but rather as an amount reasonable and necessary to sustain the employee. The determination of need in a particular case shall be established as part of the rehabilitation plan.

6204. An injured employee agreeing to a rehabilitation plan shall cooperate in carrying it out. On his unreasonable refusal to comply with the provisions of the rehabilitation plan, the injured employee's rights to further subsistence shall be suspended until compliance is obtained, except that the payment of temporary or permanent disability indemnity, which would be payable regardless of the rehabilitation plan, shall not be suspended.

6205. The injured employee may agree with his employer or insurance carrier upon a rehabilitation plan without submission of such plan for approval to the State Department of Rehabilitation. Provision of service under such plans shall be at no cost to the State General Fund.

6206. The injured employee shall receive such medical and vocational rehabilitative services as may be reasonably necessary to restore him to suitable employment.

6207. The injured employee's rehabilitation benefit is an additional benefit and shall not be converted to or replace any workmen's compensation benefit available to him.

SAFETY RETIREMENT

Government Code.

18717. (a) The board shall develop objective criteria for determining the application of the state safety category of membership in the Public Employees' Retirement System to positions in the State Civil Service. Upon the request of the Department of Personnel Administration or an employee organization, the board shall then determine which classes of positions meet all or part of the elements of the criteria and shall list the positions in order based upon the degree in which their duties meet the criteria. An employee organization that requests a determination with respect to a class of position previously determined not to meet the criteria shall submit a written argument supporting the assertion that the class of position meets the criteria. The board, if it finds the written argument to be unpersuasive, may refuse to commence determination proceedings unless and until either the Department of Personnel Administration requests a determination with respect to that class of position or the employee organization submits to the board a supporting argument which the board finds persuasive. The board shall indicate to the department whether the classes qualify for state safety membership. The Public Employees' Retirement System and employing agencies shall assist and cooperate with the board in preparation of the report.

(b) The board shall transmit the report directly to the department, which shall make a copy available to the exclusive representative of any employee organization upon its written request.

(c) The department may use the results of the study in subsequent negotiations with the exclusive employee representatives; however, the report shall in no way obligate the department to take any action or make any recommendations as it relates to state safety membership.

(d) The department shall not recommend safety membership for any class of employees who have not been determined by the board to meet the established criteria.

(e) For classes of employees recommended for state safety membership by a memorandum of understanding reached pursuant to Section 3517.5, a copy of the report authorized under this section shall be submitted to the Legislature with the signed memorandum of understanding.

(f) This section does not apply to state employees in State Bargaining Unit 16.

18717.2. Section 18717 does not apply to state employees in State Bargaining Unit 19.

20398. "State peace officer/firefighter member" also includes:

(a) State officers and employees designated as peace officers as defined in Sections 830.1, 830.2, 830.3, 830.38, 830.4, and 830.5 of the Penal Code, except a patrol member, or a firefighter whose principal duties consist of active firefighting/fire suppression, who is either excluded from the definition of state employee in subdivision (c) of Section 3513 or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, provided, that those officers and employees have responsibility for the direct supervision of state peace officer/firefighter personnel specified in Sections 20391, 20392, 20393, and 20395. The Department of Personnel Administration shall annually determine which classes meet the above conditions and are not classes specified in Sections 20391, 20392, 20393, and 20395, and report its findings to the Legislature and to this system, to be effective July 1 of each year.

(b) Members who are reclassified pursuant to this section may file an irrevocable election to remain subject to their prior retirement formula and the corresponding rate of contributions. The Director of Corrections may, upon appointment to that office on or after January 1, 1999, file an irrevocable election to be subject to the industrial formula and the corresponding rate of contributions. The elections must be filed within 90 days of notification by the board. Members who so elect shall be subject to the reduced benefit factor specified in Section 21353 only for the service included in the federal system.

SALARIES

Government Code.

18000. The salary fixed by law for each state officer, elective or appointive, is compensation in full for that office and for all services rendered in any official capacity or employment whatsoever, during his or her term of office, and he or she shall not receive for his or her own use any fee or perquisite for the performance of any official duty. The provisions of Section 19839 do not apply to any state officer whose salary is fixed by statute.

18000.5. Notwithstanding Sections 18000 and 19990, any officer or employee of the state may receive for his or her personal use compensation from any nonprofit corporation formed exclusively to aid

and assist a state museum for services rendered to the nonprofit corporation and for his or her expenses of performing these services, provided that the nonprofit corporation obtains the prior written approval of the Department of Personnel Administration to provide the compensation and files with the Controller by September 30 of each year a statement disclosing the names of state officers and employees compensated and their respective amounts of compensation for the preceding fiscal year, and the giving or receipt of the compensation is not in violation of any state or federal law.

The board of directors of the museum shall determine whether the services are incompatible with the state responsibilities of the officer or employee and whether the services rendered to the nonprofit corporation interfere with the officer's or employee's full-time obligation to the state. The board of directors of the museum also shall review any issues of compliance of the nonprofit corporation with the terms of any contractual arrangements with the state independently of the officer's or employee's receiving compensation from the nonprofit corporation.

18003. The Controller may, prior to the close of any pay roll period, draw his warrant in favor of any officer or employee covering the total salary or compensation earnable by him during that pay roll period, and may deliver the same to an authorized officer of the state agency within which the payee is employed, whether or not such salary or compensation is already earned in full. Upon delivery of any warrant to an authorized officer of a state agency as provided herein, the Controller and his bondsmen shall be under no further obligation for the proper disbursement of the amount of the warrant or the money represented by it. The Controller, pursuant to the provisions of Article 5 (commencing with Section 11346) of Chapter 3.5 of Division 3 of Title 2, shall adopt rules and regulations for the delivery of payroll warrants to employees.

STATE EMPLOYER-EMPLOYEE RELATIONS

Government Code.

3512. It is the purpose of this chapter to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the State of California by providing a uniform basis for recognizing the right of state employees to join organizations of their own choosing and be represented by those organizations in their employment relations with the state. It is further the purpose of this chapter, in order to foster peaceful employer-employee relations, to allow state employees to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to permit the exclusive representative to receive financial support from those employees who receive the benefits of this representation.

Nothing in this chapter shall be construed to contravene the spirit or intent of the merit principle in state employment, nor to limit the entitlements of state civil service employees, including those designated as managerial and confidential, provided by Article VII of the California Constitution or by laws or rules enacted pursuant thereto.

3513. As used in this chapter:

- (a) "Employee organization" means any organization which includes employees of the state and which has as one of its primary purposes representing these employees in their relations with the state.
- (b) "Recognized employee organization" means an employee organization which has been recognized by the state as the exclusive representative of the employees in an appropriate unit.
- (c) "State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, supervisory employees, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.
- (d) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public

agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(e) "Managerial employee" means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

(f) "Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

(g) "Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

(h) "Board" means the Public Employment Relations Board. The Educational Employment Relations Board established pursuant to Section 3541 shall be renamed the Public Employment Relations Board as provided in Section 3540. The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter.

(i) "Maintenance of membership" means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of that employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the Controller's office.

(j) "State employer," or "employer," for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

(k) "Fair share fee" means the fee deducted by the state employer from the salary or wages of a state employee in an appropriate unit who does not become a member of and financially support the recognized employee organization. The fair share fee shall be used to defray the costs incurred by the recognized employee organization in fulfilling its duty to represent the employees in their employment relations with the state, and shall not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization.

3514. Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000).

3514.5. The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month

limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

(c) The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

3515. Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. State employees also shall have the right to refuse to join or participate in the activities of employee organizations, except that nothing shall preclude the parties from agreeing to a maintenance of membership provision, as defined in subdivision (i) of Section 3513, or a fair share fee provision, as defined in subdivision (k) of Section 3513, pursuant to a memorandum of understanding. In any event, state employees shall have the right to represent themselves individually in their employment relations with the state.

3515.5. Employee organizations shall have the right to represent their members in their employment relations with the state, except that once an employee organization is recognized as the exclusive representative of an appropriate unit, the recognized employee organization is the only organization that may represent that unit in employment relations with the state. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the state.

3515.6. All employee organizations shall have the right to have membership dues, initiation fees, membership benefit programs, and general assessments deducted pursuant to subdivision (a) of Section 1152 and Section 1153 until such time as an employee organization is recognized as the exclusive representative for employees in an appropriate unit, and then such deductions as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

3515.7. (a) Once an employee organization is recognized as the exclusive representative of an appropriate unit it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction.

(b) The state employer shall furnish the recognized employee organization with sufficient employment data to allow the organization to calculate membership fees and the appropriate fair share fees, and shall deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee or the fair share fee. These fees shall be remitted monthly to the recognized employee organization along with an adequate itemized record of the deductions, including, if required by the recognized employee organization, machine readable data. Fair share fee deductions shall continue for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first. The Controller shall retain, from the fair share fee deduction, an amount equal to the cost of administering the provisions of this section. The state employer shall not be liable in any action by a state employee seeking recovery of, or damages for, improper use or calculation of fair share fees.

(c) Notwithstanding subdivision (b), any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to financially support the recognized employee organization. That employee, in lieu of a membership fee or a fair share fee deduction, shall instruct the employer to deduct and pay sums equal to the fair share fee to a nonreligious, nonlabor organization, charitable fund approved by the State Board of Control for receipt of charitable contributions by payroll deductions.

(d) A fair share fee provision in a memorandum of understanding which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; (3) the vote may be taken at anytime during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during the term. If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote in a manner which it shall prescribe. Notwithstanding this subdivision, the state employer and the recognized employee organization may

negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on a fair share fee provision.

(e) Every recognized employee organization which has agreed to a fair share fee provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees in the unit, within 90 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee in the unit may petition the board for an order compelling this compliance, or the board may issue a compliance order on its own motion.

(f) If an employee who holds conscientious objections pursuant to subdivision (c) requests individual representation in a grievance, arbitration, or administrative hearing from the recognized employee organization, the recognized employee organization is authorized to charge the employee for the reasonable cost of the representation.

(g) An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

3515.8. Any state employee who pays a fair share fee shall have the right to demand and receive from the recognized employee organization, under procedures established by the recognized employee organization, a return of any part of that fee paid by him or her which represents the employee's additional pro rata share of expenditures by the recognized employee organization that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment, or applied towards the cost of any other benefits available only to members of the recognized employee organization. The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals and collective negotiations and contract administration, or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and conferring with the state employer. The board may compel the recognized employee organization to return that portion of a fair share fee which the board may determine to be subject to refund under the provisions of this section.

3516. The scope of representation shall be limited to wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

3516.5. Except in cases of emergency as provided in this section, the employer shall give reasonable written notice to each recognized employee organization affected by any law, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the employer, and shall give such recognized employee organizations the opportunity to meet and confer with the administrative officials or their delegated representatives as may be properly designated by law.

In cases of emergency when the employer determines that a law, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the administrative officials or their delegated representatives as may be properly designated by law shall provide such notice and opportunity to meet and confer in good faith at the earliest practical time following the adoption of such law, rule, resolution, or regulation.

3517. The Governor, or his representative as may be properly designated by law, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

"Meet and confer in good faith" means that the Governor or such representatives as the Governor may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the state of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses.

3517.5. If agreement is reached between the Governor and the recognized employee organization, they shall jointly prepare a written memorandum of such understanding which shall be presented, when appropriate, to the Legislature for determination.

3517.6. (a) (1) In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(3) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 8 or 16. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19582.1, 19175.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(b) In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

3517.61. Notwithstanding Section 3517.6, for state employees in State Bargaining Unit 6, in any case where the provisions of Section 70031 of the Education Code, subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19173.4, 19175.7, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action. In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

3517.7. If the Legislature does not approve or fully fund any provision of the memorandum of understanding which requires the expenditure of funds, either party may reopen negotiations on all or part of the memorandum of understanding.

Nothing herein shall prevent the parties from agreeing and effecting those provisions of the memorandum of understanding which have received legislative approval or those provisions which do not require legislative action.

3518. If after a reasonable period of time, the Governor and the recognized employee organization fail to reach agreement, the Governor and the recognized employee organization may agree upon the appointment of a mediator mutually agreeable to the parties, or either party may request the board to appoint a mediator. When both parties mutually agree upon a mediator, costs of mediation shall be divided one-half to the state and one-half to the recognized employee organization. If the board appoints the mediator, the costs of mediation shall be paid by the board.

3518.5. A reasonable number of employee representatives of recognized employee organizations shall be granted reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the state on matters within the scope of representation.

This section shall apply only to state employees, as defined by subdivision (c) of Section 3513, and only for periods when a memorandum of understanding is not in effect.

3518.7. Managerial employees and confidential employees shall be prohibited from holding elective office in an employee organization which also represents "state employees," as defined in subdivision (c) of Section 3513.

3519. It shall be unlawful for the state to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

3519.5. It shall be unlawful for an employee organization to:

- (a) Cause or attempt to cause the state to violate Section 3519.
- (b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
- (c) Refuse or fail to meet and confer in good faith with a state agency employer of any of the employees of which it is the recognized employee organization.
- (d) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

3520. (a) Judicial review of a unit determination shall only be allowed: (1) when the board, in response to a petition from the state or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.

(c) Such petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce such order by writ of mandamus. The court shall not review the merits of the order.

3520.5. (a) The state shall grant exclusive recognition to employee organizations designated or selected pursuant to rules established by the board for employees of the state or an appropriate unit thereof, subject to the right of an employee to represent himself.

(b) The board shall establish reasonable procedures for petitions and for holding elections and determining appropriate units pursuant to subdivision (a).

(c) The board shall also establish procedures whereby recognition of employee organizations formally recognized as exclusive representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.

3520.7. The state employer shall adopt reasonable rules and regulations for all of the following:

(a) Registering employee organizations, as defined by subdivision (c) of Section 1150, and bona fide associations, as defined by subdivision (d) of Section 1150.

(b) Determining the status of organizations and associations as employee organizations or bona fide associations.

(c) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

3521. (a) In determining an appropriate unit, the board shall be governed by the criteria in subdivision (b). However, the board shall not direct an election in a unit unless one or more of the employee organizations involved in the proceeding is seeking or agrees to an election in such a unit.

(b) In determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals; the history of employee representation in state government and in similar employment; the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements; and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the state government, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of state government and its employees to serve the public.

(4) The number of employees and classifications in a proposed unit and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employees or any proliferation of units among the employees of the employer.

(6) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a separate unit of representation based upon occupation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers.

(c) There shall be a presumption that professional employees and nonprofessional employees should not be included in the same unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (b) establishes.

3521.5. The term "professional employee" means (a) any employee engaged in work (1) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (2) involving the consistent exercise of discretion and judgment in its performance; (3) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (4) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (1) has completed the courses of specialized intellectual instruction and study described in paragraph 4 of subdivision (a), and (2) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subdivision (a).

3521.7. The board may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws. Employees so designated shall not be denied the right to be in a unit composed solely of such employees.

3523. (a) All initial meet and confer proposals of recognized employee organizations shall be presented to the employer at a public meeting, and such proposals thereafter shall be a public record.

All initial meet and confer proposals or counterproposals of the employer shall be presented to the recognized employee organization at a public meeting, and such proposals or counterproposals thereafter shall be a public record.

(b) Except in cases of emergency as provided in subdivision (d), no meeting and conferring shall take place on any proposal subject to subdivision (a) until not less than seven consecutive days have elapsed to enable the public to become informed, and to publicly express itself regarding the proposals, as well as regarding other possible subjects of meeting and conferring and thereafter, the employer shall, in open meeting, hear public comment on all matters related to the meet and confer proposals.

(c) Forty-eight hours after any proposal which includes any substantive subject which has not first been presented as proposals for public reaction pursuant to this section is offered during any meeting and conferring session, such proposals and the position, if any, taken thereon by the representatives of the employer, shall be a public record.

(d) Subdivision (b) shall not apply when the employer determines that, due to an act of God, natural disaster, or other emergency or calamity affecting the state, and which is beyond the control of the employer or recognized employee organization, it must meet and confer and take action upon such a proposal immediately and without sufficient time for the public to become informed and to publicly

express itself. In such cases the results of such meeting and conferring shall be made public as soon as reasonably possible.

3523.5. The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to state employees.

3524. This chapter shall be known and may be cited as the Ralph C. Dills Act.

STATE EMPLOYER-EMPLOYEE RELATIONS -- EXCLUDED EMPLOYEE BILL OF RIGHTS

Government Code.

3525. This chapter shall be known, and may be cited, as the Bill of Rights for State Excluded Employees.

3526. The purpose of this chapter is to inform state supervisory, managerial, confidential, and employees otherwise excepted from coverage under the Ralph C. Dills Act by subdivision (c) of Section 3513 of their rights and terms and conditions of employment, and to inspire dedicated service and promote harmonious personnel relations among those representing state management in the conduct of state affairs.

3527. As used in this chapter:

(a) "Employee" means a civil service employee of the State of California. The "State of California" as used in this chapter includes such state agencies, boards, and commissions as may be designated by law that employ civil service employees, except the University of California, Hastings College of the Law, and the California State University.

(b) "Excluded employee," means all managerial employees, as defined in subdivision (e) of Section 3513, all confidential employees, as defined in subdivision (f) of Section 3513, and all supervisory employees, as defined in subdivision (g) of Section 3513, and all civil service employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the Public Employment Relations Board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(c) "Supervisory employee organization" means an organization which represents members who are supervisory employees under subdivision (g) of Section 3513.

(d) "Excluded employee organization" means an organization which includes excluded employees of the state, as defined in subdivision (b), and which has as one of its primary purposes representing its members in employer-employee relations. Excluded employee organization includes supervisory employee organizations.

(e) "State employer" or "employer," for purposes of meeting and conferring on matters relating to supervisory employer-employee relations, means the Governor or his or her designated representatives.

3528. The Legislature hereby finds and declares that the rights and protections provided to excluded employees under this chapter constitute a matter of important concern. The Legislature further finds and declares that the efficient and effective administration of state programs depends upon the maintenance of high morale and the objective consideration of issues raised between excluded employees and their employer.

3529. (a) Except for supervisory employees as defined in subdivision (g) of Section 3513, excluded employees shall not hold any office in an employee organization which also represents nonexcluded employees.

(b) Excluded employees shall not participate in the handling of grievances on behalf of nonexcluded employees. Nonexcluded employees shall not participate in the handling of grievances on behalf of excluded employees.

(c) Excluded employees shall not participate in meet and confer sessions on behalf of nonexcluded employees. Nonexcluded employees shall not participate in meet and confer sessions on behalf of supervisory employees.

(d) The prohibition in subdivisions (b) and (c) shall not apply to the paid staff of an excluded or supervisory employee organization.

(e) Excluded employees shall not vote on questions of ratification or rejection of memoranda of understanding reached on behalf of nonexcluded employees.

3530. Excluded employee organizations shall have the right to represent their excluded members in their employment relations, including grievances, with the State of California. Excluded employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of excluded employees from membership. This section shall not prohibit any excluded employee from appearing on his or her own behalf or through his or her chosen representative in his or her employment relations and grievances with the State of California.

3531. Supervisory employees shall have the right to form, join, and participate in the activities of supervisory employee organizations of their own choosing for the purpose of representation on all matters of supervisory employer-employee relations, as set forth in Section 3532. Supervisory employees also shall have the right to refuse to join or participate in the activities of supervisory employee organizations and shall have the right to represent themselves individually in their employment relations with the public employer.

3532. The scope of representation for supervisory employees shall include all matters relating to employment conditions and supervisory employer-employee relations including wages, hours, and other terms and conditions of employment.

3533. Upon request, the state shall meet and confer with verified supervisory employee organizations representing supervisory employees. "Meet and confer" means that they shall consider as fully as the employer deems reasonable such presentations as are made by the verified supervisory employee organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action.

3534. The state employer shall allow a reasonable number of supervisory public employee representatives of verified supervisory employee organizations reasonable time off without loss of compensation or other benefits when meeting and conferring with representatives of the state employer on matters within the scope of representation for supervisory employees.

3535. The Department of Personnel Administration may adopt rules and regulations for the administration of excluded employer-employee relations, including supervisory employer-employee relations, under these provisions. Such rules and regulations may include provisions for:

- (a) Verifying that an excluded employee organization does in fact represent excluded employees.
- (b) Verifying the official status of excluded employee organization officers and representatives.
- (c) Access of excluded employee organization officers and representatives to work locations.
- (d) Use of official bulletin boards and other means of communication by excluded employee organizations.

(e) Furnishing nonconfidential information pertaining to excluded employee relations to excluded employee organizations.

(f) Any other matters as are necessary to carry out the purposes of this chapter.

3536. The state may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the state and restricting these employees from representing any employee organization, which represents other employees of the state, on matters within the scope of representation. Except as specifically provided otherwise in this chapter, this section does not otherwise limit the right of excluded employees to be members of and to hold office in an excluded employee organization.

3537. Every excluded employee organization shall submit an annual registration statement on or before July 1 of each calendar year to the Department of Personnel Administration. The registration statement shall, at a minimum, list the name of the organization, its affiliations, headquarters, and other business addresses, its principal business telephone number, a list of principal officers and representatives, and a copy of its organization bylaws.

3538. The state employer and excluded employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against supervisory employees because of their exercise of their rights under this article.

3539. The enactment of this chapter shall not make Section 923 of the Labor Code applicable to state employees.

3539.5. The Department of Personnel Administration may adopt or amend regulations to implement employee benefits for those state officers and employees excluded from, or not otherwise subject to, the Ralph C. Dills Act.

DPA Laws

These regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). These regulations shall become effective immediately upon filing with the Secretary of State.

STATUS ACTIONS RELATING TO CLASSIFICATION PLAN CHANGES

Government Code.

18802. From time to time as it deems necessary, the board may establish additional classes and divide, combine, alter, or abolish existing classes. In establishing, altering, or abolishing classes, the board shall consider the recommendations of the Department of Personnel Administration. When those actions are taken the board shall determine in each instance whether positions affected are to be reallocated to another class or classes after taking into account the duties and responsibilities, qualifications, performance standards, and other related criteria before and after the change, and shall determine the status of the probationary and permanent employees affected.

TRAVELING EXPENSES

Government Code.

11032. Any state officer or employee of any state agency may confer with other persons, associations or organizations outside of the state whenever it may be of assistance to the state officer or agency in the conduct of its work, and actual and necessary traveling expenses shall be allowed such persons when traveling outside of the state, when such traveling and expenses have been approved by the Governor and by the Director of Finance or, in cases where the traveling involves only travel to and from places in states bordering upon this state, when approved by the Director of Finance, only. This section shall not apply to committees of the Legislature or of either house thereof nor to employees of any such committee nor to the Legislative Counsel or his employees.

UNEMPLOYMENT INSURANCE

Unemployment Insurance Code.

1256. An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.

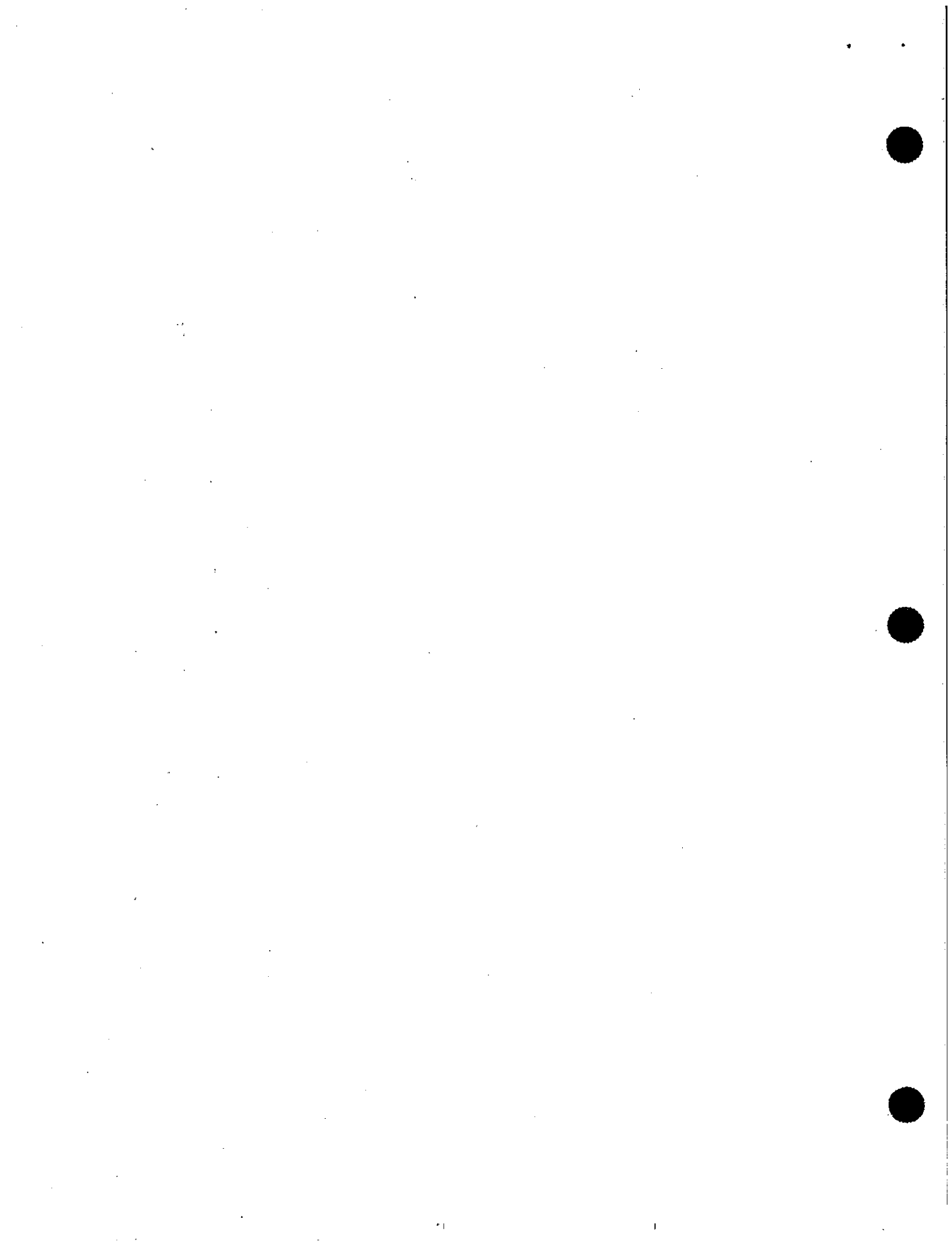
An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.

An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his or her work without good cause.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse to a place from which it is impractical to commute to the employment. For purposes of this section "spouse" includes a person to whom marriage is imminent.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her children, or himself or herself, from domestic violence abuse.

An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a collective bargaining agreement that provides that an employee with more seniority may elect to be laid off in place of an employee with less seniority when the employer has decided to layoff employees.



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