

MEMORANDUM

TO: PERSONNEL MANAGEMENT LIAISONS DATE: April 28, 1995
REFERENCE CODE: 95-024

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Personnel Officers
Holders of the Department of Personnel
Administration Law Booklet

FROM: Department of Personnel Administration
Policy Development Office

SUBJECT: 1994 Law Changes

CONTACT: Peter J. Strom
(916) 324-9368, CALNET 454-9368
OfficeVision: DPA(PJSTROM)
INTERNET: PJSTROM@SMTP.DPA.CA.GOV

Several changes have been made in the laws governing personnel administration in California State service. Because these changes are limited in number, the Department of Personnel Administration (DPA) has decided to transmit them to you with this memorandum, instead of publishing a 1995 DPA Law booklet. DPA will publish a new Law booklet in 1996 containing these changes and any that occur as a result of the 1995 legislative session.

The attached pages can be duplicated and inserted in your 1994 DPA Law booklets. Except for Government Code Section 19827, the underlined material is new and the asterisks indicate where language has been deleted. Section 19827 was repealed and entirely replaced with the attached language.

In addition, the following, nonsubstantive changes have occurred in the statutes contained in the 1994 Law booklet:

- The Election Code Sections shown on page 67 have been renumbered, as shown below. Except for editorial changes, these sections remain the same.

<u>Old Code Section Number</u>	<u>New Code Section Number</u>
1655	12312
14350	14000
14351	14001
14352	14002

- Government Code Section 13922, shown on page 86 of the DPA Law booklet, has been repealed. This section dealt with the State Board of Control's former responsibility for making rules governing payroll deductions for United States Savings bonds.



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- Subsection (d) has been deleted from Government Code Section 19995.4 on page 50 (this occurred prior to 1994).
- Editorial changes have been made in the Military and Veterans Code sections appearing on pages 75 and 76.

The DPA Rules and ongoing updates are available for purchase from Barclay's Law Publishers. To order the rules, departments need to prepare the appropriate purchase order and send it to:

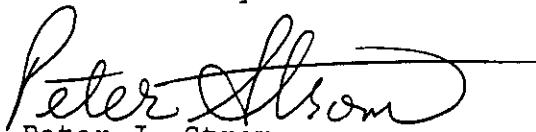
Barclay's Law Publishers
P.O. Box 3066
South San Francisco, CA 94083-3066
Phone Number: (415) 244-6611

Use the following to complete the order form:

Title:	Title 2, Administration -- Administrative Personnel	
	<u>Basic Code</u>	<u>Amendment Service (1 Year)</u>
Code Number:	02-01-000	02-01-001
Unit Cost:	\$49.00	\$66.40
Shipping:	\$ 5.25	-----
Sales Tax:	\$ 4.04	-----
TOTAL COST:	\$58.29	\$66.40

NOTE: These prices were current on the date of this memorandum. Please check with Barclay's for later price information.

Questions may be directed to me at (916) 324-9368, CALNET 454-9368.


Peter J. Strom
Assistant Chief

Attachments



Government Code Section 19827

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.

(Amended by Stats. 1986, Ch. 1235. Amended by Stats. 1992, Ch. 711. Repealed by Stats. 1994, Ch. 762. Added by Stats. 1994, Ch. 762.)



Government Code Section 19853

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.

When a day herein listed 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 herein mentioned, 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) 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," in lieu of receiving eight hours of personal holiday credit in accordance with Section 19854.



Government Code Section 19863

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.

(Amended by Stats. 1986, Ch. 657. Amended by Stats. 1994, Ch. 1027.)

Government Code Section 19871

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.

(Amended by Stats. 1984, Ch. 673. Amended by Stats. 1994, Ch. 1027.)



Government Code Section 19872

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.

(Amended by Stats. 1986, Ch. 657. Amended by Stats. 1994, Ch. 1027.)



Insurance Code Section 11870

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.

(Amended by Stats. 1935, Ch. 202. Amended by Stats. 1994, Ch. 373.)



Welfare and Institutions Code Section 1772

1772. (a) * * * Subject to subdivision (b), every person honorably discharged from control by the Youthful Offender Parole Board who has not, during the period of control by the authority, been placed by the authority in a state prison shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, and every person discharged may petition the court which committed him or her, and the court may upon such a petition set aside the verdict of guilty and dismiss the accusation or information against the petitioner who shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, including, but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law. * * *

(b) Notwithstanding * * * subdivision (a):

(1) A person described by subdivision (a) shall not be eligible for appointment as a peace officer employed by any public agency if his or her appointment would otherwise be prohibited by Section 1029 of the Government Code. However, such a person may be appointed and employed as a peace officer by the Department of the Youth Authority if (A) at least five years have passed since his or her honorable discharge, and the person has had no misdemeanor or felony convictions except for traffic misdemeanors since he or she was honorably discharged by the Youthful Offender Parole Board, or (B) the person was employed as a peace officer by the Department of the Youth Authority on or before January 1, 1983. No person who is under the jurisdiction of the Department of the Youth Authority shall be admitted to an examination for a peace officer position with the department unless and until the person has been honorably discharged from the jurisdiction of the department by the Youthful Offender Parole Board.

(2) A person described by subdivision (a) is subject to Sections 12021 and 12021.1 of the Penal Code.

(3) The conviction of a person described by subdivision (a) for an offense listed in subdivision (b) of Section 707 is admissible in a subsequent criminal, juvenile, or civil proceeding if otherwise admissible, if all the following are true:

(A) The person was 16 years of age or older at the time he or she committed the offense.

(B) The person was found unfit to be dealt with under the juvenile court law pursuant to Section 707 because he or she was alleged to have committed an offense listed in subdivision (b) of Section 707.

(C) The person was tried as an adult and convicted of an offense listed in subdivision (b) of Section 707.

(D) The person was committed to the Department of the Youth Authority for the offense referred to in subparagraph (C).

(4) The conviction of a person described by subdivision (a) may be used to enhance the punishment for a subsequent offense.

(5) The conviction of a person who is 18 years of age or older at the time he or she committed the offense is admissible in a subsequent civil, criminal, or juvenile proceeding, if otherwise admissible pursuant to law.

(c) Every person discharged from control by the Youthful Offender Parole Board shall be informed of * * * the provisions of this section in writing at the time of discharge.

(d) "Honorably discharged" as used in this section means and includes every person whose discharge is based upon a good record on parole.

(Added by Stats. 1941, Ch. 937, p. 2532, Sect. 1. Amended by Stats. 1949, Ch. 235, p. 459, Sect. 1; Stats. 1976, Ch. 1272, p. 5627, Sect. 2; Stats. 1979, Ch. 860, p. 2982, Sect. 32; Stats. 1982, Ch. 778, Sect. 2. Amended by Stats. 1994, Ch. 453.)

Government Code Section 3303

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.



Government Code Section 3303 (continued)

(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.

(Added by Stats. 1976, Ch. 465, p. 1202, Sect. 1. Amended by Stats. 1978, Ch. 775, Sect. 1. Amended by Stats. 1994, Ch. 1259.)

