

State of California

MEMORANDUM

TO: PERSONNEL MANAGEMENT LIAISONS DATE: September 14, 2001
REFERENCE CODE: 2001-035

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Employee Relations Officers
Employee Benefit Officers
Personnel Officers
Personnel Transactions Supervisors

FROM: Department of Personnel Administration
Classification and Compensation Division

SUBJECT: Follow-up to PML 2000-071 - Labor Code Applicable to State Employees
(Timely Payment of Wages Upon Separation)

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This is a follow-up memorandum to PML 2000-071, which notified departments of Labor Code sections that became effective January 1, 2001. We have received many inquiries regarding the implementation of the Labor Code sections now applicable to State service. The following are questions received and answers to the interpretation of the Labor Code provisions.

1. Question: Are the penalties subject to federal and State taxes and other deductions? How will the penalty pay be issued?

Answer: No. Deductions shall not be withheld on penalty payments.

To issue the penalty payment, agencies must submit claim schedules to the State Controller's Office (SCO). Refer to State Administrative Manual Section 8422.2 for claim schedule processing information.

Note: If a penalty payment has been issued with federal and State taxes and other deductions, a payroll adjustment is required to correct the employee's final pay and/or the employee's lump sum payment. Contact SCO for additional assistance.

2. Question: Some separation codes were not included in the PML. Are they subject to these labor codes?

Answer: The following separation codes should be included for separations that fall within Section 201: S02, S04, S30, S31, S32, S33, S40, S41, S80, S90 (if on mandatory return rights to another position), and S99. Additional separation codes are S03, S32 (when the department seeks medical separation), and S71 (when the employer seeks disability retirement).

The following separation codes should be included for separations that fall within Section 202: S01, S03, S05, S20, S21, and S70. Additional separation codes are S32 (when an employee seeks medical separation), and S71 (when an employee seeks disability retirement).

3. Question: When issuing lump sum payment for leave balances to a separating employee, should the employer calculate any increased salary rates which would cover upcoming months if the employee were to run out his or her leave time on the books (i.e., merit salary adjustments, general salary increases, increased differentials, etc.)?

Answer: Yes, for employees who separate without fault. Pursuant to Government Code (GC) Section 19839(a), when an employee separates without fault, the monies owed shall be computed by projecting the accumulated time so that the lump sum will equal the amount the employee would have been paid had he or she taken the time off but not separated from State service.

The answer is no when an employee separates from service through fault of his or her own. Pursuant to GC Section 19839(b), when an employee separates through fault of his or her own, the monies owed shall be computed based on actual accumulated time without projections as provided in GC 19839(a).

4. Question: Will SCO reduce the number of nonpay cycles to minimize the need for salary advances for last pay warrant?

Answer: The number of nonpay cycles are at the very minimum. Nonpay cycles are a result of other payroll-related processes (monthly master payroll, business month, and month end processes). The amount of time needed to run these processes prohibits running a daily payroll cycle at the same time.

5. Question: What happens when an employee quits Friday afternoon without warning and Monday is a holiday?

Answer: The employer has 72 hours in which to provide payment, in full, to the employee. The 72 hours is a continuous period that includes weekends and holidays. For example, if an employee resigns without prior notice on a Friday at 5 p.m., the employer has until 5 p.m. the following Monday to deliver wages due. If that timeframe is not met, the employer is subject to pay penalties to the employee. Therefore, in order to avoid paying penalties, it is recommended that the employer issue the separating employee a salary advance on the Friday before the holiday occurs.

6. Question: Are Absence Without Leave (AWOL) separations subject to AB 2410?

Answer: Yes.

7. Question: Does the 72 hours start from the date of the AWOL separation notice or on the first day of the unexcused absence?

Answer: The 72 hours begins at the time of the Coleman Officer's decision.

Note: In the Notice of AWOL Separation, the employee is afforded five days in which to request a hearing (Coleman hearing) to appeal an AWOL separation.

8. Question: If the employer calls the employee to make arrangement for the retrieval of his or her final pay check and the employee says he or she wants his or her job, does this statement void the AWOL separation?

Answer: No. The employee should be directed to the appeal process outlined in his or her official notice of AWOL.

9. Question: If the employee does not answer the telephone when contacted to retrieve his or her last pay check, what steps should the employer take? Should it be mailed proof of service? If the check is returned, how long should the employer keep the check?

Answer: Every reasonable attempt to contact the employee should be made. If there is no answer to telephone contact, leave a message if possible and document the date and time of the attempted contacts. If there is no return call, send the check "certified mail, return receipt requested." If the check is returned unclaimed by addressee, the undeliverable warrant must be deposited by the agency in the same manner as any other unclaimed monies. This is covered in the Payroll Procedures Manual Section I311.

10. Question: Does Section 202 allow the employer to mail a last pay warrant to an employee's home? If so, does the date of mailing constitute the date of payment for purposes of the 72-hour requirement?

Answer: First, only when the employee resigns without 72 hours' notice to the employer does the employer have 72 hours from the date and time of resignation to provide final payment to the employee. If the employee provides at least 72 hours' notice of resignation, the employer must have final payment to the employee on his or her last day of work.

Second, Section 202 does provide the option of mailing the employee his or her final pay. However, this mailing provision only applies to situations where the employee does not provide a 72-hour notice to the employer. Payment by mail must be at the employee's request and he or she must designate a mailing address. The Department of Personnel Administration (DPA) recommends that the employer require a written request to protect the employer's timeframes for payment. In these instances, the date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of resignation.

11. Question: In Section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Does "immediately" mean "on the day the employee is officially notified" (delivery of adverse action), or "within 72 hours notice of his or her impending separation from State service?" Does this include the cash-out of benefits (i.e., paid leave time on the books)?

Answer: The labor code provides for payment of all wages at the time of discharge. This includes cash-out of benefits, such as leave time, which is cashed out upon separation. For example, in an adverse action for dismissal, the date identified as the effective date on the notice of adverse action is the date of discharge. The employee must receive wages earned on this date.

Reminder: The 72 hours' provision only applies to Section 202, when an employee resigns without 72 hours' prior notice to the employer.

12. Question: In Section 202, if an employee provides the employer with 72 hours' notice prior to resignation, does "employer" mean managerial staff (e.g., immediate supervisor, manager, program director, personnel officer)?

Answer: Yes; possibly all of these options. Employees can typically submit resignations to any member of management with whom they have a reporting relationship.

13. Question: Does a notification of resignation include any type of notification, such as verbal, written, or e-mailed?

Answer: Yes, although we recommend that, when receiving a verbal notification, the employer asks the employee to provide written notification (i.e., typed in a memo, e-mailed, or handwritten).

14. Question: Do we start implementing this process effective January 1, 2001, or can we delay implementation and continue our current practice?

Answer: The Labor Code provisions encompassed in AB 2410 became effective January 1, 2001. Any State entity not in compliance with these Labor Code's on and after the effective date may be subject to penalties, which are enforceable by the Labor Commissioner.

15. Question: Can a department withhold final payment of wages when an employee separates from State service based upon the employee's failure to return State property (i.e., keys, card keys, cell phone, pager, etc.)?

Answer: No. The Labor Code does not have a provision to withhold final payment of wages pending return of an employer's property. If an employee refuses to return State property, the employer must use another method to retrieve State property.

16. Question: Currently, State employees are permitted to defer issuance of their lump sum payment of leave credits that extend past the November pay period of the current year to the following year; will this still be permitted under the Labor Code?

Answer: No. Under Section 219 an employee must be paid his or her lump sum leave either on the date of separation or within 72 hours, whichever applies. This section cannot be contravened or set aside by a private agreement.

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Under Section 219 of the Labor Code, an employer is not limited to or prohibited from making payments of wages at more frequent intervals, in greater amounts, or in full, when or before wages are due. Therefore, departments are permitted to allow employees to elect to use their leave credits rather than accept the lump-sum payment on or prior to the effective date of separation (this would delay the "effective date" of the employee's separation).

If you have any questions, please have your personnel office staff call Clarice Pace, Personnel Services Branch, (916) 324-0439, ATSS 454-0439.

A handwritten signature in cursive script that reads "Michael T. Navarro". The signature is written in black ink and is positioned above the printed name and title.

Michael T. Navarro, Chief
Classification and Compensation Division