



## “THE COMMUNICATOR”

2011 Fall Supplemental Edition

Volume V, Issue 1A

### *An Update from our ACHRO/EEO President Wyman Fong . . .*

#### **Featured Articles of Interest Inside this Supplemental Edition:**

Topics	Page	
President's Update	1	Welcome to sunny Palm Springs! It's time for a much needed and necessary break for all of us, and for me to be with colleagues and friends that can relate to the good, bad, and ugly of the past year. I cannot count the number of calls I have placed, or received, about a myriad of personnel issues and initiatives resulting from the ever shrinking state budget and the ever increasing demands on Human Resources. Does the below sound all too familiar?
2011-2012 ACHRO/EEO Officers & Staff	3	Have you implemented or are you planning to implement employee furloughs or salary reductions, supplemental employee retirement plans, layoffs, benefit caps, and/or other concessions through negotiations?
Conversion of Unused Excess Academic Sick Leave to Service Credit at Time of Retirement	4 - 6	Still breathing and still sane (with a little help from my ACHRO/EEO friends) below are some 2011 ACHRO/EEO high-lights.

#### **Title 5 EEO Revisions**

We are pleased that the revisions to Title 5 have been adopted by the Board of Governors – pending approval by the Department of Finance. Much thanks goes to the Title 5 writing team, which includes but is not limited to John Tortarolo, Chair, Karen Robinson, Laura Schulkind, Sheri Wright, and Irma Ramos. We also thank Tosh Shikasho for all his efforts!

#### **Revision and Adoption of ACHRO/EEO Constitution and By-Laws**

The ACHRO/EEO membership adopted its revised Constitution and By-Laws on March 24, 2011. Significant changes include the positions of Treasurer and Secretary being consolidated, and the Human Resources Consultant or designee serving as the Membership Director.

#### **U.S. Department of Education Community College Summit and ACHRO/EEO**

On April 15, 2011, I was able to represent ACHRO/EEO by participating in the White House/U.S. Department of Education's fourth regional community college summit – hosted by San Diego Community College District. The summit was in support of President Obama's goal in having the highest proportion of college graduates in the world by 2020.

*(continued on page 2)*

### **APAHE and ACHRO/EEO**

In my other capacity as Vice President for Asian and Pacific Americans in Higher Education (APAHE), I was pleased that ACHRO/EEO members assisted with the APAHE national conference (see apahenational.org) this past February. We organized a workshop entitled “Human Resource Services Executive Panel: Behind the Curtains.” Panelists shared their perspectives as it relates to promotional opportunities, and had a candid discussion with attendees concerning barriers affecting the Asian Pacific Islander community. A big thanks to Abe Ali, Linda Beam, Cynthia Hoover, and Gene Huff.

### **ACCCA and ACHRO/EEO**

I want to personally thank the Association of California Community College Administrators (ACCCA) for highlighting ACHRO/EEO this year. An article was recently published – providing awareness of our organization to its membership, as well as ACCCA support for the development of their human resources professionals by encouraging them to attend the annual ACHRO/EEO fall institute. Congratulations to our very own, Linda Beam, as ACCCA President-Elect!

### **CCLC AND ACHRO/EEO**

A special thanks to Kimi Shigetani, Vice President, Community College League of California (CCLC) for fostering dialog regarding potential partnerships with ACHRO/EEO. I look forward to providing you with more updates as we further build upon this relationship.

### **ACHRO/EEO (Now) and ACHRO/EEO (The Future)**

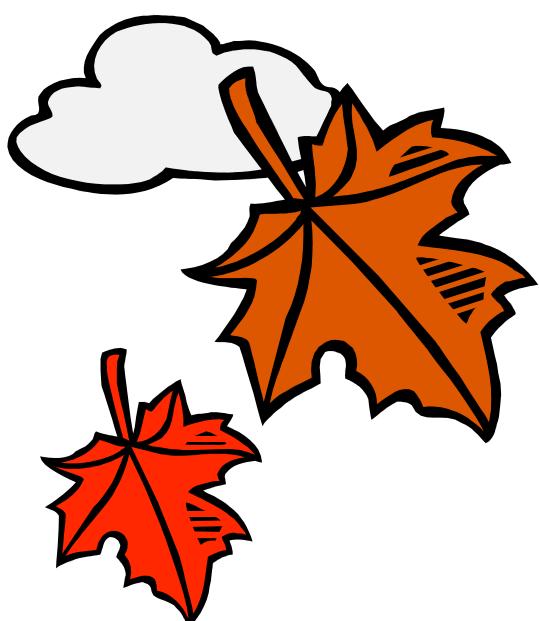
A key purpose of the Association is to take responsibility and assume leadership for the professional development efforts of human resource professionals. As with last year’s theme, ACHRO/EEO: The Next Generation, we will continue with this focus and relationship building through the leadership of Cynthia Hoover – our next ACHRO/EEO President. A big thanks to Ron Cataraha, Wayne Murphy, Marcia Wade, and Abe Ali, for joining Cynthia Hoover and me for the opening pre-conference workshop titled “Taking the “Para” out of “Para-Professional”: Transitioning into Management. Developing our future leaders (from within) is a high priority.

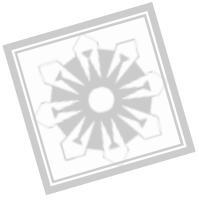
Have a rejuvenating conference!

Sincerely,

*Wyman M. Fong*

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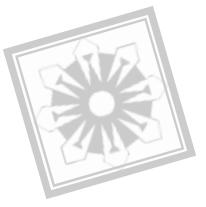
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## **Conversion Of Unused Excess Academic Employee Sick Leave To Service Credit At Time Of Retirement**

*By Mary Dowell and Frances Rogers, Liebert Cassidy Whitmore*

As community college districts struggle with decisions regarding staffing in a time of increasing economic challenge, they are looking at retirement incentives and other ways to reduce staff. If faculty are going to begin retiring in larger numbers, colleges must be aware of their obligations regarding application of unused sick leave for service credit at the time of retirement. In particular, if faculty have been permitted to earn sick leave for overload assignments, separate and apart from sick leave earned in full time assignments, the calculations can pose challenges for the college.

### **CalSTRS Law On Conversion Of Illness and Injury Leave**

Education Code section 87781 provides that every academic employee employed five days a week by a community college district is entitled to 10 days of paid leave of absence for illness or injury and any additional days that the governing board may allow for illness or injury. Unused illness and injury leave may be accumulated from year-to-year.

Education Code section 22717 provides that “A member shall be granted [service] credit at service retirement for each day of accumulated and unused leave of absence for illness or injury for which the full salary is allowed to which the member was entitled on the member’s final day of employment...” The amount of service credit is determined by dividing the number of days of accumulated unused illness and injury leave by the number of days of service the employer requires the member’s class of employees (i.e., all full-time instructional faculty) to perform in a school year during the member’s final year of creditable service which shall not be less than 175 days.

However, Education Code section 22718 provides that CalSTRS shall bill employers for service credit granted for unused illness and injury leave considered to be “excess.” The billing for this excess service credit occurs where an employer grants more than one day of sick leave per pay period to members. Pay periods may not be shorter than four weeks. The employer is billed only for the ‘present value’ of the unused excess sick leave days.<sup>1</sup> The payment is made in one lump sum by the employer within 30 days of the member’s retirement. If payment is not made by the employer within 30 days of the member’s retirement, the employer may be billed for regular interest from the due date to the date full payment is received by CalSTRS.

A “basic sick leave day” under CalSTRS law is the equivalent of one day of paid leave of absence per pay period due to illness or injury. (Educ. Code §22170.5(b).) “Excess sick leave days,” therefore, means the day or total number of days, granted by an employer in a pay period for paid leave of absence due to illness or injury, in excess of a basic sick leave day. (Educ. Code

<sup>1</sup> The “present value” of unused excess sick leave for which a district will be billed is arrived at by application of a formula. The “present value” is the number of unused excess sick leave days granted by the employer after June 30, 1986, divided by the “contract base days” (the number of days that a person in the member’s position would be required to work in that position for the school year if employed full-time, less school and legal holidays), then multiplied by the member’s prior annual earnable salary, and multiplied by the “present value factor” (a number determined by CalSTRS each year; .282 for the year 2010).

(continued on page 5)

§22170.5(c.) A “pay period” may not be less than four weeks or more than a calendar month. (Educ. Code §22154.)

In 2001, the Legislature passed Assembly Bill 2700, effective July 1, 2002. It made changes to creditable compensation. Prior to this Legislation, members could not earn more than one year of creditable compensation, regardless of whether the member took overload assignments or intersession assignments, or held multiple part-time positions. Thus, pay earned in an overload, intersession, or summer school assignment was not creditable compensation and any sick leave earned for an overload, intersession, or summer school assignment could not be reported to CalSTRS at retirement for conversion to service credit. With the passage of AB 2700, members may be credited with up to one year of service credit in the Defined Benefit Program. For work performed in excess of one year of service credit, such as overload assignments, it is now creditable to the member’s Defined Benefit Supplement account. (*See Educ. Code §22703.*) For any sick leave earned after July 1, 2002, in an overload, intersession, or summer school assignment, employers are instructed to report this additional sick leave if unused at the time of retirement in order that it may be converted to service credit.

Passage of AB 2700 prompted CalSTRS to issue an Employer Information Circular which clarified that CalSTRS:

...determines basic sick leave using a standard of 12 days per year for each year of service credit earned by the member. This standard will not change now that summer school and intersession and overload service are creditable. Employers should include unused sick leave earned for summer school, intersession and overload assignments as of July 1, 2001, and later when reporting unused sick leave to CalSTRS. Sick leave earned for service that was not creditable prior to July 1, 2001, should not be reported to CalSTRS. Employers may be billed for the total number of sick leave days reported for the member if the employer reports unused sick leave in excess of the standard 12 basic unused sick leave days per year. (CalSTRS, Employer Information Circular, Vol. 19, Issue 6 (May 22, 2003).)

This Employer Information Circular suggests that CalSTRS adopted an internal operating procedure that assumes or grants 12 days of “basic sick leave” per year to any full-time academic employee, regardless of the actual number of pay periods per year the employer maintains for the academic employee. However, the Circular directly cites to Education Code section 22170.5 and 22154, which define “excess sick leave days” as those days granted for illness or injury in excess of the one basic sick leave day per pay period. Thus, while CalSTRS may provide 12 “basic sick leave” days per year, it does not change Education Code sections 22170.5 and 22718 which count as “excess” all sick leave days in excess of one per pay period. Therefore, this Employer Information Circular should be relied upon cautiously and understood only to mean an operating procedure of CalSTRS which could be changed in the future. Until changed, however, it appears that the cost to the District for applying excess sick leave days will be lower than it otherwise would be, as those costs will kick in after the twelfth sick leave day, rather than the tenth.

#### **A District’s Potential Liability For “Excess Sick Leave Days”**

The Education Code sections cited above demonstrate that it is permissible for employees to convert *any and all* accrued and unused illness and injury leave to CalSTRS service credit. Any unused sick leave earned for work performed in an overload, intersession, or summer school assignment prior to July 1, 2002, however, should not be reported to CalSTRS. An issue arises as (*cont’d on page 6*)

to what extent the community college district must *pay* the costs associated with the extra retirement benefits that come with converting more than the basic illness and injury leave to service credit. A district arguably will need to pay costs for all sick leave days granted in excess of one per pay period if those excess sick leave days are unused at the time of retirement.<sup>2</sup>

The following are two examples of how Education Code section 22718 could potentially operate.

Example A: An 18 year academic employee retires with 1040 hours (130 days) of combined unused illness and injury leave. The employee used 600 hours (75 days) of illness and injury leave (combined) during his/her tenure. Forty hours (5 days) were earned and unused for work performed in an overload assignment prior to July 1, 2002. CalSTRS will add together the unused leave time with the used leave time, but subtract the five days earned for work performed in the overload assignment prior to July 1, 2002 to arrive at 200 days. 200 days is the total number of reportable illness and injury days the employee accrued during employment. Under a strict interpretation of Education Code section 22718, this employee would be considered to have 10 pay periods per year. Since the employee worked 18 years, under Education Code sections 22170.5 and 22154, the maximum non-excess or "basic" illness and injury days the employee may convert to service credit is 180 days (18 years x 10 pay periods). Since the employee had 200 days of accrued illness and injury leave, 20 days are considered "excess". Pursuant to Education Code section 22718, CalSTRS could bill the district for the costs associated with 20 of the 125 days of illness and injury leave the employee seeks to convert to service credit at retirement.

Example B: Consider the same scenario. However, in applying the methodology currently used by CalSTRS as stated in the Employer Information Circular, the employee is presumed to have 12 basic illness and injury leave days per year of service. Thus, the employee's maximum non-excess illness and injury leave days the employee may convert to service credit is 216. (18 years x 12). Since the employee had 200 days of accrued illness and injury leave at retirement, there are no "excess" days and the district would not be billed for any of the unused illness and injury leave.

The Employer Information Circular cited above states that "CalSTRS determines basic sick leave using a standard of 12 days per year for each year of service credit earned by the member....Employers may be billed for the total number of sick leave days reported for the member if the employer reports unused sick leave in excess of the standard 12 basic unused sick leave days per year." This means that despite Education Code sections 22717 and 22718, CalSTRS will always calculate unused sick leave based on a standard of 12 "basic sick leave days" per year of creditable service, regardless of the number of pay periods the District maintains. Since July 1, 2002, CalSTRS has calculated conversion of unused sick leave to service credit at the time of retirement according to Example B above. So long as CalSTRS maintains this operating procedure, the district will only be billed for costs associated with the conversion to service credit of those sick days that exceed the number of service years multiplied by 12.

## **Recommendations**

To limit a district's exposure to paying for costs associated with the extra retirement benefits for excess illness and injury leave at the time of a member's CalSTRS retirement, the district may consider one or more of the options below. These are only recommendations and the district can choose not to take any action, or may implement one or more of the recommendations.

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<sup>2</sup> Presumably, the costs of sick leave that is not excess, has already been factored into the rates charged to a district by CalSTRS.

First, since CalSTRS already considers that all academic employees have 12 basic illness and injury leave days each year, it is not necessary at this time for a district to change its payroll to provide for 12 pay periods per year for academic employees. However, there is always a chance that CalSTRS may change its internal operating procedure to strictly adhere to the one-sick-leave-day-per-pay-period-rule as set forth in Education Code sections 22718 and 22154. If that is the case, a district may need to consider adopting 12 pay periods per year for academic employees. This may be done if collectively bargained with the exclusive representative for academic employees.

Second, keep in mind that the district should not be reporting sick leave earned but unused for work performed in an *overload assignment* prior to July 1, 2002. Effort should be made to keep track of sick leave hours earned in an *overload assignment* prior to July 1, 2002 so that it is not reported to CalSTRS.

Third, the district may bargain to reduce the number of illness and injury leave days that may be accrued by faculty. The district must provide at least 10 illness and injury leave days per academic year by statute. (Educ. Code §87781.) However, it need not provide the additional amount it is currently providing or it may reduce the additional amount. Of course, this might require concessions on the part of the district during the collective bargaining process.

Fourth, the district may consider capping *additional* accrued and unused sick leave. Again, the district must provide, at a minimum, 10 days of illness and injury leave to each full-time academic employee each year, which may be accrued year-to-year. (Educ. Code §87781.) If the district already maintains separate leave banks – one for illness and injury leave afforded for a regular assignment; and one for illness and injury leave afforded for overload assignments - the district could continue to maintain two separate illness and injury leave banks. However, one will be for “basic illness and injury leave,” which is the 10 days required each academic year, and one will be for “additional illness and injury leave” which is the extra days the district agreed to provide under the collective bargaining agreement and all hours accrued from working an overload assignment. In this manner, the district may impose a cap on the “additional illness and injury leave” bank, such as 200 hours (25 days). Thus, an employee will not accrue any more “additional illness and injury leave” once he or she attains 200 hours, unless or until the employee draws down the “additional illness and injury leave” bank. The district, however, cannot cap the “basic illness and injury leave” bank.

No matter which option the district chooses to pursue, it will have to be addressed at the bargaining table and negotiating obligations exhausted.

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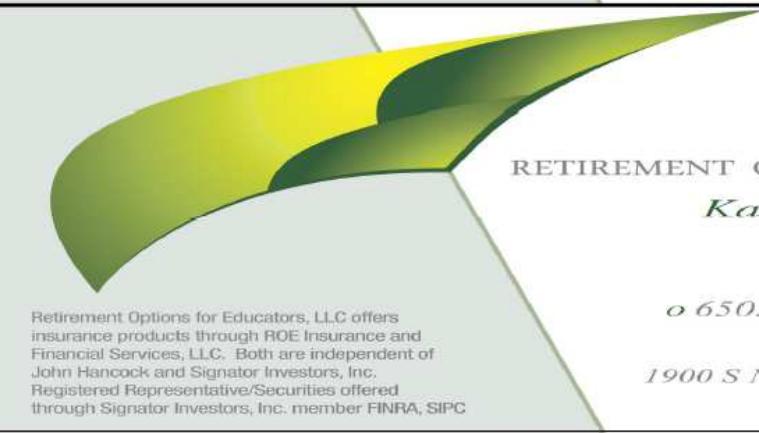
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