

HUMAN RESOURCES MEMORANDUM 00-038		DATE ISSUED: 12/22/2000
SUBJECT: LABOR CODE APPLICABLE TO STATE EMPLOYEES TIMELY PAYMENT OF WAGES UPON SEPARATION		REFERENCE: None
TO: Director, Chief Deputy Directors, Deputy Directors, Office/Branch Chiefs, All Managers/Supervisors, Personnel Liaisons, Attendance Clerks		SUPERCEDES: None

PLEASE ENSURE THAT THIS INFORMATION IS SHARED WITH YOUR EMPLOYEES

The recent passage of AB 2410 amends Section 220 of the Labor Code to remove the state employer's exemption to the provisions applicable to the payment of wages and the resolution of wage disputes, **effective January 1, 2001**. The Office of Human Resources (OHR) is examining the procedures we currently use to process payment of wages. OHR will make any necessary changes to improve the separation process and expedite final pay in compliance with the new provisions. Offices will be kept informed as these improvements are made.

Failure to comply with these provisions can result in the employer being subject to penalties including misdemeanor charges. It is extremely important to notify your Personnel Services Specialist (Personnel Transactions Unit) immediately upon any type of employee separation from state service. You must also coordinate with the Office of Fiscal Services regarding any outstanding payments (e.g., travel advances).

Types of Separations:

- Resignation
- Termination without fault (layoff, TAU, LT, Emergency, Exempt, Retired Annuitant appointments, CEA's who do not exercise right of return, and cancellation of appointment)
- Retirement
- Medical termination
- Displacement (because another employee exercises their right of return)
- Termination with fault (Emergency, CEA, Exempt, and Retired Annuitant)
- Illegal appointment termination
- Termination with fault (TAU and LT)
- Dismissal
- Rejection During Probation

Summary of Provisions:

- Section 201: When an employee is discharged (separated from state service other than voluntary), the wages earned must be paid immediately. This includes the cashout of benefits (i.e., paid leave time on the books).
- Section 202: When an employee voluntarily resigns from their employment with the State, their wages must be paid not later than 72 hours from the date of separation. However, if the employee provides the employer at least 72-hours' notice of their impending separation from state service, they are entitled to their wages at the time of separation. This includes the cashout of benefits (i.e., paid leave time on the books).

This 72-hours is a continuous period that includes weekends and holidays. For example, if an employee resigns without prior notice on a Friday at 5:00 p.m., the employer has until 5:00 p.m. the following Monday to deliver wages due.

It is unclear at this time the effect of this section on Government Code 19996.2, Absent Without Leave (AWOL) separations as this ground has not been tested.

- Section 203: Employer must pay penalties of up to thirty (30) days of continuous wages for failure to make timely payment of earned and unpaid wages pursuant to Section 201 and 202 above. If an employee avoids payment or refuses to receive payment, they are not entitled to any benefit under this section.
- Section 204.2: This section does not apply to state employment. This addresses overtime payment for employees excluded from the Fair Labor Standards Act (FLSA). However, departments need to be aware that this section may apply to the employees of vendors with which you contract for services if the employees are covered under FLSA.
- Section 204.3: This section does not apply to state employment. Subsection (h) states that this section does not apply to employees exempt from the overtime provisions of the California wages orders. All state employees fall under this exemption. You need to be aware that this section may apply to the employees of vendors with which you contract for services if the employees are covered by the overtime provisions of the California wage orders.
- Section 206: If the wages owed are being disputed, the employer must pay all wages known to be owed. The employee can seek remedies through the Labor Commissioner.

If the Labor Commissioner finds validity in an employees claim for wages, the claim is payable within 10 days after receipt of the notice to the employer. If the employer fails to pay wages due within 10 days, the employer pays treble damages.

- Section 206.5: Employer must refrain from requiring an employee to execute a release of any claim or right to unpaid wages.
- Section 207: The employer must post notices informing employees of the regular paydays and the time and place of payment.
- Section 208: The employer must make payment to discharged (separated from state service other than voluntary) employees at the place of their discharge. The employer must make payment to employees who resign at the departmental office within the county that they work.
- Section 209: This section does not apply to state employment. The State has no strike provisions in the memoranda of understanding.
- Section 210: This section does not apply to the state employment. However, this section may apply to the employees of vendors with which you contract for services if the employees are covered by this provision.
- Section 211: This provision makes the State liable for costs relating to the service of pleadings brought by the Labor Commissioner to recoup unpaid wages.
- Section 215: This provision holds any person, agent, manager, superintendent or officer of the State guilty of a misdemeanor for violations of the wage payment requirements described in Sections 207 and 208.
- Section 216: This provisions holds any person, agent, manager, superintendent or officer of the State guilty of a misdemeanor for willfully refusing to pay wages, falsely denying the amount of wages owed, or harassing anyone owed wages.
- Section 217: This section invests the Division of Labor Enforcement with the authority to seek penalties against other state departments for wage payment violations.
- Section 218: Permits district attorneys or other local prosecutors to prosecute actions against the State for wage payment violations.

- Section 218.5: Allows for the recovery of reasonable attorney's fees and costs against the State for actions brought for non-payment of wages.
- Section 219: An employer is not limited or prohibited from making payments of wages at more frequent intervals, in greater amounts, or in full when or before due. No section of this article can in any way be contravened or set aside by a private agreement.

If a department discovers overpayment following the payment of wages pursuant to the above-mentioned labor codes, the department can pursue repayment through the usual process.

Questions regarding this memorandum should be directed to your office's Personnel Liaison.

JINNY MUNRO, Manager
Program Improvement and Labor Relations

cc: Personnel Analysts
Personnel Services Specialists