

<b>HUMAN RESOURCES MEMORANDUM 02-037</b>		DATE ISSUED: 10/21/2002
SUBJECT: <b>AB 1684 – LABOR CODE REVISIONS IMPACTING THE DEFERRAL AND TRANSFER OF LEAVE CREDITS</b>		REFERENCE: None
TO: Personnel Liaisons; Attendance Clerks		SUPERCEDES: None

**PLEASE ENSURE THAT THIS INFORMATION IS SHARED WITH YOUR EMPLOYEES**

The recently passed AB 1684 (Chapter 40, Statutes of 2002) restores employees' ability to cash out unused leave credits and transfer the funds to their Savings Plus (SPP) 401 (k) or 457 deferred compensation plan or 403(b) tax-sheltered annuity. Employees who choose to do this may transfer the funds upon their separation from Sate employment, or effective the following calendar year, or some combination of both.

- Employees must submit their request to the Personnel Office at least 5 days prior to their final day of employment.
- Employees who want to defer cashing out until the following tax year may only do so if they have leave credits that extend beyond the November pay period.

The form that employees should use to initiate their request to transfer all or a portion of their unused leave credits is available on the [Savings Plus Web site](https://www.savingsplusnow.com) (https://www.savingsplusnow.com) under Plan Info & Forms/Forms and Publications and then scroll down to the form entitled Transfer Lump Sum Separation Pay and click on either 401(k) or 457 or both, if applicable. When employees complete the form, it should be sent to the Personnel Transactions Unit (PTU). The PTU will retain it in the employee's file and will process the documentation of the separation to the State Controller's Office.

An employee does not have to choose to defer all of the unused leave credits. Any portion that is not deferred must be paid to the employee according to Labor Code 201 (a) and 202 (a) within 72 hours or on his/her last day of employment along with payment for any wages owed. This is contingent on the employee providing at least 72 hours' notice of resignation to the employer.

The following are some frequently asked questions and the answers:

Question: An employee retiring October 30, 2002, will be paid accrued leave credits through November 20, 2002. Can the accrued leave payment be deferred until 2003?

Answer: No. To defer into the next tax year, the accrued leave time must extend past the November pay period. If it does, only that portion of leave that extends past November can be deferred.

Question: An employee retiring November 1, 2002, will be paid accrued leave credits through May 2003 amounting to \$35,000. The employee wants to defer payment of the leave credits until 2003 and transfer the maximum amount possible to their Savings Plus account. Is this permitted?

Answer: The employee must be paid immediately for the accrued leave for the November pay period. They may transfer all or a portion of that amount to their Savings Plus account. (Remember, the amount they want to transfer and any prior payroll deferrals can't exceed the 2002

maximum contribution limit. For 2002, the maximum contribution limit to a 401(k) for an employee 50 or older is \$12,000; for the 457, the limit is also \$12,000.)

The employee may defer, to 2003, the accrued leave payment for December through May 2003 by completing the Transfer of Lump Sum Separation Pay form on the SPP Website and printing the form and sending it to the PTU. For 2003, the maximum amount an employee 50 or older may contribute to the 401(k) is \$14,000; for the 457 the limit is also \$14,000. Once the PTU processes the correcting documentation in January and the money is transferred to Savings Plus, the employee will receive a check for the remainder of the leave accrual, less taxes.

Question: An employee is retiring December 1, 2002, has leave accrual that extends into June 2004. The employee wants to transfer all of the leave payment to SPP. Can the employee defer the portion of leave that extends into 2004?

Answer: The employee can't defer leave payment past 2003. Even though the employee's leave accrual will extend into 2004, deferrals can only be made into the next tax year after separation/retirement. The employee can transfer all or a portion of the leave payment that extends from December 2002 through November 2003 into Savings Plus up to the maximum allowed for the 2003 tax year. The employee must be paid the remaining leave payment (December 2003 to June 2004) in 2003 and will be taxed accordingly.

Questions regarding this memorandum should be directed to your assigned Personnel Services Specialist or Supervisor.

LYNN W. CATANIA, Manager  
Personnel Operations Section

cc: Personnel Transactions Unit  
Personnel Analysts