

Sonoma County Office of Education
Business Services

**EXTERNAL FISCAL SERVICES UPDATES
HR/PAYROLL USER GROUP MEETING: SEPTEMBER 13, 2017**

Reminders:

Independent Contractors vs Employees:

It is critical to correctly classify individuals when hired. If audited and determined an incorrect classification, employer may be held liable for employment taxes for that employee and there may be penalties.

The best test to determine if an individual is your employee, is if you as the employer can control what will be done and how it will be done, even if you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed, even if you never exercise the control. *Employees are subject to payroll taxes*

The general rule for determining an independent contractor is if you as the employer has the right to control or direct only the result of the work and not what will be done and how it will be done. *Independent Contractors are subject to self-employment taxes*

Resources: EDD's Employment Determination Guide (Forms DE38 and/or DE1870) or the IRS's Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (Form SS-8). *These forms can be accessed through Escape's SCOE Resources Link.* Also see SCOE's Independent Consultant Checklist found on SCOE's website at www.scoe.org

CalSTRS Retirees Working as Independent Contractor:

CalSTRS retirees are subject to an earnings limit that includes earnings paid to the retiree as an independent contractor. When contracts for professional services are submitted, look-up their membership status in REAP. If membership status is "SR" for STRS Retired, complete SCOE's CalSTRS Retiree Earnings Paid Through Accounts Payable form and send it, along with a copy of the invoices to SCOE's retirement desk (Carol Mahan). The invoice amount(s) will be included on the next CalSTRS retirement report.

Also complete CalSTRS Form ES-732 Employer Certification of Independent Contractor Status and retain in Employee's File.

These forms can be accessed through Escape's SCOE Resources Link.

CalPERS Retirees Working as Independent Contractor:

CalPERS Retirees engaged as true independent contractors, are not subject to the retirement law requirements (limited to work 960 hours as an employee). However, a misclassification as an independent contractor will affect their retirement benefit and mandate reinstatement.

CalSTRS Postretirement Restrictions:

See Employer Directive 2017-03 (*accessed through Escape's SCOE Resources Link*):

- 180-calendar day separation-from-service requirement
- 2017/2018 Postretirement earnings limit is \$43,755
- The salary being paid for retired member activities may not be less than the minimum nor can it exceed the maximum paid by the employer to other employees performing comparable duties
- Restricted from employment in classified positions with the exception of under specific circumstances (Ed Code 45134): As an aide in one of the following circumstances: An aide is needed in a class with a high pupil-teacher ratio or an aide is needed to provide one-on-one instruction in remedial classes or for underprivileged students.
- Members who retired under a golden handshake cannot return to employment in any job within five years of receiving the incentive with the school district that granted the golden handshake
- Employers are required to notify retirees of all earnings limits and golden handshake employment restrictions, if applicable

An unlawfully employed CalSTRS retiree requires CalSTRS to reduce the member's retirement benefit dollar-for-dollar.

CalPERS Postretirement Restrictions:

See Circular Letter No. 200-002-14 (*accessed through Escape's SCOE Resources Link*):

- 180 Day Wait Period between retirement date and hire date
- Retiree can only be hired for limited duration and must have the skills needed to perform the work of limited duration
- Cannot exceed 960 hour limit per fiscal year
- The retiree must be enrolled as a retired annuitant in the my/CalPERS system
- Every retiree must certify in writing that he/she did not receive any unemployment insurance payments within the 12 months prior to the appointment
- Compensation is limited to a rate of pay that is not less than the minimum and does not exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 hours to equal an hourly rate.
- No other benefit, incentive, compensation in lieu of benefits or other form of compensation can be paid in addition to the hourly pay rate

An unlawfully employed CalPERS retiree is subject to mandatory reinstatement from retirement. Both the now active employee and employer must pay retroactive member contributions plus interest for the period of unlawful employment. Likewise, the now active employee must reimburse CalPERS the entire amount of retirement allowance received during the period of unlawful employment.

Form ES372:

Form ES372 is used when an employee is hired into a position mandating enrollment into another retirement system than what he/she is currently a member of. Send completed form to SCOE's Retirement Desk (Carol Mahan and Maria Aguayo) prior to setting up retirement in Escape. Carol and Maria will let you know whether the employee can make the election or not. *This form can be accessed through Escape's SCOE Resources Link.*

Form ES350:

Form ES350 is used anytime an employee is performing creditable service, but is otherwise excluded from mandatory membership. Current interpretation of the form is if the employee elects membership, the membership date shall be the first day of the pay period following the date on which the employee signs and dates the form. *This form can be accessed through Escape's SCOE Resources Link.*

Foreign Teachers:

Individuals admitted to the U.S. under an F-1, J-1, M-1 or Q-1 visa are generally exempt from both social security and medicare taxes for 2 calendar years from the calendar year of entry. After which they become Resident Aliens and are liable for social security and medicare taxes. There are special withholding rules and special computation of withholding for non-resident alien employees. Individuals may also qualify for a Tax Treaty Exemption if a treaty between the U.S. and their home country actually exists.

Exchange and Sojourn Teachers:

CalSTRS has determined that the exclusion to membership found in ed code 22601: "Persons service as exchange teachers or sojourn teachers from outside of this state are excluded from membership in the plan," applies only to teachers who are employed in an exchange/sojourn program, as part of a 2 year agreement with the employer. It is the employer's responsibility to determine the basis of employment when considering what retirement plan or benefits to offer their employees. Sojourn Teachers should be set up in Escape with Assignment Code 62 and you will need to manually override the Contribution Code to 0 (Non-Member).

Student Workers:

Students employed by a public or private educational institution where they are enrolled and regularly attending classes are exempt from Social security and Medicare. However, be mindful of when students work during the summer break and are not attending classes as they would be subject to social security coverage until they return to school.

Form SSA-1945, Statement Concerning Your Employment in a Job Not Covered by Social Security:

Effective January 1, 2005, all state and local government employers who hire new employees not covered by social security are required to provide Form SSA-1945 to the new employee before employment begins. To download form, go to www.socialsecurity.gov . **Keep original and mail a copy to:** Member Account Services, CalSTRS, PO Box 15275, Sacramento, CA 95851-0275.

School Nurses:

School Nurses must hold a School Nurse Services Credential. RNs generally have the necessary education to apply for a Preliminary Credential. It is important to note, LVNs generally do not have the necessary education to apply for a Preliminary Credential. See the California Teaching Credential website at www.ctc.ca.gov.

Per School Services the State Minimum Wage and Exempt Minimum Salaries are as Follows:

| Minimum Wage | Effective Date: | Effective Date: | | Exempt Minimum Salary | Exempt Minimum Salary | Exempt Minimum Salary |
|--------------|-----------------|-----------------|--|-----------------------|-----------------------|-----------------------|
| | > 25 Employees | ≤ 25 Employees | | (Weekly) | (Monthly) | (Annually) |
| \$10.50/hour | 1-Jan-17 | 1-Jan-18 | | \$840 | \$3,640 | \$43,680 |
| \$11.00/hour | 1-Jan-18 | 1-Jan-19 | | \$880 | \$3,813 | \$45,760 |
| \$12.00/hour | 1-Jan-19 | 1-Jan-20 | | \$960 | \$4,160 | \$49,920 |
| \$13.00/hour | 1-Jan-20 | 1-Jan-21 | | \$1,040 | \$4,507 | \$54,080 |
| \$14.00/hour | 1-Jan-21 | 1-Jan-22 | | \$1,120 | \$4,853 | \$58,240 |
| \$15.00/hour | 1-Jan-22 | 1-Jan-23 | | \$1,200 | \$5,200 | \$62,400 |

Manual Payroll Cancels in Relation to Vol Deds:

Example #1: Even though a “Cancel” on manual payroll completely reverses the pay history for that check, it does not affect the amount of the vol ded checks processed on a normal payroll. It will, however, reduce the liability account. You want to be mindful of this because there may be voluntary deductions you will have overpaid (i.e. union dues). You will need to either: 1) Request a credit check from the vendor or 2) Cancel the next vol ded check and cut an AP check for the correct amount (this should clear the liability account).

Example #2: When correcting the pay history of a paycheck that has been “Canceled”, IT can help you to set up an adjustment vol ded deduction to use that will not affect the vendor check amount. This is done when you have already sent the vendor check to the vendor that included the amount from the canceled check. You do not want to pay the vendor again when you are creating pay history and only want to affect the liability account. You will still need to either: 1) Request a credit check from the vendor or 2) Cancel the vol ded check and cut an AP check for the correct amount (this should clear the liability account).

Recent Court Decision Regarding OT Pay Rate:

CASBO presented at their annual conference last April the new potential pitfalls regarding cash-in-lieu of health benefits in relation to the regular rate of pay used to pay overtime. Likewise, School Service put out a report in September 2016 on how to calculate the overtime pay rate with longevity and cash-in-lieu. The regular rate of pay, for purposes of calculating the overtime rate, must include all forms of regular monthly compensation including longevity, cash-in-lieu, degree stipend and most other regular additions to base salary. This requires you to know what pay must be included, calculating the value of the pay on a workweek basis and including the value of the pay in the regular rate calculation. For purposes of calculating the overtime rate, the regular rate of pay is the total remuneration for employment in any workweek divided by the total hours actually worked by the employee in that workweek (see example below):

In this example, Jane earns \$20/hour and worked 44 hours in her 40 hours, 5 days work period. Jane is also paid \$100 per month in bilingual pay. Jane has also opted-out of medical coverage under the LEA's Section 125 and receives \$800/month in Cash in-Lieu.

1. Multiply total hours worked times base:
 $44 \times \$20 = \880.00
2. Calculate the work week value of bilingual pay:
 $\$100 \times 12 \text{ months divided by } 52 \text{ weeks} = \$23.08/\text{week}$
3. Calculate the work week value of the Cash in-Lieu:
 $\$800 \times 12 \text{ months divided by } 52 \text{ weeks} = \$184.62/\text{week}$
4. Calculate Jane's Regular Rate by dividing the total amount earned by total hours worked:
 $\$880 + \$23.08 + \$184.62 = \$1,087.70/44 \text{ hours} = \$24.72 \text{ Regular Rate of Pay}$

Another consideration requires looking at the cash-in-lieu payments relative to an employer's total contributions to the plan. Under FLSA, the total cash-in-lieu payments must be "incidental" to the total plan payments. If the total cash-in-lieu payments are greater than 40% of the total plan payments, the payments are more than "incidental" and the plan is not "bona fide". This means all payments to the plan must be included in the regular rate.

You must perform a plan-wide analysis (not employee-by-employee):

Step 1: Identify the plans and all plan participants (total number of employees)

Step 2: Identify Total Plan Payments:

Cash-in-lieu + Payments Employer made to the plan to cover premiums = Total Plan Payments

Step 3: Calculate cash-in-lieu payments as a percentage of the Total Plan Payments

Step 4: If the percentage is over 40%, this may be considered more than "incidental" (not bona fide) in which case all payments to the plan must be included in the regular rate.

It is strongly recommended LEA's reach out to their legal counsel for advice on how this court decision may impact your district, to ensure compliance with the new OT regulations and for advice when developing their policy.