

THE CALIFORNIA STATE UNIVERSITY
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Date: December 20, 2004

Code: **TECHNICAL LETTER**
HR/Benefits 2004-29

To: Human Resources Directors
Benefits Officers

From: Cathy Robinson, Assistant Vice Chancellor
Human Resources Administration

Subject: **Temporary Disability Allowance While on Involuntary Leave (AB 908)**

The California State University (CSU) currently has authority to submit a disability retirement application to the California Public Employees' Retirement System (CalPERS) for an employee who is vested with CalPERS but is unable to perform the duties of his/her position or any other position within the university due to disability. During the time CalPERS is reviewing the disability retirement application for determination, the employee may be using leave credits, Industrial Disability Leave (IDL) or Non-Industrial Disability Insurance (NDI) payments, as appropriate, or, in some circumstances, may not be receiving any type of pay. Legislation recently was passed adding Education Code Section 89536.1 requiring the CSU to implement new procedures for payment of a Temporary Disability Allowance (TDA), as appropriate, when placing an employee on involuntary leave.

AB 908 Requirements

As notified earlier this year, effective January 1, 2004, AB 908 mandates specific actions the university must take when determining the employment relationship of an employee unable to perform the duties of his/her position. AB 908 states:

1. If, after considering the conclusions of a medical examination or medical reports from an employee's physician or other pertinent information, the trustees determine that the employee is unable to perform the work of his or her present position or any other position in the state university system, and the employee is eligible for, and does not waive the right to, retire for disability, the trustees shall file an application for disability retirement on the employee's behalf. The trustees shall give the employee 15 days written notice of their intention to file the application and a reasonable opportunity to respond prior to the filing of the application. However, the decision to file the application is final, and is not subject to appeal to the State Personnel Board.

Distribution:

CSU Presidents
Vice Chancellor, Human Resources
Vice Presidents, Academic Affairs
Vice Presidents, Business/Administration
Associate Vice Presidents/Deans of Faculty

Budget Officers
Director, SOSS
Payroll Managers
Risk Managers

2. Notwithstanding Section 21153 of the Government Code, upon filing the application for disability retirement, the trustees may remove the employee from his or her job and place the employee on involuntary leave status. The employee may use any accrued leave during the period of the involuntary leave. If the employee's leave credits and programs are exhausted, or if they do not provide benefits that are at least equal to the estimated retirement allowance, the trustees shall pay the employee an additional temporary disability allowance so that the employee receives payment that is equal to the estimated retirement allowance. The trustees shall continue to make all employer contributions to the employee's health insurance plan during the period of involuntary leave.
3. If the application for disability retirement is subsequently granted, the retirement system shall reimburse the trustees for the temporary disability allowance, which shall be deducted from any back disability retirement benefits that are otherwise payable to the employee. If the application is denied, the trustees shall reinstate the employee to his or her position, with back salary and benefits, less any temporary disability allowance paid by the trustees. The trustees shall also restore any leave credits that the employee used during the period of the involuntary leave.

Please note that provisions of AB 908 pertain to a campus making a decision on or after January 1, 2004, to remove an employee from his/her position and place the employee on involuntary leave for the purpose of applying for disability retirement on behalf of the employee. **These provisions do not cover an employee who chooses to apply for disability retirement on his/her own behalf. The campus must be the moving party for these provisions to apply.**

The following guidelines have been developed to assist campuses in the implementation of the provisions of AB 908.

➤ **Request Retirement Estimate from CalPERS**

Prior to implementing the provisions of AB 908, the campus must complete the employer-generated Disability Estimate Request form (PERS-BSD-1F) and mail or fax to CalPERS at the address listed on the form. The campus must request this information in order to determine the TDA the employee would receive, if eligible. A copy of the form is provided as Attachment A. When submitting the estimate request form, the campus should:

1. Indicate on the top of the estimate request in RED: "Employer Originated Application."
2. Enter a retirement date. The campus can use the first of the month the application is going to be sent to CalPERS.
3. Specify where the estimate is to be sent (campus' address); otherwise, it may be sent to the employee.

Once the campus receives this information, it can move to the next step in the process.

➤ **Notice Requirements**

AB 908 requires that after a campus considers the conclusions of appropriate medical documentation from an employee's physician or other pertinent information and determines an employee is unable to perform the duties of his/her position or any other position with the university, and the employee is eligible for, and does not waive the right to, retire for disability, the campus shall file an application for disability on behalf of the employee. Prior to submitting the application, the campus must give the employee 15 days written notice of its intention to file the application and a reasonable opportunity for the employee to respond prior to the filing of the application and placing the employee on involuntary leave. The notice should state the campus' intent to file an application for disability retirement on the employee's behalf, state if the employee will be placed on involuntary leave, and provide information on applicable leave credits and/or benefits programs available to the employee. If the employee is out of leave credits and/or has exhausted benefits programs, the employee is eligible for a TDA. Normally, a five (5) day period to request the opportunity to respond would meet the definition of reasonable. *The campus should review the employee's response, which may be in writing or result from an in-person meeting, and provide the employee with a written response.* Please note that the decision to file the application is final and is not appealable to the State Personnel Board. A draft notice to the employee is provided as Attachment B.

➤ **Submit Retirement Application to CalPERS**

Once the appropriate notice and response period is completed and the campus makes the determination to file the disability retirement application, the campus should complete the disability retirement application form and send to the CalPERS Disability Unit.

➤ **Placement of Employee on Involuntary Leave**

Once the campus has filed the disability retirement application, the campus may place the employee on involuntary leave status, if appropriate. During the time CalPERS is reviewing the disability retirement application, the employee is eligible for the following options, as appropriate:

- Continue health, dental, and vision benefits and employer-paid supplemental benefits, if eligible.
- Use leave credits or Compensatory Time Off (CTO), if appropriate.
- Apply for Non-industrial Disability Insurance (NDI) leave, if eligible.
- Apply for Industrial Disability Leave (IDL) or Temporary Disability (TD), if the illness/injury is work-related.
- Apply for the Catastrophic Leave Program.
- Designate the involuntary leave as Family Medical Leave, if eligible.
- Placement on TDA if the employee does not have leave credits available and is ineligible for NDI, IDL, or TD.

Note:

- If it is determined that the employee's leave credits or applicable benefit program provide a payment less than the TDA, the leave credits or benefit program is to be supplemented by TDA up to the full TDA amount.

If an employee decides NOT to utilize leave credits or a benefits program such as NDI, IDL or Temporary Disability (TD), the employee is ineligible to receive a TDA. However, the employee would continue to receive health, dental, vision and any supplemental benefits during the involuntary leave.

➤ **Payroll Processing Instructions**

Payroll processing instructions are provided below:

- **Leave Credits** – If the employee elects to use available leave credits, pay is considered regular pay (no employment history update is needed). For example, if the employee receives regular pay and has a qualifying pay period for the month, the employee receives full State service credit for seniority purposes, leave credit accruals, and any salary changes in effect. Payments of the employee's leave credits are subject to mandatory and voluntary deductions (state and federal income taxes, Social Security/Medicare contributions, and retirement contributions). Voluntary deductions will continue to be deducted from the employee's regular pay if there is enough net pay to take deductions, and deductions have not been cancelled by the employee.
- **Benefit Program** – Employees receiving payments for a benefit program such as IDL or NDI, are subject to program provisions and receive all benefits the program provides.
- **TDA Payments** – TDA is an interim allowance paid to the employee while a decision for disability retirement or industrial disability retirement (for public safety employees, if eligible) is being made. TDA payments are subject to mandatory deductions (State and federal income taxes and Social Security/Medicare contributions). Retirement contributions are not deducted from the employee's earnings nor will the employer contribution be made as service credits are not accruing toward retirement when the employee is receiving TDA payments. A represented employee's union dues/fair share fees are deducted from the TDA payments. Employees who are disabled/industrial retired typically do not have voluntary deductions taken from their retirement benefits unless approved by CalPERS. Therefore, the employee should be given the opportunity to cancel any voluntary deductions.
- **Payroll Code** – The S42 transaction with Item 719, Code 78 will be used to document Involuntary Leave.

Please note: Involuntary leave should not be documented nor shall TDA be paid if the employee is retiring on a service retirement pending disability retirement.

The SCO will release a Payroll Letter providing instructions for updating Employment History for an employee on Involuntary Leave and requesting the Temporary Disability Allowance payment pending a CalPERS decision on the disability retirement application.

➤ **Disability Retirement Approved**

When the campus receives notification from CalPERS of the employee's disability retirement approval, the campus is required to report the amount of TDA paid to the employee/member to CalPERS (if applicable). The following steps should be followed:

- In order to report the total amount of TDA to be reimbursed to the campus by CalPERS, the campus must request and receive accounts receivables (A/R(s)) through the SCO. Because the employee is ineligible for vision or supplemental benefits (i.e., life insurance and/or LTD) when retired, neither CalPERS or the employee will be required to reimburse the campus for these deduction amounts. The campus then contacts CalPERS Roll Process Unit either by FAX at (916) 795-1280 or by telephone at 1-800-352-2238 to inform them of the total amount due for the TDA payments. The campus must provide an address for mailing the reimbursement check(s).
- If the employee/member has received TDA, CalPERS pays the retroactive disability benefits to the campus to reimburse the campus for the A/R(s) established for TDA payments. If a balance remains, CalPERS will take a monthly deduction equaling 10 percent of the employee/member's gross allowance to pay off the balance. CalPERS must be notified if the employee/member and the campus come to a different arrangement for reimbursement.
- The campus reimbursement is completed through a monthly payment process. The campus will receive a check from CalPERS and a "carrier register" (list) that details the employee/member's Social Security number, name, and payment amount for each employee represented on the check. Campuses will not receive reimbursement for vision, life insurance or LTD plans. When the A/R(s) are satisfied or at the close of the tax year, the campus is required to report the amount received to the SCO in order to update the employee's W-2 file.
- To place the employee on the retirement roll, the campus is to process an S42V (if one was not processed) to void the employee's temporary separation and a subsequent S71 transaction to document the employee's disability retirement.
- The employee's effective date for disability retirement shall be based on the date of the employer's application for disability retirement on behalf of the employee and any leave credits used. For example, if the employee used leave credits while awaiting the disability retirement decision (before going on TDA), the effective date will be after the employee's leave credits are exhausted.

CalPERS Retirement Payments – CalPERS places the employee on the next available retirement roll.

- Retroactive payments to employees are made on a bi-weekly basis.
- CalPERS will tax the reimbursement paid to the member. The reimbursement is a deduction from the member's allowance.
- CalPERS will retroactively apply all health, dental, and other applicable deductions (except vision, life, and LTD) as a retiree.
- If the retirement effective date is after the 10th of the month, deductions will begin the first of the following month.

- A deduction is set up to reimburse the campus on the next monthly payment schedule. (The deduction is taken from the member's retroactive bi-weekly check. However, all direct carrier payments are made on a monthly basis.)

➤ **Disability Retirement Denied**

Pursuant to Education Code 89536.1(c), if the application for disability retirement is denied, the campus is required to reinstate the employee to his or her former position with back salary and benefits, less any TDA paid by the campus, and restore any leave credits that the employee used during the period of Involuntary Leave. The campus should:

- Process an S42V to void the IL and return the employee to pay status.
- Pay the employee the difference between TDA and his/her salary.
- Restore any leave credits used while the employee was on IL.
- Reestablish any voluntary deductions that were cancelled while the employee was receiving TDA.

Please note: When the employee's disability retirement is denied, the retirement system is not responsible for reimbursing the amount of TDA paid to the employee by the campus.

Human Resources Administration will host a conference call in January to provide campuses with additional information regarding these new disability retirement requirements. Information on the conference call will be communicated to appropriate staff via email.

If you have any questions, please contact Pamela Chapin in Human Resources Administration at (562) 951-4414 or by email at pchapin@calstate.edu. This Technical Letter is also available on Human Resources Administration's Web page at: <http://www.calstate.edu/HRAdm/memos.shtml>.

CR/pc

Attachments



CalPERS
 Sacramento Regional Office
 P.O. Box 942717
 Sacramento, CA 94229-2717
 FAX (916) 231-7878

DISABILITY ESTIMATE REQUEST

**(THIS FORM IS TO BE USED BY THE EMPLOYER ONLY WHEN THE EMPLOYER
 WILL BE GENERATING A DISABILITY APPLICATION ON BEHALF OF THE MEMBER)**

THIS FORM IS NOT AN APPLICATION FOR RETIREMENT.

Please complete this form and fax or mail to the above address. The disability retirement estimate will be faxed or mailed to the address you indicate on this form. This estimate cannot be processed unless all information on this form is complete.

1. Name (First) (MI) (Last)			2. Social Security Number		
3. Employer Mailing Address			4. Member Birth Date Month / Day / Year / /		
City	State	Zip Code	5. Telephone Numbers Work() Fax()		
6. Employer					
7. Last day on paid status Month / Day / Year		8. Type of Estimate <input type="checkbox"/> Disability Retirement <input type="checkbox"/> Industrial Disability Retirement			
9. Beneficiary Birth Date (if known) Month / Day / Year					
			Relationship to member: _____		
A. Has the member been married for at least one year prior to the retirement date?		<input type="checkbox"/> Yes		<input type="checkbox"/> No	
B. Does the member have any unmarried children who are under age 18 or disabled?		<input type="checkbox"/> Yes		<input type="checkbox"/> No	

NOTICE LETTER REQUIRED BY EDUCATION CODE 89536.1(a)
(If the campus wishes to place the employee on Involuntary Leave)

(DATE)

(EMPLOYEE'S NAME)

(ADDRESS)

(CITY, STATE, ZIP CODE)

Dear (NAME):

This is to notify you that pursuant to Education Code 89536.1, on (DATE [15 days from the notice]) [CAMPUS] will apply to California Public Employees' Retirement System (CalPERS) for disability retirement on your behalf. It has been determined that you are unable to perform the duties of your current position or any other position within the university. This decision is based on the [DATE] medical report by [DOCTOR'S NAME] (or other pertinent information).

As provided in Education Code 89536.1, you have the right to respond to (CAMPUS) prior to the filing of your application for disability retirement. Please contact (CAMPUS) within five (5) days after the date of mailing of this notice if you wish the opportunity to explain why you disagree with the intended action. (The date of mailing is shown on the attached proof of service.)

You will be placed on involuntary leave (IL) while awaiting a decision from CalPERS on your disability retirement. You are eligible to receive a Temporary Disability Allowance (TDA) if your leave credits and/or other available program(s) have been exhausted or if they do not provide pay at least equal to your estimated retirement allowance. If you elect not to use available leave credits or participate in an appropriate disability program, you will not be entitled to receive a TDA. The campus will continue to make employer contributions to your health, dental, and vision plan (Life Insurance and/or LTD, if eligible) during the IL period.

If you elect payment for your available leave credits, it shall be considered regular pay. If applicable, state and federal income taxes, Social Security/Medicare contributions, and retirement contributions will be deducted. Your voluntary deductions will continue provided there is enough net pay to take the deductions and you do not cancel them. If your leave credits generate a qualifying pay period, you will receive State service credit for seniority purposes, leave credit accruals, and any salary changes in effect.

Payment for any available program i.e., [NON-INDUSTRIAL DISABILITY LEAVE OR INDUSTRIAL DISABILITY LEAVE] is subject to program provisions and you are eligible to receive all the benefits the program provides.

If you are only eligible to receive payment for TDA without payment of leave credits and/or a benefit program, you are considered to be on a temporary separation. Your TDA payments are subject to mandatory deductions that include State and federal income taxes, and Social Security/Medicare contributions. Retirement contributions will not be deducted nor will the

employer's contribution be made while receiving payment of your TDA. [Your union dues/fair share fees will be deducted from your TDA payment (if represented).]

TDA is an interim allowance paid while a decision for disability retirement is being made. Voluntary deductions will continue providing that there is enough net pay to take them. Retired employees, typically, do not have voluntary deductions taken from their retirement benefits unless approved by CalPERS. It is recommended that you provide [campus contact] with a decision on whether you elect to continue your voluntary deductions while waiting for your CalPERS disability retirement decision.

If your application for disability retirement is granted, the retirement system will reimburse the campus for the TDA payments you received. The payments will be deducted from the retroactive portion of your disability retirement allowance which would otherwise be payable to you.

If your application for disability retirement is denied, you will be reinstated to your position pursuant to Education Code 89536.1(c) and paid the difference between the TDA payments you received and any salary you may have received during the period you were on IL. Any voluntary deductions that were cancelled will need to be reestablished. Any leave credits used during the period of your IL will be restored to your leave credit account. You will receive service credit for retirement, qualifying pay periods, full State service credit for seniority purposes, leave credit accruals, and any salary changes in effect during the period you were placed on IL. The campus may be eligible for certain salary offsets under the law, as well.

Disability retirement is considered a temporary separation. CalPERS may determine at a later date that you are able to return to work. For more details or information regarding disability retirement, you may contact CalPERS directly at (800) 352-2238.

Attached is a selection form [CAMPUS TO DEVELOP] that provides your accrued leave credits and information regarding [AVAILABLE PROGRAM, if any]. Please review and select the option of your choice. Upon making your selection, please return the option form to [CONTACT NAME AND ADDRESS] by [DATE]. If you elect not to use your available leave credits, and/or to participate in the available program, or if you do not respond with an election, you will be placed on involuntary leave without TDA payments. However, your health, dental, and vision coverage [and employer-paid supplemental benefits, if eligible,] will be continued.

During your period of involuntary leave, we will provide assistance and answer any questions you may have regarding your disability retirement status. We recognize that we are providing a great deal of information and that you will be making important decisions. If you need additional assistance/information, or if you need clarification of your options, please contact me at [AREA CODE - NUMBER].

Sincerely,

Attachment