EMERGING TRENDS IN HUMAN RESOURCES/PAYROLL
HOT TOPICS

• EXCESS SICK LEAVE
• REPORTING VALUE OF UNIFORM ALLOWANCE TO CalPERS
• INCREASE IN CALIFORNIA MINIMUM WAGE
• AB375 – CERTIFICATED EMPLOYEES - PAID BONDING TIME
BASIC SICK LEAVE

California Education Code §22170.5

• (a) "Sick leave days" means the number of days of accumulated and unused leave of absence for illness or injury.

• (b) "Basic Sick Leave day" means the equivalent of one day's paid leave of absence per pay period due to illness or injury.

• 12 Month employee = 12 days; 10 Month employee = 10 days.

• Note: CalPERS does not have a limit to the amount of sick leave an employee can be offered per year (at this time.) This is an issue for employers of CalSTRS covered employees.
EXCESS SICK LEAVE

California Education Code §22170.5

• (c) "Excess Sick Leave days" means the day or total number of days, granted by an employer in a pay period as defined in §22154 after June 30, 1986, for paid leave of absence due to illness or injury, in excess of a Basic Sick Leave day.

• Excess Sick Leave is implied to be sick leave accrual in excess of one day per month.

• Excess Sick Leave should be tracked separately from Basic Sick Leave accrual.
WHY IS TRACKING EXCESS SL IMPORTANT?

• Prior to the recent increases in the CalSTRS contribution rates for employees and employers, the employee contributed 8.00% to CalSTRS and the employer contributed 8.25%.

• The additional .25% paid by the employer was designed to pay for the additional service credit derived from Basic Sick Leave accrual. (California Education Code §22951).

• .25% of the employer rate today still pays for Basic Sick Leave service credit at retirement for CalSTRS members.

• CalSTRS is vigilant in collecting contributions for Excess Sick Leave because it is not covered in the .25% paid by employers.
WHY IS TRACKING EXCESS SL IMPORTANT?

• When an employee retires from CalSTRS, the Basic and Excess Sick Leave balances need to be reported (to CalSTRS via from SR 0554E (Express Benefit Report)) within 30 days of the member’s retirement date or the date the retirement application is received by CalSTRS. (California Education Code §22717.5(c).

• Penalties and interest (P&I) will be assessed on unpaid balances.

• CalSTRS derives the authority to assess P&I under California Education Code §22718(a).
OTHER TYPES OF EXCESS SICK LEAVE

• Do you offer more than one day of sick leave per month to your Classified employees?

• Example: District A offers 13 days of sick leave to their 12 month classified employees. This was negotiated as part of the Classified Collective Bargaining Agreement (CBA).

• For purposes of this example, we will say an employee was eligible for the Right of Election between CalPERS/CalSTRS due to a qualifying event and had prior CalSTRS membership.

• The employee elected to remain in CalSTRS in his/her new classified position.
OTHER TYPES OF EXCESS SICK LEAVE

• Your classified employee with CalSTRS retirement is earning in excess of one day of sick leave per month (under the classified CBA).

• CalSTRS considers this extra day of sick leave to be Excess Sick Leave.

• It should be tracked separately in an Excess Sick Leave “bucket.”

• Note: It is probable you will always have some classified employees under CalSTRS retirement. Districts need to assess whether it would be in their interest to avoid offering sick leave in excess of the one (1) Basic day of sick leave per month.
SICK LEAVE NOT EARNED UNDER CalSTRS

• Employees who earn sick leave under CalPERS or an Alternative Retirement System (ARS) (ex: PARS, Apple) and then move to a CalSTRS covered position should have the sick leave earned under CalPERS/ARS treated as Excess Sick Leave.

• A typical example would be an Instructional Aide (covered by CalPERS) later becomes a teacher (and is covered by CalSTRS retirement).

• CalSTRS considers sick leave earned under another retirement system to be Excess because it was not earned under CalSTRS covered employment.
SICK LEAVE NOT EARNED UNDER CalSTRS

• You can allow the employee to migrate their sick leave balance over to the new CalSTRS covered position, but it should be tracked separately from the sick leave accrued in their CalSTRS covered position.

• It should be tracked in an Excess Sick Leave “bucket.”

• Be mindful of your employees who transition from CalPERS/ARS to CalSTRS and document their sick leave balance accordingly.
UTILIZING EXCESS SICK LEAVE

• Rules for the utilization of Sick Leave have evolved over the years.
• Prior to 7/1/86, employers were not required to differentiate between Basic and Excess Sick Leave.
• California Education Code §22724(a) defines the order sick leave balances are utilized:
  • a) Accumulated and unused sick leave days existing on 7/1/86.
  • b) Basic Sick Leave days granted on or after 7/1/86.
  • c) Excess Sick Leave days granted on or after 7/1/86.
UTILIZING EXCESS SICK LEAVE

• All Sick Leave earned prior to 7/1/86 and all Basic Sick Leave must be exhausted prior to Excess Sick Leave being utilized.

• Ex: John Smith has a balance of 40 hours of Sick Leave (prior to 7/1/86), 1,200 hours of Basic Sick Leave and a balance of 240 hours of Excess Sick Leave.

• John becomes ill and begins to miss work.

• John must exhaust all 40 hours of Sick Leave (earned prior to 7/1/86) and 1,200 hours of Basic Sick Leave before his Excess Sick Leave can be utilized.

• Excess Sick Leave is always utilized last.
WHEN AN EMPLOYEE RETIRES...

• CalSTRS will perform an analysis when an employee retires.

• The Basic Sick Leave balance on the Express Benefit Form divided by CalSTRS years of service should be less than 12.

• Since employees can only earn one day of Basic Sick Leave per month, having an average of over 12 days is a red flag.

• Expect a bill from CalSTRS for the Excess Sick Leave if your retiring employee averages more than 12 days per year.

• You may correct previously reported sick leave by submitting Form SR 0559 – Employment Termination or Sick Leave Data Correction.
CalSTRS IS CONDUCTING AUDITS...

• CalSTRS is actively conducting audits of School Districts.
• CalSTRS is granted authority to audit School District Sick Leave Records under California Education Code §22724(b).
• Excess Sick Leave is a common finding in these audits.
• Audit findings lead to expensive penalties and interest being assessed.
• Audit findings are released publicly.
• Audit findings are potentially embarrassing to School Districts.
YOU MAY NOT OFFER EXCESS SICK LEAVE...

• While your District may not offer Excess Sick Leave, you (as the last employer of record) will be responsible for paying for it.

• CalSTRS recognizes this is unfair and is in the early stages of coming up with a plan to assess Districts who offer Excess Sick Leave a higher contribution rate compared to Districts who don’t.

• If you are an employer who is frequently on the hook for Excess Sick Leave charges, you will want to be vocal about wanting this change pursued.

• If you currently offer Excess Sick Leave and do not want to incur additional CalSTRS contribution costs in the future, you may want to work on negotiating an end to Excess Sick Leave you offer.
YOU CANNOT DENY ACCEPTING EXCESS SL...

• You are unable to deny accepting Excess Sick Leave contributions from another District because California Education Code does not differentiate between Basic and Excess Sick Leave in terms of an employee’s right to transfer Sick Leave from another District. (California Education Code §44979).

• Some Districts allow a transfer of Sick Leave beyond one year.

• Employers are not required to accept a transfer of Sick Leave after one year. (California Education Code §44979).

• Districts who accept Sick Leave transfers after one year may be opening themselves up to a greater sick leave liability.
CALCULATING THE COST OF EXCESS SICK LEAVE

• You can calculate the cost of the Excess Sick Leave you will be submitting on the Express Benefit Form.

• Sending a check with the Express Benefit Form to CalSTRS within 30 days of the employee’s retirement will enable you to proactively avoid paying penalties and interest.

• Let’s say John Smith has a ending balance of 1,000 hours of Excess Sick Leave. His prior year compensation was $200,000. His work year is comprised on 248 days of compensation.
CALCULATING THE COST OF EXCESS SICK LEAVE

• Formula for the cost of Excess Sick Leave:

• Cost of John’s Excess Sick Leave:
125 days (1,000 ÷ 8 = 125) ÷ 248 day work year = .5040 of a year.
.5040 x $200,000 x .301 = $30,340.80
$30,340.80 is the cost of John’s Excess Sick Leave to the District.
CALCULATING THE COST OF EXCESS SICK LEAVE

• Note: CalSTRS periodically updates the Present-Value Factor used to calculate the cost of Excess Sick Leave.

• The .301 Present-Value Factor has been valid from 7/1/12 to 6/30/16. (see CalSTRS Employer Directive 2015-02)

• It is possible this rate will change 7/1/16.

• Watch for updates from CalSTRS.
BEST PRACTICES FOR EXCESS SICK LEAVE

• Keep track of BASIC and EXCESS sick leave in separate “buckets.”
  - Remember this applies to all CalSTRS members.
  - Remember CalSTRS members can be Classified or Certificated.
  - Utilize Excess Sick Leave only after exhausting all other SL.
  - Making changes now will help you survive a CalSTRS audit.

• Make sure to send the Express Benefit Form to CalSTRS as soon as possible after a CalSTRS covered employee retires.

• Also include a check for the cost of the Excess Sick Leave with your Express Benefit Form to avoid paying P&I.
BEST PRACTICES FOR EXCESS SICK LEAVE

• Personnel (HR) and Payroll should work together to develop a Sick Leave Transfer Form that will easily identify Excess Sick Leave transfers from another district.

• Survey districts that surround you to become familiar with the leave benefits they offer.

• Identify the districts that offer their employees more than one BASIC sick leave day per month.

• Most districts list their Collective Bargaining Agreements online.
  - You can see the benefit they offer by checking their CBA’s.
OVERALL: TRANSFER OF SICK LEAVE

• Sick Leave for Certificated employees should *always* be transferred in days.

• If you are accepting or transferring Sick Leave in hours for Certificated employees, you may be causing an equitable Sick Leave transfer.

• Example: Many Districts have full-time teaching days that vary in length from six (6) to eight (8) hours per day.

• If you receive a Sick Leave transfer from a District in hours, you should contact the transferring District to determine the length of the regular full-time work day for the employee.
OVERALL: TRANSFER OF SICK LEAVE

• Depending on the length of the normal teaching day, you may need to adjust the hours of the balance you have accepted.

• Example: Joan worked as a teacher at District A. She had a sick leave balance of 800 hours. Her teaching day was 6.25 hours per day. District A transferred Sick Leave to District B in hours.

• Joan moves to District B, which has an 8.00 hour teaching day.

• Joan earned her Sick Leave at District A under a 6.25 hour day.

• 800 hours ÷ 6.25 hours = 128 days of Sick Leave.

• District B should take 128 days x 8.00 hours = 1,024 hours.
OVERALL: TRANSFER OF SICK LEAVE

• If District A had correctly transferred 128 days of Sick Leave for the Certificated employee, District B would have taken the 128 days transferred x 8.00 hours to come up with 1,024 hours of sick leave.

• If District B had simply accepted a transfer of 800 hours of sick leave from District A, they would have shorted the employee equitable Sick Leave accrual.

• You can assist other Districts by transferring Sick Leave in days for Certificated employees and also include the F/T work day length.

• Classified employees are always transferred in hours.
VALUE OF SICK LEAVE AT RETIREMENT

• CalSTRS

• CalSTRS retirees earn additional service credit from their unused sick leave balance at the rate of a day for a day.

• Example: John has a 185 day work year. He has 100 days of unused sick leave at retirement.

• 100 days of sick leave ÷ 185 day work year = .5405

• John earns .541 of additional service credit.
VALUE OF SICK LEAVE AT RETIREMENT

• CalPERS
• CalPERS retirees earn additional service credit from their unused Sick Leave hours ÷ 2,000 hours.
• Example: John has a 1,600 hours of unused sick leave when he retires. 1,600 ÷ 2,000 hours = .80
• John earns .80 of a year of additional service credit at retirement.
REPORTING OF UNIFORM VALUE TO CALPERS

• This is a common audit finding when CalPERS is auditing Districts.

• Under California Code of Regulations (CCR’s) §571 (a) & (b), compensation paid or reimbursed for the monetary value of purchasing, renting and maintaining required clothing is reportable to CalPERS.

• Clothing must be a substitute for personal attire clothing (per IRS definition).

• It excludes such items considered safety equipment (such as protective vests, pistols, bullets, and steel-toed boots).
REPORTING OF UNIFORM VALUE TO CALPERS

• If you require employees to wear a uniform (custodians, bus drivers, security personnel), the value of the uniforms – whether offered as an allowance or paid by the employer – is reportable to CalPERS.

• Districts often are aware that a Uniform Allowance is reportable to CalPERS. Districts often do not report the value of purchasing, renting and maintaining uniforms when it is employer paid.

• While not taxable income to the employee (when employer paid), the value is reportable to CalPERS.

• Obtain invoices from your A/P Department to report to CalPERS.
MINIMUM WAGE TO INCREASE

• As a result of Governor Brown signing SB3 into law on April 4, 2016, the minimum wage paid to employees will increase over the next few years.

• The law was the result of a compromise between labor unions, the legislature and the Governor.

• Labor unions were proposing two ballot measures for the November Election – one that would have immediately increased the minimum wage to $15.00 and one that would have phased a $15.00 rate in over a number of years.

• Both initiatives would have required voter approval.
MINIMUM WAGE TO INCREASE

• As a result of the new law, the labor unions have removed the ballot measures from consideration in November.

• The new law applies to employers with 26 or more employees beginning January 1, 2017.

• Employers with less than 26 employees will have an additional year to comply with each increase.

• California was already tied with Massachusetts for the highest minimum wage in the United States @ $10.00/hour.

• The Governor will be able to temporarily pause increases for one year in the event of an economic downturn.
MINIMUM WAGE TO INCREASE

• Projected Increases in the Minimum Wage:
  • January 1, 2017 = $10.50 per hour. (not subject to pause/delay).
  • January 1, 2018 = $11.00 per hour.
  • January 1, 2019 = $12.00 per hour.
  • January 1, 2020 = $13.00 per hour.
  • January 1, 2021 = $14.00 per hour.
  • January 1, 2022 = $15.00 per hour.
• Increases to the minimum wage after reaching $15.00 will be determined annually by adjusting for inflation (national CPI).
ASSESS YOUR MINIMUM WAGE EMPLOYEES

• Pay particularly close attention to your Teachers & IT Employees.
• Myth: All Teachers are Exempt Employees.
• Reality: Teachers are Exempt if they meet the requirements under California Law.
• In order for Teachers to qualify as exempt employees under the Professional Exemption, they must earn an hourly wage of TWICE the California Minimum Wage. (see IWC Wage Order 4-2001)
• Now is the time to assess the Exempt status of your teachers.
• Your Substitute Teachers are unlikely to be Exempt employees.
ASSESS YOUR MINIMUM WAGE EMPLOYEES

• In order for teachers to remain Exempt in future years, they will need to earn an hourly wage of TWICE the minimum wage.

• What this looks like:

  • 2017 = $21.00  2018 = $22.00  2019 = $24.00
  • 2020 = $26.00  2021 = $28.00  2022 = $30.00

• Will Column 1/Row 1 of your Salary Schedule meet this calc?
AB 375 – Certificated EE Baby Bonding

• Applies to Certificated employees only – became law 1/1/16.
• Added §44977.5 to California Education Code.
• Allows Mothers, Fathers and Adoptive Parents to have Maternity and Paternity leave of up to 12 weeks (under CFRA) to be paid at sub differential pay - to bond with a child – birth or placement of a child in connection with employee’s adoption or foster care.
• Certificated employees must qualify for California Family Rights Act (CFRA) to be able to utilize this leave. (see Government Code §12945.2).
AB 375 – Certificated EE Baby Bonding

• CFRA (for this purpose) was previously an unpaid leave at most School Districts.

• To receive differential pay, the employee must have exhausted all of their fully paid sick leave.

• The exhaustion requirement is a major departure from current CFRA law and most Collective Bargaining Agreements.

• Employees may unilaterally elect to utilize accumulated sick leave for bonding leave – and once exhausted – receive sub-differential pay for the balance of the 12 weeks.
AB 375 – Certificated EE Baby Bonding

• An employee who elects not to exhaust sick leave during the bonding leave is ineligible for differential pay.

• Sub-Differential Pay is defined in California Education Code §44983 as the difference between the employee’s salary and the amount that would have been or was actually paid to a substitute.

• An employee is only provided one 12 week sub-differential pay period per maternity/paternity leave.

• If the school year ends before the 12 week period is exhausted, the employee may take the balance of the 12 weeks in the new year.
AB 375 – Certificated EE Baby Bonding

• Bonding leave is not required to be taken in one continuous period.

• The minimum duration of leave is two weeks (per CFRA regs.)

• However, employers must grant leave of less than two weeks on two occasions and may grant additional requests for leaves lasting less than two weeks.

• Any bonding leave taken must be concluded within one year of the birth or the placement of the child.
AB 375 – Certificated EE Baby Bonding

• Districts who use the 100 days/50% rule for their certificated employees should consult legal counsel regarding how to proceed under AB375.

• The general consensus is the language in §44977.5 trumps 50% pay, and leave under AB375 should be at sub-differential pay.

• AB 375 leave is in addition to the 5 months of sub differential pay offered to Certificated employees – it is not part of the 5 months of sub differential pay or 100 days of 50% pay Certificated employees receive.
AB 375 – Certificated EE Baby Bonding

• California Education Code §44975 states, “To the extent this section conflicts with a provision of a Collective Bargaining Agreement (CBA) entered into by a public school employer and an exclusive representative before 1/1/16 – this section shall not apply until expiration or renewal of that CBA.

• CBA’s may need to be updated to reflect the new language of the law.
YOUR SPEAKERS TODAY

Mike Stribling – mstribling@rcoe.us
Coordinator, Payroll Services – Riverside County Office of Education

Jessica Garcia – jmgarcia@valverde.edu
Asst. Manager Payroll/Budget – Val Verde Unified School District

Lena Young-Gallardo – lena_young-Gallardo@sbcss.k12.ca.us
Financial Manager – San Bernardino County Superintendent of Schools

THANK YOU FOR ATTENDING TODAY!