

Cathy McKim

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**To:** TSB Help Desk  
**Subject:** FW: Payroll User Group Handouts  
**Attachments:** Payroll\_User\_Group8\_14\_12.pdf; Key Points for Penalties 1 - 4 July 1, 2012 foward.pdf; PenaltiesandInterest-Final Regulation 20110224-Text v3 51.doc; CA\_ED\_Code\_for\_CommunityColleges.doc

Hi,

Thanks to everyone for attending August 14th payroll user group meeting and giving us your feedback. Attached are the slides and handouts as well as excerpts from California Education Code pertaining to Community Colleges.

Per Ed Code 87822, community college academic employee working in the summer should be paid "within 10 days after the end of each calendar month or pay period during which the services are performed." This tells us that EOM or the 10<sup>th</sup> payroll will be fine.

For classified employees working at community colleges, "Payment shall be made on the last working day of the month in which the employee was in paid status" (Ed Code 88165).

You may read the Ed Code sections for these excerpts to their entirety to gain full understanding of the requirements. Here is the link:  
<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=edc>

Link to CalSTRS Resources:

<https://sew.calstrs.com/CalSTRSSewWebUI/ReferenceMaterial/Pages/ReferenceItemSearch.aspx>

First log into SEW, click on "Reference Items" on the menu on the left and search for any reference category and/by keyword. The "Employer Directives and Circulars" category has all the CalSTRS Circular Letters that were published. The "User Manuals and Trainings" has training information.

Link to CalPERS Training and Workshops:

<https://my.calpers.ca.gov/web/ebp/ces/businessPartner/ces/classList.htm>

First login in my|CalPERS as a Business Partner; then you will be able to view and enroll trainings and workshops CalPERS offers.

Link to the Subscription Page to CalPERS Circular Letters:

<https://www.calpers.ca.gov/index.jsp?bc=/employer/ebulletin/subscribe-now.xml>

This link will allow employers to subscribe to CalPERS Circular Letters. Depending on your internet browser, you may get a screen asking you to select your agency type. Try to copy and paste the link a couple of times until you see the page with "Subscribe Now" on the top.

Thanks,



Santa Clara County  
Office of Education

**Joyce Shen, Advisor**

District Business & Advisory Services  
Santa Clara County Office of Education  
1290 Ridder Park Drive MC 252  
San Jose, CA 95131-2304  
(408) 453-4327

**Ed Code requirements on Community College academic positions payroll period and pay day, including additional summer work:**

TITLE 3. POSTSECONDARY EDUCATION  
DIVISION 7. COMMUNITY COLLEGES  
PART 51. EMPLOYEES  
CHAPTER 3. EMPLOYMENT  
Article 8. Salaries  
EDUCATION CODE SECTION 88160-88168

**87821.** Each salary payment for any calendar month may be made on the last working day of the month and shall be paid not earlier than the last working day of the month and not later than the fifth day of the succeeding calendar month except that faculty employed for less than full time in classes for adults, in a day or evening community college, shall be paid on or before the 10th day of the succeeding calendar month for services performed during the preceding calendar month.

If the community college district provides for the payment of the salary of employees employed in academic positions once each two weeks, twice a month, or once each four weeks, each salary payment may be made on the last working day of the payroll period and shall be made not earlier than the last working day of the payroll period and not later than the eighth working day of the following payroll period.

This section shall not prohibit a district from making a payment of earned salary prior to the last working day of the month or payroll period.

**87822.** Except as provided in Section 87790, when any community college district employs an academic employee to perform instruction or other services in addition to his or her regular instructing duties, or when a district employs an academic employee to perform instructing or other services at a summer school maintained by the district, the district shall pay the employee for those services either in one lump sum or at an hourly, daily, biweekly, quadriweekly, or monthly rate of pay. If the pay is in one lump sum, the district shall pay the employee within 10 days after the termination of the services. If the pay is at an hourly, daily, biweekly, quadriweekly or monthly rate, the district shall pay the employee within 10 days after the end of each calendar month or pay period during which the services are performed.

**Ed Code requirements on Community College classified positions payroll period and pay day:**

TITLE 3. POSTSECONDARY EDUCATION  
DIVISION 7. COMMUNITY COLLEGES  
PART 51. EMPLOYEES  
CHAPTER 4. CLASSIFIED EMPLOYEES  
EDUCATION CODE SECTION 88160-88168

**88165.** Orders for the payment of wages and payroll orders and warrants for the payment of wages of employees a part of the classified service in any community college district shall be drawn at least once during each calendar month, for those districts not using Section 85244 or 85260. Payment shall be made on the last working day of the month in which the employee was in paid status.

This section shall not prohibit a community college district from making a payment of earned salary prior to the last working day of the pay period or of the month.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

**88166.** Whenever it is determined that an error has been made in the calculation or reporting in any classified employee payroll or in the payment of any classified employee's salary, the appointing authority shall, within five workdays following such determination, provide the employee with a statement of the correction and a supplemental payment drawn against any available funds.

# PAYROLL USERGROUP MEETING

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August 14, 2012 10am-12pm  
Milpitas Room  
Santa Clara County Office of Education

## CalSTRS Penalty and Interest

- Effective July 1, 2012, CalSTRS has started to assess penalty and interest for late reports and late contributions.
- There are four types of penalties:
  - Penalty 1: Late Report
  - Penalty 2: Late Adjustments
  - Penalty 3: Late Fiscal Year Contributions
  - Penalty 4: Late Contributions

## CalSTRS Penalty and Interest

- Defined Benefit Program (DB)—California State Teachers' Retirement System, aka the State Teachers' Retirement System Defined Benefit Plan (Ed Code 22001.5)
  
- Cash Balance Benefit Program (CB) (EC. 26000)
  - Created and established on July 1, 1996
  - Provide a retirement plan for persons employed to perform creditable service for less than 50% FTE for the position.
  - Excluded from mandatory membership in CalSTRS Defined Benefit Program.

## CalSTRS Penalty and Interest

- Two districts in Santa Clara County have Cash Balance Benefit Program and they report directly to CalSTRS.
  
- All other retirement contributions and reports submitted through SCCOE are for Defined Benefit Program (DB) and subject to penalty and interest assessment pertaining to DB.

## CalSTRS Penalty and Interest

### Penalty Type 1 (P1)—Late Reports

- New data for service period
- DB—Late if received on the 44<sup>th</sup> day after 5:00 p.m. Pacific time.
- CB—Late if received on the 10<sup>th</sup> business day after 5:00pm.
- DB & CB—Penalty is 7.5% of employer and employee contributions compounded daily.
- SCCOE submits DB files by the 15<sup>th</sup> business day when final payment is made.

## CalSTRS Penalty and Interest

### Penalty Type 1 (P1)—Late Reports (Continued)

#### DB Exemptions:

Regulations 27003 (g) (1), Workers Compensation.

“Any period of time beginning on the date an application for workers’ compensation is filed with the Workers’ Compensation Appeals Board until the date compensation is awarded, if the awarded compensation increases the amount of contributions due for that period of time.”

## CalSTRS Penalty and Interest

### Penalty Type 1 (P1)—Late Reports (Continued)

#### DB Exemptions:

Regulations 27003 (g) (2), retroactive changes resulting from State and Federal laws.

## CalSTRS Penalty and Interest

### Penalty Type 1 (P1)—Late Reports (Continued)

#### DB Exemptions for Part-Timers—EC 27003 (h)

- The date the part-time is paid matches the pay date on a published salary schedule.
- The pay date is no more than 31 days following the last day of the month in which the compensation being reported was earned.
- The applicable portions of the report are received no later than 44 days following the pay date.

## CalSTRS Penalty and Interest

### Penalty Type 1 (P1)—Late Reports (Continued)

DB Exemptions for Part-Timers and Substitues  
—EC 27003 (h)

Example:

- Services performed: 7/2-7/16
- Pay period reported to STRS: 7/1-7/31
- Pay date: 8/31, 31 calendar days after 7/31.
- Pay date 8/31 is on the published payroll schedule.

## CalSTRS Penalty and Interest

### Penalty Type 2 (P2)—Late Adjustment (DB & CB)

- Contributions reported for the second time by the report unit for an employee, for a specified period of time.
- Late on the 60<sup>th</sup> calendar day after 5:00pm following discovery by the employer or notification by the system...
- Regulations 27003 (c) (1) (2):
  - Notification by the system shall be on a form (756)... shall be delivered to the employer by mail or email.
  - Audit report delivered to the employer by mail or email.
- Discovery date—date employer discovers the error and notifies CalSTRS.



## CalSTRS Penalty and Interest

### Penalty Type 2 (P2)—Late Adjustment (DB & CB)

#### Regulation 27003 (c):

- Cumulative value of interest accruing on the sum of the absolute value for the change in employer and employee contributions.
- 7.5% interest compounded daily.
- Example:
  - original report—paid \$100 in contribution 7/31
  - Found 8/15 that \$20 was overpaid; district backs out \$100 and re-enters \$80. The \$20 difference is subject to P&I.

## CalSTRS Penalty and Interest

### Penalty Type 2 (P2)—Late Adjustment (DB & CB)

#### Exemptions: Regulations 27003 (f) Retro's

1. Class of employees.
2. Written employment agreement.
3. Becomes effective at the same time with the effective date of the written employment agreement or the effective date of the provision in the agreement providing for future increases in compensation.
4. Report within 90 days of the effective date of the written employment agreement or the effective date of the provision in the agreement providing for future increase in compensation.

## CalSTRS Penalty and Interest

Penalty Type 2 (P2)—Late Adjustment (DB & CB)

Exemptions:

- Workers' Compensation
- State or Federal Law
- Part-timers and substitutes

## CalSTRS Penalty and Interest

- Contributions for a prior fiscal year period remitted after March 1 of the subsequent fiscal year.
- Assessed 5% of creditable compensation.
- Penalty Type 3 does not apply to Cash Balance.

## CalSTRS Penalty and Interest

### Penalty Type 4 (P4)—Late Contributions (DB and CB)

- DB—95% by the 5<sup>th</sup> working day and 5% by the 15<sup>th</sup> working day.
- CB—10 Business days from report period end date.
- DB & CB—Assessed regular interest 7.5% compounded daily.

## CalSTRS Penalty and Interest

### What can districts do to avoid penalty and interest assessment?

- Pay employees correctly and on time.
- Correct errors immediately.
- Run F496 Report at CalSTRS Secure Employer Website (SEW)
- Submit error free CalSTRS files to TSB.

## 10-11 Month Contracted Employees Summer Work Compensation

- Ed Code 42646

- Source:

Title 2. Elementary and Secondary Education

Division 3. Local Administration

Part 24. School Finance

Chapter 9. School District Funds—Expenditures and Appropriations

*Article 4. General Provisions—Orders, Requisitions and Warrants*

## 10-11 Month Contracted Employees Summer Work Compensation

- Ed Code 42646:

“In any county, the county superintendent of schools, with the approval of the Superintendent of Public Instruction, the county board of education, and the county auditor, may prescribe a payroll procedure, to be followed by designated districts in the county...”

## 10-11 Month Contracted Employees Summer Work Compensation

- Ed Code 42646-Continued:

“To obtain the advantage of a uniform pay period and pay date within school districts, the payroll procedure may specify the ending date of the pay period and...the date of issue for payroll warrants, except that the issue date shall be on or before the 10th calendar day following the end of the pay period.”

## 10-11 Month Contracted Employees Summer Work Compensation

- Ed Code 45049

- Source:

Title 2. Elementary and Secondary Education  
Division 3. Local Administration  
Part 25. Employees  
Chapter 4. Employment—Certificated Employees  
*Article 5. Salaries.*

## 10-11 Month Contracted Employees Summer Work Compensation

- Ed Code 45049 (a):

“When any school district employs a certificated employee to perform teaching or other services in addition to his or her regular teaching duties, or when a school district employs a certificated employee to perform teaching or other services at a summer school maintained by the district, the district shall pay the employee for the services either in one lump sum or at an hourly, daily, biweekly, quadriweekly, or monthly rate of pay.”

## 10-11 Month Contracted Employees Summer Work Compensation

- Ed Code 45049 (a)--Continued:

- “If the pay is in one lump sum, the district shall pay the employee within 10 days after the termination of the services.”
- “If the pay is at an hourly, daily, biweekly, quadriweekly or monthly rate, the district shall pay the employee within 10 days after the end of each calendar month or regular pay period during which the services are performed.”

## 10-11 Month Contracted Employees Summer Work Compensation

- Ed Code 45049 (a)--Continued:
  - Lump sum risks non-compliance and is not recommended.
    - Example: If a summer program runs from 6/15-7/15, pay day should be between 7/15-7/25, no pay date for our payroll system.
  - Summer work should be paid by the 10<sup>th</sup> payroll following end of each calendar month or regular pay period.
    - Options: End of Month Payroll
      - 10<sup>th</sup> Payroll

## 10-11 Month Contracted Employees Summer Work Compensation

- Ed Code 45049 (a)--Continued:
- Example:
  - Summer work 7/17-8/16
  - Pay period reported to STRS/PERS: 8/1-8/31
  - Pay day should be by 9/10
    - Either End of the Month on 8/31
    - Or on 10<sup>th</sup> Payroll 9/10

## 10-11 Month Contracted Employees Summer Work Compensation

- Ed Code 45049 (b):
  - “If a salary payment is not made timely as required by this section, the amount of the salary payment due shall be increased by an amount of interest on the unpaid amount for each day of delay.”

## 10-11 Month Contracted Employees Summer Work Compensation

- CalPERS requires reporting compensation as earned.
- Government Code Section 20630: “...When compensation is reported to the Board, the employer shall identify the pay period in which the compensation was earned regardless of when reported or paid...”



### 10-11 Month Contracted Employees Summer Work Compensation

- Reporting compensation as earned impacts the calculation of retirement benefits.
- The final compensation is determined by adding all 12 consecutive months of pay rate data and dividing by 12.
  - Examples (see handout)

### Changes on CalSTRS Retiree Earnings Limit in 2012-13

- Retired CalSTRS members can return to work, perform CalSTRS activities, and receive compensation up to a certain amount without impacting their pension benefit.
- The retiree must be above normal retirement age, which is age 60.
- If the retiree has not reached age 60, the limitation is zero for the first 6 months or until age 60 is reached, whichever is first; otherwise retiree's pension benefit will be reduced dollar-for-dollar.

## Changes on CalSTRS Retiree Earnings Limit in 2012-13

- There have been exemptions in the past from the earnings limitation for retirees of age 60 or above under certain circumstances:

## Changes on CalSTRS Retiree Earnings Limit in 2012-13

Exemption Type	Education Code Section
No creditable service performed for 12 consecutive months after retirement	24214(e)
Filling vacant administrative position in emergency situation	24216(b)
Appointment as trustee or administrator by statute or program requirement	24216(a)
Classroom instruction or teacher support	24216.5
Remedial instruction	24216.6

As of July 1, 2012, all these exemptions have expired.

### Changes on CalSTRS Retiree Earnings Limit in 2012-13

- AB 178 was signed into law by Governor Brown on 7/17/12 and took effect immediately.
- AB 178 extended the exemptions for retirees who are working as trustees, administrators, or fiscal advisors appointed by the State Superintendent of Public Instruction, the California Community Colleges Board of Governors, or a county superintendent of schools, through FY 2012-13.
- Impose new requirements for the appointing bodies as they fill these positions.
- AB 178 does not address any other exemptions, such as for remedial instruction or filling a vacant administrative position in an emergency situation.

### Changes on CalSTRS Retiree Earnings Limit in 2012-13

AB 178 tightens restrictions on retiree earnings.

- The earnings limitation will be the amount equal to half of the medial final compensation of members that retired the previous year, which is estimated to increase from the current \$31,020 to about \$40,011 for 2012-13.
- Any earnings above the limitation would cause a dollar-for-dollar reduction in the retiree's retirement allowance or the retiree would need to reinstate to active service.

### Changes on CalSTRS Retiree Earnings Limit in 2012-13

- AB 178 eases reinstatement requirements. It allows retirees who reinstate into active service not to wait a whole year after reinstating before retiring again.
- If you have any retirees working in your district, be sure to notify them of these provisions, and report the earnings to CalSTRS as required.
- The retiree, not the district, bears the risk from there.

### Changes on CalSTRS Retiree Earnings Limit in 2012-13

- Ed Code 24214 (a) requires:
- "...the member shall not make contributions to the retirement fund or accrue service credit based on compensation earned from that service."
- "The employer shall maintain accurate records of the earnings of the retired member and report those earnings monthly to the system and retired member as described in Section 22461."

### Limitations on CalPERS Retirees Returning to Work

- CalPERS retirees of at least normal retirement age can work up to 960 hours per year without impacting their retirement benefits
- Recent statutory changes impose additional limitations:

### Limitations on CalPERS Retirees Returning to Work

- Retiree can fill a position on a temporary basis only if it is vacant, and only during recruitment of a permanent appointment.
- The 960-hour limit applies to all employers of the retiree combined.
- No extension is allowed.
- The compensation cannot exceed the maximum hourly rate for the vacant position on a publicly available pay schedule, and no additional benefits or compensation can be provided.

**Definition for  
Penalty 1 –  
Late report**

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DB and CB – Contributions reported for the first time by the report unit for an employee for a specific period of time where there was no previous reported line for that employee by that unit for any day in that specific period of time.

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**DB Ed. codes:  
23004, 23005,  
23006**

DB – Late if received on the 44<sup>th</sup> day after 5:00 p.m. Pacific Time  
CB – Late if received on the 10<sup>th</sup> business day after 5:00 p.m. Pacific Time  
DB and CB – Penalty is 7.50% of employer and employee contributions

**DB regulations:  
27000(a)  
27001(a)-(c)  
27003(a)-(b)  
27003(e)  
27003(g)-(h)**

compounded daily  
DB and CB – ‘Line in the sand’, Any late report, even prior to July 1, 2012, may be assessed

- The penalty for the days late will only be calculated back to July 1, 2012

DB and CB – No penalty for late reports that neither increases nor decreases the employer or employee contributions

**Exemptions**

**CB Ed. codes:  
26301**

DB and CB – Exemptions for workers’ compensation and federal and state law

**CB regulations:  
27000(b)  
27002(a)-(c)  
27004(a)-(b)  
27004(e)  
27004(g)-(h)**

- No data elements for system exclusion making it necessary for employer to dispute

DB and CB – Exemptions for part time and substitute extra days

Conditions to be met:

1. Date the substitute or part-time position is paid matches the pay date on a published salary schedule for that position; and
2. The pay date is no more than 31 calendar days following the last day of the month in which the compensation being reported was earned; and
3. The applicable portions of the report are received no later than 44 calendar days following the pay date.

Because of START limitations, for the following Assignment codes: 44, 54, 45, 55, 58

- System will penalize based on 31 days from end of pay period end date.

Example: part time pay period reported to CalSTRS: 09/01/12 – 09/30/12

- System will add 31 days to 9/30/12 = 11/1/12
- **Report due date** for 9/1/12 – 9/30/12 = **12/14/12**, 44 days from 11/1/12

*Need desk audit to determine if conditions met*

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**Definition for  
Penalty 2 –  
Late  
adjustments**

DB and CB – Contributions reported for the second time by the report unit for an employee, for a specific period of time

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**DB Ed. codes:  
23008**

DB and CB – late on 60<sup>th</sup> calendar day after 5:00 p.m. Pacific Time

**DB regulations:  
27003(c)-(g)**

DB and CB – Calculation based on cumulative value on the sum of the absolute value of the change in employer and employee contributions for each employee

DB and CB – Penalty is 7.50% of employer and employee contributions compounded daily

**CB Ed. codes:  
26302**

DB and CB – ‘line in the sand’, Adjustments with earnings dated July1, 2012 or later may be assessed

**CB regulations:  
27004(c)-(g)**

DB and CB – No penalty for a late adjustment that neither increases or decreases the employer or employee contributions

DB and CB – Exemptions for workers’ compensation and federal and state law

- No data elements for system exclusion making it necessary for employer to dispute

DB and CB – Exemptions for retroactive adjustments

Conditions to be met:

1. Adjustments are made for all members of a class of employees
2. The adjustments are made pursuant to a written employment agreement with an employer or with an exclusive representative entered into by an employer
3. The adjustments become effective contemporaneously with the effective date of the written agreement or the effective date of the provision in the agreement providing for future increases in compensation
4. The adjustments are reported to the system within 90 days of the effective date of the written employment agreement or the effective date of the provision in the agreement providing for future increases in compensation.

Because of START system limitations, Contribution Code 5:

- System will bypass all Contribution Code 5 lines

*Need desk audit to determine if conditions met*

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**Definition for  
Penalty 3 –  
Late FY  
contributions**

DB only – Contributions for a prior fiscal year reported after March 1 of subsequent fiscal year

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**DB Ed. codes:  
23003**

Late on March 1<sup>st</sup> of subsequent fiscal year  
Assessment based on 5% of creditable compensation

**DB regulations:  
27007(a)**

‘line in the sand’ – earning periods dated July 1, 2012 or later may be assessed  
The penalty for the days late will only be calculated back to July 1, 2012

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**Definition for  
penalty 4 – late  
contributions**

DB and CB – Late receipt of contributions

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**DB Ed. codes:  
23002, 23002.5,  
23003**

DB and CB – late receipt of payments of contributions  
DB – Penalty based on receiving 95% of contributions due by the 5<sup>th</sup> business/working day by 3:00 p.m. Pacific Time

**DB regulations:  
27005(a)-(c)  
27007(a)-(f)**

DB – Remaining balance due on the 15<sup>th</sup> business/working day by 3:00 p.m. Pacific Time

CB – Penalty based on receiving 100% of contributions due by the 10<sup>th</sup> business/working day by 3:00 p.m. Pacific Time

DB and CB – ‘Line in the sand’ Earning periods dated July 1, 2012 or later may be assessed

**CB Ed. codes:**

DB and CB – Penalty is 7.50% of employer and employee contributions compounded daily

**Exemptions**

DB and CB – Workers’ compensation and state and federal regulations

- No data elements for system exclusion making it necessary for employer to dispute

DB and CB – late contributions if related to a retro  
*Need desk audit to determine if conditions met*

DB and CB – Part time or substitute extra days  
*Need desk audit to determine if conditions met*

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**California Code of Regulations**  
**Title 5. Education**  
**Division 3. Teachers' Retirement System**  
**Chapter 1. Teachers' Retirement System**  
**Article 16. Penalties and Interest for Late Remittances and Late and Unacceptable Reporting**  
**by Employers**

**§ 27000 Format for Monthly Reports**

Employers shall file reports through CalSTRS' secure employer website as follows:

(a) Employers reporting information to the Defined Benefit Plan shall comply with CalSTRS' F496 File Specification, as revised on March 1, 2011 and hereby incorporated by reference.

(b) Employers reporting information to the Cash Balance Benefit Program shall comply with CalSTRS' Voluntary Deduction File Specification, as revised on March 1, 2011 and hereby incorporated by reference.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: Sections 23004, 23006, 23008, 26301, Education Code.

**§ 27001 Acceptable Report – Defined Benefit Program**

(a) A monthly report for the Defined Benefit Program is acceptable if it is reported in compliance with Section 27000, subdivision (a). Reports that fail to comply shall be rejected by CalSTRS, and will not be received.

(b) A monthly report shall contain the information as specified in Section 27000 for all employees who perform creditable service for an employer during the month.

(c) Information reported pursuant to Section 27000, subdivision (a) for one or more employees from a prior month shall be aggregated and treated as a separate report for the month to which it relates.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: Sections 23004, 23005, 23006, Education Code.

**§ 27002 Acceptable Report – Cash Balance Benefit Program**

(a) A report for the Cash Balance Benefit Program is acceptable if it is reported in compliance with section 27000, subdivision (b). Reports that fail to comply shall be rejected by CalSTRS, and will not be received.

(b) A report shall contain the information required by section 27000, for all employees who perform creditable service for an employer during the pay period.

(c) Information reported pursuant to Section 27000, subdivision (b) for one or more employees from a prior pay period shall be aggregated and treated as a separate report for the pay period to which it relates.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: 26301, Education Code.

### **§ 27003 Assessment of Penalties for Late Reports – Defined Benefit Program**

(a) A monthly report received 45 or more calendar days following the month in which the creditable compensation being reported was earned shall be subject to penalties based on the number of calendar days it is late, in an amount equal to the greater of:

(1) \$500 or

(2) The cumulative value of interest accruing on the sum of employer and employee contributions due for the late monthly report compounded daily, based on the regular interest rate in effect that day, until the report is received.

(b) A monthly report that is received after 5:00 p.m. Pacific Time on the 44th calendar day shall be considered to have been received on the 45th calendar day, and therefore is late.

(c) Those portions of a monthly report that adjust contributions remitted in a prior month shall be aggregated and treated as a report adjusting incorrect contributions. The report shall be late if received after 5:00 p.m. Pacific Time on the 60th calendar day following discovery by the employer or notification by the system. The penalty for a late report adjusting incorrect contributions shall be the cumulative value of interest accruing on the sum of the absolute value of the change in employer and employee contributions for each employee on the late report compounded daily, based on the regular interest rate in effect that day, until the report is received.

(d) Those portions of a monthly report that adjust incorrect contributions for a month prior to the effective date of this article shall not be subject to the penalties provided for in this section.

(e) Those portions of a monthly report that neither increase nor decrease employer and employee contributions for an employee shall not be subject to the penalties provided for in this section.

(f) Those portions of a monthly report that adjust contributions remitted in a prior month shall not be subject to the penalties provided for in this section if all of the following are true:

(1) The adjustments are made for all members of a class of employees;

(2) The adjustments are made pursuant to a written employment agreement with an employer or with an exclusive representative entered into by an employer, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code; and

(3) The adjustments become effective contemporaneously with the effective date of the written employment agreement.

(4) The adjustments are reported to the system within 60 days of the effective date of the written employment agreement.

(g) Those portions of a monthly report that are otherwise late shall not be subject to the penalties provided for in this section during the following periods of time:

(1) The period of time beginning on the date an application for workers' compensation is filed with the Workers' Compensation Appeals Board until the date compensation is awarded, if the awarded compensation increases the amount of contributions due for that period of time.

(2) Any period of time that directly results from the operation of a state or federal statute or regulation which requires a retroactive increase in the creditable compensation paid to a member for prior service, if that retroactive increase results in an increase in the amount of contributions due for that period of time.

(h) For employees employed on a part-time basis or a full-time basis with an additional part-time position, those portions of a monthly report for the part-time position that are otherwise late shall not be subject to the penalty and interest assessed on a late report provided for in subdivision (a) of this section if all of the following are true:

(1) The date the part-time position is paid matches the pay date on a published salary schedule for that position; and

(2) The pay date is no more than 30 calendar days following the last day of the month in which the compensation being reported was earned; and

(3) The applicable portions of the report are received no later than 44 calendar days following the pay date.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: Sections 23004, 23006, 23008, Education Code.

#### **§ 27004 Assessment of Penalties for Late Reports – Cash Balance Benefit Program**

(a) A report received 11 or more working days following the pay period in which the salary being reported was earned shall be subject to penalties based on the number of calendar days it is late, in an amount equal to the greater of:

(1) \$500 or

(2) The cumulative value of interest accruing on the sum of employer and employee contributions due for the late report compounded daily, based on the regular interest rate in effect that day, until the report is received.

(b) A report due on the 10th working day that is received after 5:00 p.m. Pacific Time on the 10th working day shall be considered to have been received on the 11th working day, and therefore is late.

(c) Those portions of a report that adjust incorrect contributions for a pay period prior to the effective date of this article shall not be subject to the penalties provided for in this section.

(d) Those portions of a report that neither increase nor decrease employer and employee contributions for an employee shall not be subject to the penalties provided for in this section.

(e) Those portions of a report that adjust contributions remitted in a prior month shall not be subject to the penalties provided for in this section if all of the following are true:

(1) The adjustments are made for all members of a class of employees;

(2) The adjustments are made pursuant to a written employment agreement with an employer or with an exclusive representative entered into by an employer, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code; and

(3) The adjustments become effective contemporaneously with the effective date of the written employment agreement.

(4) The adjustments are reported to the system within 60 days of the effective date of the written employment agreement.

(f) Those portions of a report that are otherwise late shall not be subject to the penalties provided for in this section during the following periods of time:

(1) The period of time beginning on the date an application for workers' compensation is filed with the Workers' Compensation Appeals Board until the date compensation is awarded, if the awarded compensation increases the amount of contributions due for that period of time.

(2) Any period of time that directly results from the operation of a state or federal statute or regulation that requires a retroactive increase in the creditable compensation paid to a member for prior service, if that retroactive increase results in an increase in the amount of contributions due for that period of time.

(g) For an employee employed on a part-time basis or a full-time basis with an additional part-time position, those portions of a report that are otherwise late shall not be subject to the penalty and interest assessed on a late report provided for in subdivision (a) of this section if all of the following are true:

(1) The date the part-time position is paid matches the pay date listed on a published salary schedule for that position; and

(2) The pay date is no more than 30 calendar days following the last day of the pay period in which the compensation being reported was earned; and

(3) The applicable portions of the report are received no later than 10 working days following the pay date.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: Section 26301, Education Code.

### **§ 27005 Late Contributions – Defined Benefit Program**

In order to process contributions for any given day, the contributions must be received on or before 3:00 p.m. Pacific Time. Therefore,

(a) Contributions received after 3:00 p.m. Pacific Time shall be considered to have been received on the following working day.

(b) The portion of contributions due on the fifth working day that are not received by 3:00 p.m. Pacific Time on that fifth working day shall be considered to have been received on the sixth working day, and therefore are late.

(c) The remaining portion of contributions due on the 15th working day that are not received by 3:00 p.m. Pacific Time on that 15th working day shall be considered to have been received on the 16th working day, and therefore are late.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: Section 23002, Education Code. Section 4108, Uniform Commercial Code.

### **§ 27006 Late Contributions – Cash Balance Benefit Program**

In order to process contributions for any given day, the contributions must be received on or before 3:00 p.m. Pacific Time. Therefore,

(a) Contributions received after 3:00 p.m. Pacific Time shall be considered to have been received on the following working day.

(b) Contributions due on the 10th working day that are not received by 3:00 p.m. Pacific Time on that 10th working day shall be considered to have been received on the 11th working day, and therefore are late.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: Section 26303, Education Code. Section 4108, Uniform Commercial Code.

**§ 27007 Assessment of Penalties for Late Contributions – Defined Benefit Program**

(a) A late contribution shall be subject to a penalty equal to 5% of the creditable compensation upon which the contribution was based if that contribution is received after March 1st of the state fiscal year that immediately follows the state fiscal year in which the contribution was due.

(b) Interest on late contributions shall be imposed as follows:

(1) If less than 95 percent of contributions due have been received by the 6th working day, interest shall be charged on the balance of those contributions due and compounded daily based on the regular interest rate in effect that day.

(2) For contributions received more than 15 working days after the date those contributions are due, interest shall be charged on the balance of contributions due and compounded daily based on the regular interest rate in effect that day.

(c) The penalty and interest assessed on late contributions provided for in this section shall not apply to adjustments made to contributions for a month prior to the effective date of this article.

(d) Adjustments to contributions remitted in a prior month shall not be subject to the penalty and interest assessed on late contributions provided for in this section if all of the following are true:

(1) The adjustments are made for all members of a class of employees;

(2) The adjustments are made pursuant to a written employment agreement with an employer or with an exclusive representative entered into by an employer, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code; and

(3) The adjustments become effective contemporaneously with the effective date of the written employment agreement.

(4) The adjustments are reported to the system within 60 days of the effective date of the written employment agreement.

(e) For an employee employed on a part-time basis or a full-time basis with an additional part-time position, contributions for the part-time position that are otherwise late shall not be subject to the penalty and interest assessed on late contributions provided for in this section if all of the following are true:

(1) The date the part-time position is paid is based upon a published salary schedule; and

(2) That date is no more than 30 calendar days following the last day of the month in which the compensation being reported was earned; and

(3) 95% of the contributions due are received five working days immediately following the date the part-time position is paid, and the balance of contributions due are received no more than 15 working days following the date the employee is paid.

(f) Contributions that are otherwise late shall not be subject to the penalty and interest assessed on late contributions provided for in this section during the following periods of time:

(1) The period of time beginning on the date an application for workers' compensation is filed with the Workers' Compensation Appeals Board until the date compensation is awarded, if the awarded compensation increases the amount of contributions due for that period of time.

(2) Any period of time that directly results from the operation of a state or federal statute or regulation which requires a retroactive increase in the creditable compensation paid to a member for prior service, if that retroactive increase results in an increase in the amount of contributions due for that period of time.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: Sections 23002, 23003, Education Code.

#### **§ 27008 Assessment of Interest on Late Contributions – Cash Balance Benefit Program**

(a) Interest shall be charged on contributions received more than 10 working days after the date those contributions are due and compounded daily based on the regular interest rate in effect that day.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: Section 26303, Education Code.

#### **§ 27009 Right to an Administrative Hearing**

An administrative hearing shall be available to an employer that reports directly to the system when there is disagreement over the assessment of penalties, interest, or both, pursuant to this article. A written request for an administrative hearing and the reasons therefore must be received by the System at its headquarters within 90 days of the mailing of written notice of such penalties, interest, or both. If no request for an administrative hearing is made within the time prescribed, the penalties, interest, or both assessed shall be final and any right to an administrative hearing or judicial review shall be deemed forfeit and waived.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22219, 22250 and 22305, Education Code.

Reference: Sections 23010, 26303.5, Education Code.

#### **§ 27010 Effective Date of Regulations**

The regulations provided for in this article shall become effective July 1, 2012.

Note: Authority: California Constitution, Article XVI, Section 17; and Sections 22207, 22213, 22214, 22250 and 22305, Education Code.

Reference: Section 22305, Education Code.