

# California State University

Office of the Chancellor

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## Confidential Employees Human Resources Program Guidelines

2018

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## Introduction

The purpose of this guide is to provide an overview of the California State University (CSU) policies and procedures covering employees who are in positions designated as “Confidential,” pursuant to the Higher Education Employer-Employee Relations Act (HEERA). This guide does not provide policy, but rather summarizes applicable provisions of the Education Code, Title 5 regulations, other legal requirements, and other CSU policy.

## Authority

### Chancellor’s Office

The Chancellor’s Office is responsible for setting and interpreting policies and programs for Confidential employees and setting salary ranges for Confidential classifications.

*Reference: [Standing Orders of the Board of Trustees](#)*

### President

Each President (or the Chancellor for Chancellor’s Office employees) or designee is responsible for approving all confidential position designations, ensuring that the work performed meets the criteria under HEERA; evaluating Confidential employee performance; and setting the appropriate salary rate within the assigned classification.

*Reference: [HR Letter 1992-03](#), [HR Letter 2004-31](#), and [§43350 and §43351 of Title 5](#)*

## Definition of a Confidential Employee

HEERA defines a “*Confidential employee*” as “any employee who is required to develop or present management positions with respect to *meeting and conferring* or whose duties normally require access to confidential information which contributes significantly to the development of those management positions.”

Positions are appropriately designated as HEERA confidential only if the employee: a) is regularly involved with grievance responses and/or maintains the grievance files; or b) is directly involved with systemwide collective bargaining and/or campus meet and confer sessions, including participating in management caucuses to evaluate information and determine the campus<sup>1</sup> position.

*Reference: HEERA, under Government Code, §3562 (d), (m), and (r) (1))*

HEERA Confidential employees are not represented by an exclusive bargaining representative.

*HR 95-17, HR 96-15*

## Employee Category

Employee categories as defined: All CSU classifications are assigned an appropriate category, based on Title 5 definitions. Certain employment provisions are set by the employee category (e.g., probationary period, layoff procedures).

### Non-Academic Category

A non-academic employee is defined as “an employee who provides non-instructional and non-administrative supporting services such as secretarial, clerical, and maintenance services that do not fall within the Administrative Category. A non-academic employee may have lead responsibility, but normally does not have responsibility for major decisions. Higher academic degrees are not an essential qualification for service as a non-academic employee.” The following Confidential classifications are in the Non-Academic Category:

- Confidential Office Support
- Confidential Technical Support
- Legal Assistant
- Legal Secretary
- Paralegal

### Administrative Category

An administrative employee is defined as “an employee engaged primarily in one or a combination of professional or quasi-professional activities.” The following Confidential classifications are in the Administrative Category:

- Confidential Administrative Support
- Presidential Aide

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<sup>1</sup> The reference to campus throughout this document also includes the Chancellor’s Office.

## Appointments and Assignments

“Appointment” means the acceptance of an offer of employment and hiring in a position in the California State University. Appointments include various personnel actions such as initial appointments, reappointments (including reappointments which confer tenure or permanent status), promotions, transfers, demotions and reinstatements

*Reference [§42700 of Title 5](#)*

### Appointment Types

An employee may be appointed to a Confidential position on a temporary, probationary, or permanent basis, or may serve at the pleasure of the appointing authority

Part-time Confidential employees do not earn permanent status. Refer to the Probationary Period section for more information. An employee may be paid on an hourly or monthly basis.

### Appointment in Multiple Positions

Confidential employees may be employed in multiple positions; however, it is inappropriate for a Confidential employee to be appointed simultaneously in both a Confidential and represented position due to the Confidential employee’s scope of responsibility and access to confidential information related to collective bargaining.

*Reference: [HR Letter 2004-37](#)*

### Work Assignments

Each employee is assigned to perform the duties included in the specifications of his or her position description. Full-time non-exempt employees shall normally work 40 hours a week and each part-time employee a proportionate amount of time based on his or her assignment.

*Reference [§42713 of Title 5](#)*

### Out-of-Classification Assignment

If a Confidential employee temporarily is assigned to and performs duties at a higher classification or skill level, the employee is to receive compensation appropriate for the higher classification/skill level effective with the new assignment. This temporary assignment is to be made in writing. A copy is to be placed in the employee’s personnel file.

At the end of the temporary assignment, the employee is returned to his/her permanent assignment with the same status as s/he would have had if s/he had not been granted the temporary assignment.

*Reference: [HR Letter 2004-37](#)*

### Work Hours for Non-Exempt Employees

Each full-time, non-exempt Confidential employee normally works forty (40) hours per week. Part-time non-exempt employees work a proportionate amount of time based on the assignment.

*Reference [§42713 of Title 5](#)*

### Meal Breaks

Typically, non-exempt Confidential employees are provided a meal break between thirty (30) and (60) minutes. Pursuant to FLSA, if it is a bona fide meal break (employee is free to leave the office), the employee is not paid for the meal break. Meal breaks are provided pursuant to campus practice, as established by the campus President or designee.

### Break Periods

Typically, non-exempt Confidential employees are provided with a paid fifteen (15) minute break for every four (4) hours worked. Break periods are provided pursuant to campus practice, as established by the campus President or designee.

## **Classification**

Broadly defined classifications have been developed for Confidential positions performing similar bodies of work. Some classifications have position skill levels. Each classification has a corresponding salary range with a minimum and maximum salary rate. Classifications with position skill levels also have sub-ranges within the salary range. The Chancellor's Office is responsible for adjusting Confidential salary ranges, as needed.

### Fair Labor Standards Act (FLSA) Exemption Status

FLSA status for CSU classifications can be found in the CSU Salary Schedule. Campuses are responsible for first determining the appropriate FLSA status of the employee's position and subsequently identifying the appropriate classification and/or skill level.

*Reference: [HR Letter 1996-15, Supplement 1](#) and [HR Letter 2004-26](#)*

### Classifying Employees

The President or designee is responsible for assigning a Confidential position to the appropriate Confidential classification and/or position skill level. The assigned salary rate within a classification/skill level is based upon an assessment of the incumbent's knowledge, skills, abilities, and other qualifications needed to satisfactorily perform the duties of the position. The assignment of positions to classifications may vary from campus to campus, depending upon the nature of the assignment and the circumstances on each campus.

*Reference: [FSA 1971-71](#), [HR Letter 1992-03](#) and [HR Letter 1996-15, Supplement 1](#)*

### Change in Classification Increase

The President or designee may review and change the assigned classification of a Confidential employee. The employee will remain in the classification to which the position is assigned until a different classification and/or skill level is assigned by the President or designee. A change to a higher classification is accompanied by a minimum 5% increase, or to the minimum of the new range, whichever is higher.

### In-Classification Progression Increase

An in-classification progression is movement from one skill level to another higher skill level within the same classification. An in-classification progression is typically accompanied by a minimum 5% increase, or to the new salary range minimum, whichever is higher.

*Reference: [HR Letter 1996-15, Supplement 1](#)*

## **Probationary Periods**

### Non-Academic

A Confidential employee in the “non-academic” employee category (Confidential Office Support, Confidential Technical Support, Legal Assistant, Legal Secretary, and Paralegal classifications) who serves full-time for one year gains permanent status at the beginning of the second year. Full-time temporary service counts toward the one-year probationary period. Part-time service does not count toward the probationary period.

*Reference: [§43588.1 of Title 5](#)*

### Administrative

A Confidential employee in the “administrative” employee category (Confidential Administrative Support and Presidential Aide classifications) who serves full-time for two years gains permanent status at the beginning of the third year. Full-time temporary service counts toward the two-year probationary period. Part-time service does not count toward the probationary period.

An employee serves one probationary period within a classification; it can be at any skill level. If an employee moves to a higher skill level within the same classification, no new probationary period is served.

*Reference: [§42713, 43580 and §43588.1 of Title 5, HR Letter 1996-15 and Supplement 1](#)*

## **Seniority**

Full-time permanent employees earn one (1) seniority point of service credit in a given classification for each qualifying month of employment. Part-time employees holding permanent status earn seniority points on a pro-rata basis. Seniority points for temporary or probationary employees count once the employee becomes permanent in that classification.

*Reference: [FSA 1978-78, Supplement 4](#)*

## **Salary Administration**

### CSU Salary Schedule

The CSU Salary Schedule provides important employment information for CSU classifications such as employee category, FLSA status, and shift differential eligibility. Confidential classification information can be found in the “C99 - Confidential Classes” section of the Salary Schedule. Current and prior Salary Schedules are available on Human Resources Administration’s Web site at: <http://www.calstate.edu/HRAdm/SalarySchedule/salary.aspx>

### Salary Determination

Upon assignment to a Confidential classification, the campus has the authority to determine the employee's salary based upon the assessment of the knowledge, skills and abilities required in the position; an assessment of the needs of the campus; employee merit; and equity with comparable positions within the campus. The salary must be within the salary range (except when Red Circle conditions apply, as outlined below).

### Payment Over the Salary Range Maximum/Red Circle Rate

Presidents have delegated authority to authorize a Red Circle rate payment over a salary range maximum. The Red Circle Rate may be granted when an employee moves to a classification or skill level with a salary range maximum that is lower than the employee's current salary rate. The Red Circle rate reduces the adverse financial impact on an employee when the employee is moved to a classification with a lower salary range. A campus can approve a Red Circle condition when an employee moves to a classification with a salary range maximum that is lower than the employee's current base salary rate. The Red Circle Rate is limited to twenty-five percent above the salary range maximum of the classification or skill level to which the employee is moving. A Red Circle Rate cannot be used to grant a salary increase.

*Reference: [HR Letter 2003-16](#)*

In addition, Confidential employees also can be paid over the salary range maximum when electing a demotion in lieu of layoff.

*Authority Granted: FSA1983-25, [HR Letter 2004-37](#)*

### Payment Below the Salary Range Minimum

Confidential employees cannot be paid below the minimum of the salary range. When the Chancellor's Office adjusts salary range minimums, the Confidential employee's salary must be adjusted to the new salary range minimum.

*[HR/Salary Letter 99-12](#)*

## **Salary Increase Programs**

### In-Range Progression

An in-range progression is a salary increase within the existing salary range and has no minimum increase percent requirement. A President or designee can grant this increase at any time.

An in-range progression has no minimum increase percent requirement. Refer to the Appointment and Assignment section for more information.

*Reference: [HR Letter 1996-15, Supplement 1](#)*

### Merit Salary Increase

In fiscal years when the Chancellor approves a merit program, merit salary increases are based on meritorious performance, as documented by the annual performance evaluation. The

Chancellor communicates program information to the Presidents. Typically, merit increases are effective July 1st of each fiscal year.

*Reference: [HR Letter 2004-37](#)*

### Performance Evaluation Plan

Permanent or probationary Confidential employees are to be evaluated annually and at other times or shorter time period deemed appropriate by the President or designee. Each campus is to establish performance appraisal procedures consistent with the policies of the Board of Trustees and the Chancellor.

Campuses are encouraged to evaluate temporary employees, as appropriate.

*Reference: [HR Letter 2004-31](#), [and §43350](#) and [§43351 of Title 5](#)*

### Promotion Increase

A promotion occurs when a Confidential employee applies for and is appointed to a higher classification. A promotion is accompanied by a minimum 5% increase, or to the new salary range minimum, whichever is higher.

*Reference: [HR Letter 2004-37](#)*

## **Bonus Pay Programs**

### Merit Bonus Program

Presidents have the discretionary authority to award merit bonuses to Confidential employees. Campuses electing to use the merit bonus option are required to have in place specific evaluation plans outlining the criteria and/or objectives for provision of the bonus. The bonus is not a permanent increase to the employee's base salary and will not be reflected in the employment history. Campuses may award merit bonuses to Confidential employees if either of the following occur:

- An employee meets specific measurable standards that are established at the beginning of an evaluation period that indicate if specific actions are met, a merit bonus pay adjustment will be provided.
- An employee meets a specific stated objective that is both articulated in advance and is measurable.

*Reference: [HR Letter 2000-15](#) and [HR/Salary 2000-19](#)*

## **Premium Pay Programs**

### Overtime and Compensatory Time Off (CTO)

Non-exempt Confidential employees can earn overtime payable as cash or compensatory time off (CTO) at the rate of one and one half the regular rate of pay, subject to FLSA requirements. Paid leave such as holiday, sick leave and vacation is counted as time worked for purposes of the overtime calculation. Before the overtime work is performed, FLSA requires the employee and employer to reach an understanding or agreement regarding the payment of overtime or the accrual of CTO.

*[HR/Salary 2000-07](#), [HR/Leaves 2014-02](#), [Attachment A](#)*

CTO should be taken within the calendar year it is earned, whenever possible. Under CSU policy, if an employee has been unable to take his/her CTO and has a balance in excess of 120 hours as of December 31, s/he will be paid in cash for all hours in excess of 120. Such payment will be made by February 1, of each year. The employee must receive payment for any accrued but unused CTO upon separation.

*Reference: [HR Letter 2004-37](#)*

### Shift Differential

Confidential employees are ineligible for shift differential.

*Reference: [HR Letter 1996-15, Supplement 1](#)*

### Call Back

Call-back work is work performed at a time outside of, and not continuous with, an employee's regular work schedule. A non-exempt Confidential employee called back to work will receive not less than three (3) hours pay at the overtime rate unless such call-back is within three (3) hours of the beginning of the employee's next shift, in which case the employee will only be paid for the hours remaining before the beginning of the employee's next shift, at the overtime rate.

*Reference: [HR Letter 2004-37](#)*

## **Benefit Programs**

Confidential employees are eligible for an array of CSU core and supplemental benefit plans, voluntary benefit plans, and CalPERS retirement plan. For more information, refer to the appropriate benefit documentation.

*Reference: [Confidential Benefits Summary, §42850 and §42851, 42852, of Title 5 HR/Benefits 2004-09, and \[CSYou Benefits\]\(#\)](#)*

## **Paid Leave**

### Holidays

Presidents are responsible for administering paid holidays for employees, including Confidential employees, at their respective campuses.

The following holidays, when not occurring on a Saturday or Sunday, are observed on the days specified below:

- 1) January 1
- 2) Third Monday in January (Martin Luther King, Jr. Day)
- 3) March 31 (Cesar Chavez Day)
- 4) July 4
- 5) First Monday in September (Labor Day)
- 6) November 11 (Veteran's Day)
- 7) Thanksgiving Day
- 8) December 25
- 9) Any other day designated by the Governor of this state for a public fast or holiday.

Any holiday which falls on a Saturday is observed on the preceding Friday. Any holiday which falls on a Sunday is observed on the following Monday.

The following days are designated holidays which may be rescheduled to another day consistent with the needs of the campus or systemwide office:

- 1) Third Monday in February (President's Day)
- 2) February 12 (Lincoln's Birthday)
- 3) Last Monday in May (Memorial Day)
- 4) September 9 (Admission Day)
- 5) Second Monday in October (Columbus Day)
- 6) Personal holiday to be designated by each employee upon reasonable advance notice.

*Reference: Title 5, § 42920*

### Compensation for Holiday Work

Non-exempt Confidential employees who are required to work on days when the campus is observing a holiday are eligible for compensation in cash or in compensatory time off (CTO), as determined by the President. Premium pay is compensated at one and one-half of the regular rate of pay on an hour-for-hour basis for the number of hours worked on the holiday. CTO is earned at one and one-half times the number of hours worked.

*Reference: HR Letter 2004-37*

### Holidays and Alternate Work Schedules

If a non-exempt Confidential employee works on an alternate workweek/schedule (e.g., Sunday – Thursday) and a holiday falls on a scheduled day off (e.g., Friday), the employee is entitled to the number of holiday hours equal to the hours of their normal workday. This holiday must be used within ninety (90) days after the holiday was observed at the campus or it will be forfeited. An employee on a leave of absence without pay or in other non-paid status on a day a holiday is officially observed is not entitled to the holiday.

*Reference: HR Letter 2004-37*

### Vacation Leave

On the first day of the monthly pay period following completion of 160 hours of qualifying service, a Confidential employee accumulates vacation at a rate of two workdays (16 hours) of credit for vacation with pay. On January 1<sup>st</sup> of any calendar year, a Confidential employee shall not have a credit for vacation for pay of more than 384 working hours for 10 or less years of qualifying service or 440 working hours for more than 10 years of such service. Vacation must be taken as directed or authorized by the appointing power and scheduled by mutual agreement whenever possible.

*Reference: §42700 (aa) and 42902 (a), 42909 of Title 5*

### Part-time Employees

Confidential employees who work part-time earn vacation on a pro-rated basis, in one-third hour increments.

*Reference: §42902 (b) (1) of Title 5*

### Employees Paid on an Hourly Basis

Confidential employees paid on an hourly basis earn vacation at a rate of two workdays of vacation the first day of the monthly pay period following completion of each 160 hours. If an employee works less than 160 hours in a pay period, the employee's hours are carried forward over more than one pay period until the accumulated hours equal or exceed 160, at which time two vacation days are credited. Hours accumulated in excess of 160 hours in a pay period or hours worked in a single pay period in excess of 160 are not carried forward because credit cannot be accrued at a rate greater than full-time.

*Reference [§ 42902 \(b\)\(2\) of Title 5](#) and [HR/Leaves 2002-01](#)*

### Multiple Positions

An employee holding a position in addition to a full-time (1.0 FTE) position does not earn credit for vacation for service in the additional position. Similarly, if an employee holds two or more positions each of which is less than full-time, vacation leave is earned in each position but credits cannot exceed full-time employment credit.

*Reference: [§42906 \(a\) and \(b\) of Title 5](#),  
[FSA 1983-14](#), [HR/Leaves 2002-01](#)*

### Lump Sum Payment of Vacation Upon Separation

Confidential employees separated from service without cause are entitled to a lump sum payment of any unused accrued vacation without regard to the current carry-over limitation. Accumulation of vacation credit by such an employee shall continue through the last working day for which the employee is entitled to pay.

Employees dismissed from service for cause accumulate vacation credit only through the date of separation. If there are enough paid working days to qualify the monthly pay period, vacation will be given for that monthly pay period.

*Reference [§42912 of Title 5](#)*

Subject to specific circumstances and requirements, an employee may defer all or a portion of accrued vacation that extends past the November pay period into the next calendar year or into a 401(k), 403(b) or 457 plan in the current or next calendar year.

*Reference: [HR Letter 2003-15](#), and [AB 1684, Chapter 40](#)*

### Sick Leave

Full-time Confidential employees earn sick leave at a rate of eight (8) hours per qualifying pay period. Sick leave may be accumulated without limit. Confidential employees may be required by the campus to provide satisfactory proof to the campus of the necessity of taking sick leave. Family illness is an appropriate use of sick leave. The duration of family sick leave is set at the discretion of the President or designee.

Part-time confidential employees who work part-time earn sick leave on a pro-rated basis the fractional part of day of credit for sick leave with pay.

*Reference: [FSA 76-91](#)*

### Employees Paid on an Hourly Basis

Confidential employees paid on an hourly basis earn eight (8) hours of sick leave the first day of the monthly pay period following completion of each 160 hours. If an employee works less than

160 hours in a pay period, the employee's hours are carried forward over more than one pay period until the accumulated hours equal or exceed 160, at which time 8 hours sick leave is credited. Hours accumulated in excess of 160 hours in a pay period or hours worked in a single pay period in excess of 160 are not carried forward because credit cannot be accrued at a rate greater than full-time.

*Reference: [HR/Leaves Letter 2002-01](#)*

### Multiple Positions

An employee holding a position in addition to a full-time (1.0 FTE) position does not earn credit for sick leave for service in the additional position. If an employee holds two or more positions, each of which is less than full-time, sick leave is earned in each position but such credits cannot exceed full-time employment credit.

*Reference: [§19866 of Government Code](#), [§89500 of Education Code](#), [FSA 1976-61](#), [HR/Leaves 2002-01](#)*

### Bereavement Leave

Confidential employees are eligible for five (5) days Bereavement Leave with pay for each death of an immediate family member or of a significantly close relative, as defined by Coded Memo [HR 2013-14](#).

*Reference: [HR Letter 2002-21](#), [HR Letter 2013-14](#), [HR/Leaves 2014-02](#)*

### Catastrophic Leave

Eligible Confidential employees may receive leave with pay for up to three months due to a catastrophic illness or injury. To qualify, the employee must be unable to work and have exhausted all leave credits. The leave is funded through voluntary donations of leave credits by employees to the injured/ill employee. Under certain circumstances, Catastrophic Leave can be extended for an additional three months.

*Reference: [HR Letters 1991-19 and HR 2002-25 and §42931 of Title 5](#)*

### Parental Leave - Maternity/Paternity/Adoption Leave

Confidential employees are eligible for thirty (30) consecutive days of paid leave commencing within sixty (60) days of the arrival of a new child. The paid leave applies to the birth of an employee's own child or the placement of a child with the employee in connection with adoption or foster care. This type of absence is not charged against the employee's leave credits.

*Reference: [HR Letter 2002-21](#)*

### Jury Duty

Confidential employees are eligible for Jury Duty leave, regardless of the length of jury services. Campuses may request a Proof of Service (versus Jury Fee remittances) to verify employee jury service in order to continue CSU compensation and benefits. CSU employees may keep monies received for reimbursement of jury duty travel expenses.

*Reference: [HR/Benefits 2004-22](#), [HR/Leaves 2014-02](#)*

## Income Protection Benefits

### Non-Industrial Disability Insurance Leave

Confidential employees who are active members of CalPERS in compensated employment and meet other eligibility criteria may receive Non-Industrial Disability Leave of \$250 per week for up to twenty-six (26) weeks.

*Reference: [Non-Industrial Disability Leave Administrative Guide](#)*

### Industrial Disability Leave

Confidential employees who are members of CalPERS who suffer an industrial disability may be eligible to receive Industrial Disability Leave (IDL) in lieu of Workers' Compensation Temporary Disability benefits. An eligible employee may receive IDL payments not to exceed fifty-two (52) weeks within two years from the first day of disability.

*Reference: [Industrial Disability Leave Administrative Guide](#)*

### Workers' Compensation

Confidential employees who are members of the CalPERS and who suffer from a work-related injury may select Workers' Compensation Temporary Disability payments in lieu of IDL payments. Confidential employees who are not members of CalPERS are eligible for Workers' Compensation Temporary Disability payments.

*Reference: [Provider Documentation](#)*

## Unpaid Leave

Please refer to [HR/Leaves 2014-02](#) for a comprehensive list of unpaid leaves available to Confidential employees.

*Reference: [§43100](#), [§43095](#), of Title 5, [HR Letter 99-05](#), [HR Letter 2009-11](#), [HR Letter 2010-03](#), [HR Letter 2007-19](#)*

## Rejection During Probation

### Non-Academic

Any probationary Confidential employee in the "non-academic" employee category (Confidential Office Support, Confidential Technical Support, Legal Assistant, Legal Secretary, or Paralegal classifications) may be separated from service at any time upon written notice of rejection to the employee signed by the appointing power. The employee must be given written notice of rejection for permanent status which should be not less than 30 days prior to the end of the probationary period. The notice must be mailed by registered mail, return receipt requested, or it may be delivered to the employee who must acknowledge receipt in writing. If the employee refuses to acknowledge receipt thereof, the person delivering the notice can make and file with the appointing power an affidavit of service.

*Reference: [§43301](#) of Title 5, [§89534](#) of Education Code*

## Administrative

Any probationary Confidential employee in the “administrative” employee category (Confidential Administrative Support and Presidential Aide classifications) may be rejected at any time during the probationary period. The notice of rejection to the employee must be made in writing and signed by the campus President or designee. The notice must state the assigned date of separation based upon the following criteria:

- Following completion of six months or more of continuous service, notice shall be given not less than fifteen days prior to the assigned date of separation; or
- Following completion of twelve months or more of continuous service, notice shall be given not less than thirty days prior to the assigned date of separation; or
- Following completion of eighteen months or more of continuous service, notice shall be given no later than the last day of probationary period and not less than forty-five days prior to the assigned date of separation.

An administrative Confidential employee does not become a permanent employee beginning the third year of service if the notice of rejection has been given at any time during the probationary period.

*Reference: [§43300](#), [§43301](#), and [§43302 of Title 5](#), [43585 of Title 5](#)*

The campus President may relieve an administrative Confidential employee of his or her duties following notice of rejection during probation if it is determined to be in the best interest of the campus. The campus may direct other duties to the employee, or may direct the employee to take vacation or take a leave of absence with pay. These options shall not be deemed a disciplinary action or reassignment. The notice of rejection to the probationary administrative Confidential employee shall be in writing signed by the campus President or designee and mailed by certified mail, return receipt requested or the notice may be delivered to the employee who shall acknowledge receipt of the notice in writing. If the notice is delivered to the employee and the employee refuses to acknowledge receipt thereof, the person delivering the notice shall make and file with the appointing power an affidavit of service.

*Reference: [§89500](#), and [§89534 of Education Code](#), [§43585 \(b\) of Title 5](#)*

## Formal Discipline

**Rejection during probation is not considered formal discipline and this provision does not apply to probationary employees rejected during probation.**

Confidential employees are subject to discipline under the California Education Code. Discipline may include such actions as demotion, unpaid suspension, and dismissal. The employee must be given a written notice of the proposed discipline that contains the reasons for the discipline, the events upon which the discipline is based and the nature of the proposed penalty. The employee must also be given an opportunity to participate in a pre-discipline Skelly hearing and must be advised of the right to appeal to the State Personnel Board 30 days after the final discipline letter is issued. Campus counsel must be consulted prior to issuance of formal discipline.

*Reference: [§89535](#), [89538-89539 of Education Code](#)*

## Layoff

### Layoff by Campus

Layoff of Confidential employees due to lack of funds or lack of work is by classification within a particular campus.

### Notice to Employees

Confidential employees to be laid off are to receive a written notice of layoff, signed by the President. The notice must include the effective date of the layoff and the rights and options of the employee.

### Order of Layoff

Once a determination has been made to layoff in a certain classification, temporary Confidential employees are to be laid off first, then probationary Confidential employees without regard to length of service, and then permanent Confidential employees in the inverse order of length of service (based on seniority points) in the classification.

*Reference: [§89543](#) and [§89550-89557](#) of Education Code, [HR Letter 96-15 Supp#1](#)*

### Demotion or Transfer in Lieu of Layoff

In lieu of being laid off, a Confidential employee may elect demotion or transfer to any Confidential classification in which s/he has served as a permanent employee or to any vacancy for which s/he is qualified. If demotion or transfer is selected, placement for layoff purposes in the classification is determined in accordance with Section §89555 of the Education Code. An employee electing demotion or transfer must notify the President in writing of his/her election within five (5) calendar days after receipt of the notice of layoff.

In addition, Confidential employees may be paid over the salary range maximum when electing a demotion in lieu of layoff.

*Reference: [§89555](#) of Education Code, [FSA 1983-25](#), [HR Letter 2003-16](#), [HR 2004-37](#)*

### Reemployment List

Each campus must establish and maintain reemployment lists of all permanent Confidential employees laid off for lack of funds or lack of work during the preceding five-year period. Laid off permanent Confidential employees are listed by the classification from which they were laid off. Persons whose names are on reemployment lists shall be offered reemployment in their previous classification before others are considered in filling vacancies and shall be given consideration appropriate to their qualifications for other available positions.

*Reference: [§89551-89556](#) of Education Code, [§42702](#) of Title 5, [FSA 1978-78, Supplement 4](#), [HR Letters 2004-37](#) and [HR 2003-16](#)*