

# Proposal for Adjunct/Overload Parity in Sick Leave Compensation Upon Retirement

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## Proposal Summary

The Federation proposes the inclusion of a new contractual provision that provides a cash payout for earned but unused sick leave upon retirement for adjunct and overload faculty, consistent with principles of equity and in recognition of the valuable contributions made and compensation earned by these faculty members over their careers.

## Background and Justification

Currently, under California Education Code Section 22717, full-time faculty receive service credit toward CalSTRS retirement for unused sick leave upon retirement from the District. However, adjunct faculty are excluded from this benefit, resulting in a significant inequity between full-time and part-time academic employees.

Adjuncts often work for decades at our institution, accruing sick leave in good faith, yet upon retirement, they receive no benefit from this earned payment. This creates a two-tiered system that is not only inequitable but also discourages long-term institutional commitment from adjunct faculty.

Additionally, most, if not all, adjunct faculty are not CalSTRS Defined Benefit members and are not eligible to receive service credit for unused sick leave due to part-time status. The Cash Balance Program offered to adjuncts by CalSTRS is in the form of a 401 contribution matching benefit and the service credit benefit offered to full-time faculty. For adjuncts the sick leave is simply forfeited—an outcome that is not being imposed on full-time employees.

This proposal seeks to rectify this disparity by granting adjunct and overload faculty a cash payout for their accrued unused sick leave upon retirement from the District, similar to cash-outs offered in other districts and in alignment with California's anti-discrimination principles under Government Code § 12940. The proposal resolves the adjunct complaint that they are denied equal protection as it concerns sick pay compensation upon retirement.

## Proposed Language

*Article IX – Compensation and Related Benefits*

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## 11.0 Sick Leave Cash-Out Upon Retirement for Adjunct and Overload Faculty

Adjunct and overload faculty who retire from the District shall receive a one-time cash payout for all accrued but unused sick leave hours, provided that:

1. The faculty member is eligible to retire under CalSTRS, CalPERS, or Social Security;
2. The faculty member provides official written verification of retirement from their retirement system;
3. The faculty member has worked a minimum of 5 calendar years in cumulative service with the District; and
4. The payout shall be calculated at the hourly rate of pay for the faculty member's most recent assignment.

This payout shall be provided regardless of whether the faculty member qualifies for service credit for unused sick leave under their retirement system.

### **Fiscal and Legal Rationale**

- **Cost-Contained:** This proposal applies only at retirement and only to hours already accrued. It does not generate new sick leave liabilities, only addresses payout upon separation.
- **Retention-Focused:** Offering this benefit would encourage long-term service and enhance retirement security for adjuncts, improving morale and institutional loyalty.
- **Compliant with Law:** Both Federal and California courts have consistently held that disparate treatment of similarly situated employees without a compelling justification may violate equal protection principles.

### **Conclusion**

Adjunct faculty are entitled to a cash payout for all accrued, unused sick leave upon retirement. Sick leave is not a discretionary benefit; it is earned compensation for services rendered. The District is obligated to compensate retiring adjunct faculty for this earned benefit. This proposal seeks to establish a contractual provision guaranteeing sick leave cash-out at retirement for adjuncts and full-time faculty with overload assignments, thereby eliminating the current inequitable system that denies part-time academics the value of their accrued leave. The principle is unequivocal: no faculty member's earned sick leave shall be forfeited without retirement compensation.

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### **District Response – March 13, 2026**

While we have discussed this proposal at subsequent meetings, the Federation requested a formal written response at our last meeting. Accordingly, the District formally rejects the

proposed leave-payment structure, premised on the statutory inequity created by the Education Code and regulations relating to CalSTRS.

The District's rationale arises directly from the same statutory sources. Under the Education Code, full-time faculty employees are entitled to receive a minimum of ten (10) days of sick leave per year. (Educ. Code §87781(a)(1).) Sick leave accrues annually and is cumulative for the duration of an employee's academic career. (Educ. Code §87781(b).) While the Education Code sets a minimum number of days leave a full-time faculty employee is entitled to annually, the Education Code *permits*, but does not *require*, employers to provide leave in excess of 10 days.

The Education Code requires that upon separation of an academic employee, the District must make an accounting within 30-days of the members election for service retirement (Educ. Code § 22717), or must transfer the leave to a subsequent employer. (Educ. Code § 87782.) With regard to the latter, so long as an academic employee of a community college has been an employee of that district for at least one school year, the employee can transfer to a second district the total amount of leave absence for illness or injury to which the employee is entitled under Education Code Section 87781. (Educ. Code § 87782.) If the employee leaves District service due to service retirement, CalSTRS looks at sick leave as "basic" sick leave or "excess" sick leave. (Educ. Code § 22170.5.) Essentially, any annual sick leave accrual up to and not exceeding twelve (12) days is considered "basic" sick leave.

Under Education Code Section 22717, CalSTRS is required to credit a member at service retirement for each day of accumulated and unused sick leave days for which full salary is allowed and to which the member was entitled on the member's last day of employment with the employer(s), subject to coverage by the Defined Benefit Program during the last term in which the member earned the creditable compensation. (CalSTRS Employer Directive 2021-04; Educ. Code § 22717.) Eight hours of sick leave equals one day of service credit, or .004 years of service credit. The District CalSTRS contribution pays for the employees' accrual of basic sick days. In redeeming sick leave credit and determining the number of excess sick leave days to which a member is entitled, the District must deduct the days of sick leave used from the member's accumulated and unused sick leave balance according to the statutory method. (Educ. Code § 22724.)

There is some discretion in how sick leave is accumulated (e.g. the mandatory 10-days or over) but once accumulated, there isn't much discretion afforded to the District. However, a CBA provision that replaces or conflicts with the Education Code is not permitted or enforceable. Specifically, the EERA expressly states that neither it nor negotiated terms may supersede provisions of the Education Code. (Govt. Code § 3540.) The California Supreme Court has held that to the extent that a CBA provision violates or interferes with a mandatory provision of the Education Code, it is a prohibited subject of bargaining, considered "illegal" or "unlawful" language, and cannot be included in a collective bargaining agreement nor enforced. (See *Board of Education v. Round Valley Teachers Assn.*

(1996) 13 Cal. 4th 269; *Sunnyvale Unified School District v. Jacobs* (2009) 171 Cal. App. 4th 168.) Thus, to the extent that any CBA language would “replace or set aside” inflexible mandatory provisions of the Education Code, such as Sections 22170.5 and 22717, it would be prohibited.

This is where the District has a great deal of concern and reluctance in considering something of a radical new benefit. As we discussed at prior meetings, we have been unable to find any comparators – out of the other 73 community college districts – that have negotiated anything close to, or that intrudes as deeply into the CalSTRS structure, as what has been proposed. If we were still in older times, this is where the edge of the map would simply state “here be monsters.”

However, to address the legal rationale advanced with the Federation’s proposal (“disparate treatment of similarly situated employees without a compelling justification may violate equal protection principles”) we will note one final point in closing. In California, public employment is not held by contract but by statute. (See *Miller v. State of California* (1977) 18 Cal.3d 808.) Accordingly, no public employee has a vested right to continue in their employment contrary to the terms and conditions fixed by law. (*Id.* at 813; citing *Butterworth v. Boyd* (1938) 12 Cal.2d 140, 150.) And as recognized by California courts, different classes of personnel can and do enjoy very different rights:

[T]he crucial determination [...] ought not, and does not, turn on the eventuality that he is employed in the civil service system or works for an educational institution and/or on the fortuitous circumstance that the educational institution has a tenure system whereby **a certain class of employees enjoys special rights and privileges separate and distinct from the other classes of employees.** The overriding consideration rather is whether the employee has a constitutionally protected property interest in his continued employment.

(*Mendoza v. Regents of University of Cal.* (1978) 78 Cal.App.3d 168, 173-174.)

While the Education Code authorizes a broadly permissive use of authority to community college districts, the governing board may only “initiate and carry on any program, activity, or ... otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.” (Educ. Code § 70902(a)(1).) Accordingly, a community college district may only employ personnel, and those personnel may only claim terms and conditions of employment, in a manner that does not conflict with the statutory classifications and parameters set forth by the Legislature. That is where the District’s compelling interest – ensuring that its operations and programs are consistent with law and state requirements – both begins and ends.