

# CAPS PROPOSED ROLL OVER

**Bargaining Unit:** 10

**Date:** February 23,  
2021; 2:44PM

**Exclusive Representative:** CAPS

**Article:** 5

**Subject:** Health and Welfare

## 5.8 Pre-Tax of Health/Dental/Vision Premiums

Employees who are enrolled in any health, dental, and/or vision plan which requires a portion of the premium to be paid by the employee will automatically have their out-of-pocket premium costs taken out of their paycheck before federal, state, and social security taxes are deducted. Employees who choose not to have their out-of-pocket costs pre-taxed must make an election not to participate in this program.

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Principal Labor Relations Officer

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CAPS Bargaining Team Chair

# CAPS PROPOSED ROLL OVER (Gender Neutral Considerations)

**Bargaining Unit:** 10

**Date:** February 23,  
2021; 2:44PM

**Exclusive Representative:** CAPS

**Article:** 6

**Subject:** Business and Travel Expenses – Allowances and Reimbursements

## 6.2 Moving Expenses

Whenever an employee is reasonably required to change ~~his/her~~ their place of residence, the State shall reimburse the employee in accordance with existing administrative regulations. All current rules and regulations applying to State reimbursement of moving and relocation expenses shall remain in effect for the life of this Agreement.

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**Article:** 6

**Subject:** Business and Travel – Allowances and Reimbursements

## 6.5 Damage of Personal Items

- A. In accordance with established procedures, when requested by an employee and approved by the department, the State will replace, repair or reimburse for various articles of personal property necessarily worn by unit employees in the course of ~~his/her~~ their employment when such property is damaged or destroyed, through no fault of the employee, while the employee is carrying out ~~his/her~~ their job assignment. Coverage is limited to articles of clothing, eyeglasses, hearing aids, watches and dentures. Depreciation will be considered in arriving at the reimbursement value of clothing and other articles. The repair or replacement cost for a watch shall not exceed fifty dollars (\$50.00).
- B. This provision does not apply to lost or stolen articles or when recovery is possible under Workers' Compensation laws.

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# Management Rollover Proposal

**Bargaining Unit: 10**

**Date: 2/23/21; 1:49PM**

**Exclusive Representative: CAPS**

**Article: 7**

**Subject: Hours of Work**

## 7.1 Meal Period

- A. Unit 10 employees will normally be allowed a meal period of not less than 30 minutes or more than 60 minutes, which shall be determined by the employee's supervisor. The meal period will normally be scheduled in the middle of the work shift. A supervisor shall consider employee requests for an earlier or later meal period. Meal periods shall not be counted as part of the total hours worked. For employees assigned to a straight eight (8) hour work shift, meal periods will be counted as part of the total hours worked.
- B. Upon request of a Unit 10 employee to modify ~~his/her~~ their established meal period, a supervisor shall consider the needs of the employee, the needs of the State, and the nature of the work to be performed.

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**Article: 7**

**Subject: Hours of Work**

### **7.5 Fair Labor Standards Act**

- A. Notwithstanding any other contract provision, departmental policy, or practice, the travel time of employees who are covered by FLSA shall only be considered as time worked if it meets the definitions and requirements of travel time in Sections 785.34 through 785.41 of Title 29 of the Code of Federal Regulations.
- B. No employee in a classification assigned to Work Week Group E shall have ~~his/her~~ their salary reduced (docked) for absences of less than an entire day.

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**Article:** 9

**Subject:** Grievance and Arbitration Procedure

## 9.6 Informal Discussion

An employee's grievance initially shall be discussed with the employee's immediate supervisor. Within seven (7) calendar days, the immediate supervisor shall give ~~his/her~~ their decision or response.

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**Date:** February 23,  
2021; 1:45PM

**Exclusive Representative:** CAPS

**Article:** 9

**Subject:** Grievance and Arbitration Procedure

## 9.12 Formal Grievance – Step 5

- A. If the grievance is not resolved at Step 4, within thirty (30) calendar days after receipt of the fourth level response, CAPS shall have the right to submit the grievance to arbitration. If the grievance is not submitted to Arbitration within thirty (30) calendar days after receipt of the fourth level response, it shall be considered withdrawn and CAPS may not proceed to arbitration.
- B. CAPS shall have one hundred eighty (180) calendar days after appealing the grievance to arbitration to request in writing to CalHR to strike for arbitrators. If the request to strike arbitrators is not made within one hundred eighty (180) calendar days of the initial request to arbitrate, the grievance shall be considered withdrawn and CAPS may not proceed to arbitration. Within seven (7) calendar days after the notice to strike arbitrators has been served on the State or at a date mutually agreed to by the parties, the parties shall meet to select an impartial arbitrator. If no agreement is reached at this meeting, the parties shall, immediately and jointly, request the American Arbitration Association, State Conciliation and Mediation Service, or the Federal Mediation and Conciliation Service to submit to them a panel of seven (7) arbitrators from which the State and CAPS shall alternately strike names until one name remains and this person shall be the arbitrator. The State shall have forty (40) calendar days after a request to the American Arbitration Association, the State Conciliation and Mediation Service or the Federal Mediation and Conciliation Service prior to selecting an arbitrator.
- C. The arbitration hearing shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association. The cost of arbitration shall be borne equally between the parties.
- D. An arbitrator may, upon request of CAPS and the State, issue ~~his/her~~their decision, opinion or award orally upon submission of the arbitration. Either party may request that the arbitrator put ~~his/her~~their decision, opinion, or award in writing and that a copy be provided.
- E. The arbitrator shall not have the power to add to, subtract from, or modify this Agreement. Only grievances as defined in Section 9.2.A shall be subject to arbitration. In all arbitration cases, the award of the arbitrator shall be final and binding upon the parties.

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**Article:** 9

**Subject:** Grievance and Arbitration Procedure

## 9.13 Health and Safety Grievances

All Health and Safety grievances deemed necessary for expedited processing shall first be appealed directly to the second level of the grievance procedure pursuant to the modified time limits set forth below:

### A. Health and Safety Grievance - Step 2

1. If the grievant is not satisfied with the decision rendered by ~~his/her~~their supervisor pursuant to Section 9.6, the grievant may appeal the decision within fourteen (14) calendar days after receipt of the decision to a designated supervisor or manager identified by each department head as the second level of appeal.
2. Within five (5) calendar days after receipt of the appealed grievance, the person designated by the department head as the second level of appeal shall respond in writing to the grievance.

### B. Health and Safety Grievance - Step 3

1. If the grievant is not satisfied with the decision rendered pursuant to Step 2, the grievant may appeal the decision within twenty-one (21) calendar days of receipt to a designated supervisor or manager identified by each department head as the third level of appeal. If the department head or designee is the second level of appeal, the grievant may bypass Step 3.
2. Within twenty-one (21) calendar days after receipt of the appealed grievance, the person designated by the department head as the third level of appeal shall respond in writing to the grievance.
3. If the grievance is not resolved at Step 3, within thirty (30) calendar days after receipt of the third step response, CAPS shall have the right to submit the grievance to arbitration.

- C. The selection of the arbitrator shall be in accordance with Section 9.12.B, and the case must be before an arbitrator within twenty (20) calendar days.

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2021; 1:45PM

**Exclusive Representative:** CAPS

**Article:** 13

**Subject:** CAPS Representational Rights

## 13.8 Sexual Harassment

- A. The State and CAPS agree that no employee shall be subject to sexual harassment and agree to take such actions as necessary to assure that this purpose is achieved. In this spirit, the State agrees to post a statement of this commitment to this principle in all work sites.
- B. Complaints alleging harassment shall not be grievable under the grievance procedure contained in Article 9 of this Agreement.
- C. If the complaint is resolved in favor of the employee and the employee feels ~~he/she~~they ~~are~~ is unable to return to ~~his/her~~their current job assignment, the State shall give consideration to transferring the employee to an equivalent position at the same salary and class, in the same location if a vacancy exists.

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**Date:** February 23,  
2021; 1:46PM

**Exclusive Representative:** CAPS

**Article:** 16

**Subject:** Transfer and Layoff

## 16.3 Change in Work Location

The State, CAPS, and Bargaining Unit 10 employees recognize that the nature of the work performed by Unit 10 employees may require the State to make temporary reassignments of employees on short notice.

The State will normally provide Unit 10 employees with at least seven (7) working days advance notice of a change in their work location which would not reasonably require the employee to change ~~his/her~~ their place of residence. This advance notice is not required if: (1) the new work location is within the general vicinity of the employee's current regular street business address, (2) the change is due to an unforeseen emergency, or (3) the change is made at the request of the employee.

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**Article:** 16

**Subject:** Transfer and Layoff

## 16.4 Appeal of Involuntary Transfer

- A. An involuntary transfer which reasonably requires an employee to change ~~his/her~~their residence may be grieved under Article 9 only if the employee believes it was made for the purpose of harassing or disciplining the employee. If the appointing authority or the California Department of Human Resources disapproves the transfer, the employee: (1) shall be returned to ~~his/her~~their former position; (2) shall be paid the regular travel allowance for the period of time ~~he/she/they were~~ was away from ~~his/her~~their original headquarters; and (3) shall be paid ~~his/her~~their moving costs both from and back to the original headquarters, in accordance with the California Department of Human Resources laws and rules.
- B. An Appeal of an involuntary transfer which does not reasonably require an employee to change ~~his/her~~their residence shall not be subject to the grievance and arbitration procedure. It shall be subject to the complaint procedure if the employee believes it was made for the purpose of harassing or disciplining the employee.

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**Exclusive Representative:** CAPS

**Article:** 17

**Subject:** Classification

## 17.2 Out-of-Class Grievance Process

### A. Definitions

1. "Working out-of-class" (a.k.a. "out-of-class work") is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the employee has a current, legal appointment.
2. A "pre-arranged out-of-class assignment" is defined as the intentional assignment of out-of-class work to an employee by the employee's appointing power, department head or designee for a defined period of time of up to 120 days or, if approved by the California Department of Human Resources, up to one year.
3. "Terminated out-of-class work or assignment" is defined as "working out-of-class" (as defined above) in which the out-of-class work or assignment has ceased either because the duties and responsibilities that created the out-of-class situation were removed, or the percentage of time spent performing the full range of duties and responsibilities fell below 50 percent, or the employee is no longer working in the position alleged to have created the out-of-class situation.

### B. Pre-arranged Out-of-Class Assignments

Notwithstanding Government Code Sections 905.2, 19818.8, 19818.6, 19818.16, and 19823 an employee may be required to perform work other than that described in the specification for ~~his~~her~~her~~their classification for up to 120 consecutive calendar days during any 12-month period. An employee may be assigned to work out-of-class for more than 120 consecutive calendar days only with the approval of the California Department of human Resources (CalHR). Out-of-class assignments shall not exceed one year.

#### 1. Rate of Pay:

If an appointing power, department head or designee requires an employee to work "out-of-class" in a higher classification for more than two consecutive weeks, the employee shall receive the rate of pay, pursuant to DPA Regulation 599.673, 599.674, or 559.676 that the employee would have received if appointed to the higher class for the entire duration of the assignment. The out of class compensation shall not be considered as part of the base pay in computing the promotional step in the higher class.

#### 2. Rotation to Avoid Out-of-Class Pay:

  
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The State shall not rotate employees in and out of out-of-class assignments for the sole purpose of avoiding payment of an out-of-class compensation.

C. Out-of-Class Grievances

1. Exclusive Appeal Process:

The grievance and arbitration procedure described in Subsection E below shall be the exclusive means by which alleged out-of-class assignments shall be remedied, including requests for review by the California Department of Human Resources referenced in Government Code Section 19818.16. Out-of-class grievances shall not be filed with the State Board of Control.

2. Out-of-Class Remedy:

The grievance and arbitration procedure described in Subsection E shall be the exclusive means by which alleged out-of-class appeals shall be remedied, including those referenced in Government Code Sections 19818.6 and 19818.20.

3. Retroactive Pay:

The only remedy that shall be available to grievants is retroactive pay for out-of-class work.

4. Back Pay Limited to One Year:

A timely filed grievance concerning out-of-class work which is granted under this Article shall not be compensated retroactively for a period greater than one (1) year before the filing of the grievance.

5. Arbitrator Limitations:

Arbitrators shall not have the authority to order reclassification (reallocation) of a grievant's position or discontinuance of out-of-class work assignments.

D. Grievance Procedure and Time Limits

1. Duty to File Timely Grievance:

If an employee believes that ~~he/she~~they have been assigned out-of-class duties and responsibilities, ~~he/she must file an out-of-class grievance~~ must be filed no later than 60 days after the conclusion of the out-of-class duties/work. Any claim for back pay concerning the out-of-class work is waived if the employee fails to timely file the grievance as provided by this section. The grievance package shall include a completed CalHR 651 (Job Description Form).

2. Third Level Appeal:

Out-of-class grievances shall be filed with a designated supervisor or manager identified by each department head as the third level of appeal in the usual grievance procedure found in Article 9.

3. Third Level Response:

The person designated by the department head as the third level of appeal shall respond to the grievance in writing within 45 calendar days after receipt of the grievance.

4. Fourth Level Appeal:

If the grievant is not satisfied with the decision rendered by the person designated by the department head at the third level of appeal, the decision

~~he/she~~ may be appealed the decision in writing within 21 calendar days after receipt to the Director of the California Department of Human Resources.

5. Fourth Level Response:  
The Director of the California Department of Human Resources or designee shall respond to the grievance in writing within 60 calendar days after receipt of the appealed grievance.
6. Arbitration Request:  
If the grievance is not resolved by the California Department of Human Resources, the union shall have the right to submit the grievance to arbitration within 30 calendar days following receipt of the California Department of Human Resources' decision.
7. Arbitration Process:  
Article 9.12 "Formal grievance - Step 5" shall apply to out-of-class grievances except as otherwise provided in this section.

- E. Arbitrator Award:  
The arbitrator's award regarding out-of-class grievances shall be final and binding on the parties. Said awards shall not be subject to challenge or review in any forum, administrative or judicial, except as provided in Code of Civil Procedure Section 1286.2 et seq.

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