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***(Revised)***

# MOU Fiscal Analysis Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21 (SEIU Local 1000)

LEGISLATIVE ANALYST'S OFFICE

Presented to:

The California Legislature

Pursuant to Section 19829.5 of the Government Code

# Background on the State Memorandum of Understanding (MOU) Process

☑ ***Ralph C. Dills Act Provides for State Employee Collective Bargaining.*** With passage of the Dills Act in 1977, the Legislature authorized collective bargaining between unions representing rank-and-file state employees and the administration. Currently, around 200,000 state workers belong to one of the state's 21 bargaining units.

☑ ***Legislature and Employees Must Ratify MOUs.*** The key provisions of MOUs must be ratified by the Legislature and bargaining unit members in order to take effect. In addition, under the Dills Act, the Legislature annually may choose whether to appropriate funds in the budget to continue the financial provisions of each MOU.

☑ ***MOUs Ratified by Legislature and Employees.*** The Legislature ratified the Service Employees International Union Local 1000 (Local 1000) MOUs in Chapter 728, Statutes of 2010 (AB 1625, J. Pérez) on October 7, 2010. Local 1000 members ratified the MOUs on November 8, 2010. The MOUs are effective from July 1, 2010 to July 1, 2013.

☑ ***Fiscal Analysis Required by State Law.*** Section 19829.5 of the Government Code—approved by the Legislature in 2005—requires the Legislative Analyst's Office (LAO) to produce a fiscal analysis of tentative MOUs within ten days of receiving the tentative MOUs and specifies that legislative ratification of MOUs should not occur until either the LAO has presented its review or ten days have passed from the time the LAO received the MOUs. Given that the administration and Local 1000 reached agreement at the same time as budget negotiations were completed, the Legislature waived the Section 19829.5 ten-day review period in the MOU ratification legislation (Chapter 728). Although the Legislature has already ratified the MOUs, we prepared this analysis to serve as a historical record and to help the public understand the details of these three-year agreements.

# Bargaining Units at a Glance

☑ ***Local 1000 Represents About One-Half of Unionized State Workers.*** Local 1000 is the largest state union. The nine Local 1000 bargaining units include about 95,000 state workers, or about one-half of the unionized workforce. These workers perform a wide variety of tasks and work in nearly every state department.

☑ ***Most Work in Administrative and Financial Services.*** Figure 1 shows the distribution of employees represented by Local 1000. About 75,000 of the workers are in Units 1 and 4 and work in administrative, financial, and office assignments.

**Figure 1**

**SEIU Local 1000 Bargaining Units**

| Bargaining Unit | Number of Employees |
|---|---|
| Unit 1—Professional, Administrative, Financial, and Staff Services | 47,834 |
| Unit 3—Professional Educators and Librarians (Institutional) | 1,419 |
| Unit 4—Office and Allied Workers | 27,581 |
| Unit 11—Engineering and Scientific Technicians | 2,996 |
| Unit 14—Printing Trades | 471 |
| Unit 15—Allied Service Workers | 4,723 |
| Unit 17—United Registered Nurses | 4,952 |
| Unit 20—Medical and Social Services Specialists | 3,847 |
| Unit 21—Educational Consultants and Library (Non-Institutional) | 575 |
| **Total** | **94,398** |

Source: Local 1000.

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## Previous MOUs

- ☑ ***Expired in 2008.*** The Legislature approved Local 1000's previous MOUs in 2006. Those MOUs expired on June 30, 2008. Based on state law, an expired MOU generally remains in effect unless a new MOU is approved or the state and the union reach an impasse in negotiations. Tentative Agreements between Local 1000 and the administration were not ratified by the Legislature in 2009.

- ☑ ***Included Pay Increases.*** Under the previous MOUs, most Local 1000 employees received a one-time $1,000 bonus in 2006, a 3.5 percent salary increase on July 1, 2006, and a 3.4 percent salary increase on July 1, 2007. In addition, the Legislature approved MOU addenda providing additional raises for small groups of workers, such as medical staff (related to actions of the Receiver and other prison health care lawsuits).

- ☑ ***Provided Health Benefits Under the 80/80 Formula.*** Employees in Local 1000 bargaining units—except Unit 3—received health benefits under the "80/80" formula, which provides that the state's contribution to health premiums equals 80 percent of the average California Public Employees' Retirement System (CalPERS) plan premiums, plus 80 percent of the average additional premiums to enroll dependent family members. Unit 3 members received 80/80 health benefits through the end of 2008, but have received no increase to cover rising health premiums since 2008.

## Previous MOUs *(Continued)*

☑ ***Provided "2 Percent at 55" Retirement Formula.*** Under the previous MOU, most Local 1000 employees were eligible for "2 percent at 55" retirement benefits and contributed approximately 5 percent of monthly pay to cover part of the costs of these benefits. (State safety employees receive higher benefits.) The state paid the remainder of the costs, including costs to address unfunded liabilities. Pension benefits paid to retired employees were based on the highest pay received during a *single* year of employment. Pension benefits for workers hired after January 2007, however, were based on the highest average annual pay received over any consecutive *three* years of state service.

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# Ratified MOUs—Personal Leave Program

- ☑ ***Personal Leave Program (PLP) for All Bargaining Units.*** The MOUs establish a 12-month PLP effective November 2010. The PLP provides every employee eight hours of unpaid leave each month in exchange for a 4.6 percent pay reduction. (The hourly amount of leave differs slightly for employees who work on an academic calendar.) Unused leave under the PLP accrues on a monthly basis and expires June 30, 2013. Seasonal and temporary employees are not subject to the PLP. Employees hired while the PLP is operational will be included in the PLP and receive a reduced paycheck for the remainder of the program.

- ☑ ***No Furloughs During PLP.*** During the 12-month PLP, the MOUs specify that the state shall not impose a new furlough program on Local 1000 employees. Lawmakers could reinstate a furlough program on Local 1000 employees, however, after the PLP has expired.

- ☑ ***Reduced Take-Home Pay Does Not Affect Retirement Benefits.*** Although employee and employer pension contributions to CalPERS are based on the lower pay levels for employees, the PLP does not reduce the amount of final compensation used to determine employee pension benefit levels.

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# Ratified MOUs—Continuous Appropriations

☑ ***Continuous Appropriations for Duration of MOU.*** In the MOUs, the administration and Local 1000 agreed to support legislation that provides for continuous appropriations of Local 1000 employee compensation and benefits for the term of the MOUs. The Legislature approved language in Chapter 728 for continuous appropriations through the *2013-14 Budget Act* for any period during a budget impasse. Chapter 728 states that the continuous appropriation "shall not apply after the term of the memorandum of understanding has expired."

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# Ratified MOUs—Changes in Holidays and Overtime Provisions

- ☑ ***Restore Premium Pay for Six Holidays.*** A February 2009 budget trailer bill—Chapter 4, Statutes of 2009 Third Extraordinary Session (SBX3 8, Ducheny)—reduced the number of state holidays (eliminating Lincoln's Birthday and Columbus Day) as a cost-savings measure. This legislation also provided that state employees who worked on the remaining state holidays would receive "straight-time" pay, instead of premium pay. The MOUs for Local 1000 restore premium pay—generally 150 percent of regular pay and up to eight hours of holiday credit—for all hours worked on six holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas. The MOUs also conform to the elimination of Columbus Day and Lincoln's Birthday from the list of holidays granted to Local 1000 employees.

- ☑ ***Change Hours Used to Calculate Overtime.*** Chapter 4 also provides that various types of paid and unpaid leave "shall not be considered as time worked by the employee for the purpose of computing cash compensation for overtime." For example, if a worker takes leave on Monday (an eight-hour workday) and then works eight-hour days on Tuesday through Friday (32 work hours), she cannot count her first hour of work on that Saturday as the 41$^{st}$ weekly work hour and earn overtime pay at 150 percent of her regular pay rate. The ratified MOUs for Local 1000 conform the contracts to this law.

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# Ratified MOUs—Professional Development

☑ ***Two Professional Development Days.*** The MOUs provide that employees are entitled to two leave days per fiscal year (without loss of compensation) for activities that "promote professional and/or personal growth" and "enhance professional and/or personal goals." The MOUs specify that the professional development days shall be requested and approved in the same manner as vacation/annual leave and the time shall not be accumulated beyond the fiscal year. The MOU does not provide a mechanism to determine what employees do on their two days off. The Department of Personnel Administration (DPA) assumes that managers will authorize professional development days in a manner not to incur any overtime costs for other employees covering the absent employees' shift.

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# Ratified MOUs—Pension Changes

☑ ***Reduced Pension Benefits for Future Hires.*** The MOUs do not affect the pension benefits for current employees, but reduce them for future state employees as follows:

- ***Miscellaneous and Industrial Employees.*** The pension benefit formula for future miscellaneous and industrial employees is reduced from "2 percent at 55" to "2 percent at age 60" based on the employee's highest average monthly pay rate during three consecutive years of employment. The benefits grow after an employee reaches age 60, eventually reaching "2.418 percent at age 63" (slightly below the current maximum level).

- ***State Safety Employees.*** The pension formula for future state safety employees generally is reduced from "2.5 percent at 55" to "2 percent at 55" based on the employee's highest average monthly pay rate during three consecutive years of employment.

☑ ***All Employees Contribute Larger Share Towards Pension.*** All Local 1000 employees will contribute an additional 3 percent towards retirement beginning November 2010. Miscellaneous and industrial employees now generally contribute 8 percent of their pay towards retirement and state safety employees contribute 9 percent (as summarized in Figure 2).

**Figure 2**

**Previous and Recently Ratified Employee Pension Formulas and Contributions**

*(Percent of Monthly Pay[a])*

| Retirement Category | Previous Contributions | Contributions Under New MOUs |
|---|---|---|
| Miscellaneous | 5% | 8% |
| Industrial | 5 | 8 |
| Safety | 6 | 9 |

[a] A small portion of monthly pay is excluded from the calculation. In some cases, different contributions are applicable for employees not subject to Social Security.

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# Ratified MOUs—Pay Increases July 2013

- ***General 3 Percent Increase to Top Step.*** With two exceptions, the ratified MOUs specify that all Local 1000 classifications shall be adjusted by increasing the top step of the salary range by 3 percent effective July 1, 2013. The two exceptions are discussed below.

- ***Seasonal Clerks.*** The MOUs provide the approximately 1,300 seasonal clerks employed by the Franchise Tax Board and the State Compensation Insurance Fund with a 50 cent per hour pay raise effective July 1, 2013. These clerks currently have a base salary of $1,418 to $1,620 per month, meaning the change represents between a 5 percent and 6 percent increase.

- ***California Department of Corrections and Rehabiliation (CDCR) Unit 3 Employees.*** The MOUs provide certain CDCR Unit 3 employees who work on an academic calendar with a 3 percent pay increase effective July 1, 2013. The affected Unit 3 employees generally are those who are at step six or higher in any range.

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# Ratified MOUs—Other Major Provisions

- ☑ ***Health Benefit Increase for Unit 3 Employees.*** Under the Unit 3 MOU, the flat-dollar state contribution towards monthly health coverage for Unit 3 employees and their dependents is increased to the equivalent of the 80/80 formula. The contributions will be adjusted each January until January 1, 2013. The MOU also increases the state's monthly contribution to dental premiums for Unit 3 employees. Health coverage for those employees already under the 80/80 formula is not changed by the new MOU.

- ☑ ***Past Furloughs Ratified.*** On October 4, 2010 the California Supreme Court ruled that state employee furloughs may be constitutional if they are authorized through the collective bargaining process and/or the Legislature. The MOUs explicitly ratify the nine furlough days that occurred between August and October 2010. Thus, the MOUs appear to eliminate any ambiguity as to the legality of the current-year furlough program for Local 1000 employees.

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# DPA Fiscal Estimates

**Figure 3**

**Administration Estimates of Costs and Savings Under the Recently Ratified MOUs[a]**

*(In Millions)*

| | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|---|---|---|---|---|
| **All Funds** | | | | |
| Nine furlough days | -$135.0 | — | — | — |
| Personal Leave Program savings | -176.5 | -$88.2 | — | — |
| Additional 3 percent pension contribution | -75.2 | -116.4 | -$118.2 | -$121.8 |
| Subtotals, Savings | (-$386.7) | (-$204.7) | (-$118.2) | (-$121.8) |
| Premium time for six holidays | $2.8 | $4.2 | $4.2 | $4.2 |
| Health benefit increases for Unit 3 | 1.0 | 2.2 | 3.2 | 3.7 |
| Increased top pay step by 3 percent | — | — | — | 171.9 |
| Additional $0.50 for seasonal clerks | — | — | — | 0.5 |
| Two Professional Development Days | — | — | — | — |
| Subtotals, Costs | ($3.8) | ($64.0) | ($74.0) | ($180.2) |
| **All Funds Net Savings (-)/Costs (+)** | **-$382.9** | **-$198.3** | **-$110.8** | **$58.4** |
| General Fund Net Savings (-)/Costs (+) | -$164.3 | -$81.2 | -$44.1 | $27.0 |
| Other Fund Net Savings (-)/Costs (+) | -218.7 | -117.1 | -66.8 | 31.4 |

[a] Numbers adjusted to reflect costs and savings in each year compared with the prior MOUs.

- ☑ ***Savings in 2010-11, 2011-12, and 2012-13.*** As shown in Figure 3, the administration's fiscal estimates for the nine MOUs indicate that the state will experience significant but diminishing savings during the first three fiscal years.

- ☑ ***Net Costs Beginning 2013-14.*** By 2013-14, the costs provided for in the MOUs will more than offset the savings provisions. As Figure 3 shows, net costs will increase in 2013-14 by about $58 million ($27 million General Fund).

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## (DPA) Fiscal Estimates *(Continued)*

☑ ***Long-Term Savings Significant.*** The changes in pension benefits would result in significant cost reductions for the state in the long run (over many decades), but will not result in significant short-term savings. The DPA did not attempt to estimate these savings through 2013-14.

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# LAO Comments—DPA's Fiscal Estimates

- ☑ ***Some Concerns With Administration's Assumptions.*** While DPA's estimated costs and savings associated with the Local 1000 MOUs generally are reasonable, we discuss two concerns below.

- ☑ ***Overtime Costs Associated With Leave Programs.*** The administration assumes that management will not allow employees to use professional development days or PLP if it would result in another employee working overtime. In our view, it is not realistic to assume that 14 days of lost work per employee over the next 12 months could result in no overtime costs. This assumption seems especially implausible for employees who work in 24-hour facilities. For example, Local 1000 represents nursing staff in CDCR prisons. These positions are under the authority of the Federal Receiver. The Receiver requires that a specified number of nurses be on duty at each prison at all times. It is our understanding that most prisons are staffed at levels near or at these specified minimums. When a nurse takes leave, therefore, his or her position likely would be replaced by an off-duty nurse (who would earn overtime) or a registry nurse (contracting with CDCR). Under either scenario, the 14 days of leave likely would result in increased CDCR employee costs.

- ☑ ***Productivity Loss Resulting From Leave.*** The administration's MOU estimates also assume no productivity losses associated with the 14 days of leave. This assumption has the effect of overstating the state's likely net savings from the leave programs. For example, Unit 1 includes 170 auditors working in the State Controller's Office (SCO) Division of Audits. The SCO advises us that their auditors typically recover $13 for every $1 of total employee costs. Under this assumption, the productivity losses associated with the leave granted to the Unit 1 SCO auditors would more than offset the state's savings from the PLP for these employees.

# LAO Comments—
# Professional Development Days

☑ ***Professional Development or Personal Holiday?*** Referring to the two annual non-accumulating leave days as "professional development days" is confusing and misleading. In prior Local 1000 MOUs (such as the prior MOU for Unit 21), this term was used to refer to verifiable professional training. Under the new MOUs (as well as the excluded employee package also approved in 2010), however, this term is used to describe a leave program that allows employees to take two days off to participate in personal or professional activities without verification. As Figure 4 shows, professional development leave programs for other state employee bargaining units are limited to professional activities and require verification. We recommend that in the future, the administration refer to these leave days as "personal holidays" to reduce confusion and to promote transparency.

**Figure 4**

**Authorized Professional Development Programs**

| Employee Group | Ratification or Authorization Date | Days Per Year | Authorized Use Of Leave | Verification of Activities Required? |
|---|---|---|---|---|
| Unit 21: Noninstitutional Education and Libraries (Local 1000) | 2006 (prior MOU) | Not Specified[a] | Professional Development | Yes |
| Unit 10: Professional Scientific (CAPS) | 2006 | Not Specified | Professional Development | Yes |
| Unit 2: Attorneys (CASE) | 2007 | 3 | Professional Development | Yes |
| Unit 19: Health and Social Services Professionals (AFSCME Local 2620) | August 2010 | 1 | Professional Development | No |
| Local 1000 | November 2010 (New MOU) | 2 | Professional Development and Personal Growth | No |
| Excluded Employees | November 2010 | 2 | Professional Development and Personal Growth | No |

[a] Employees are eligible for a one-time $300 professional development incentive.

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## LAO Comments—Baseline

☑ ***Comparison to Furlough Program.*** The administration's estimate of MOU savings and costs compares the 2010 MOU with the MOU that expired in 2008. While this comparison is appropriate, it differs from comparing the MOU's savings and costs with state employer costs before the agreement. Immediately before Local 1000 and the state reached agreement, Local 1000 employees were included in the three-day-per-month furlough program, which reduced employee salaries 13.8 percent below the amounts specified in the expired MOUs. Figure 5 illustrates that if we were to compare state costs under the new MOUs with state costs before the agreement, the new MOUs costs are over $100 million higher.

**Figure 5**

**LAO Estimate Using Furlough Program as Baseline**

*2010-11*
*(In Millions)*

| | General Fund | Other Funds | All Funds |
|---|---|---|---|
| Savings | -$106.0 | -$145.7 | -$251.7 |
| Costs | 167.0 | 196.9 | 363.9 |
| **Totals** | **$61.0** | **$51.3** | **$112.2** |

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# Extension of Ratified MOU Terms to Unrepresented Executive Employees

☑ ***Terms Extended to Unrepresented Employees Through Executive Order.*** On October 7, 2010, Governor Schwarzenegger issued Executive Order S-15-10, which extended some of the terms in the Local 1000 MOUs to certain executive branch managers and supervisors not subject to collective bargaining. The Governor ordered that the following personnel policies be adopted for these employees:

- ***Higher Employee Pension Contributions.*** Employees' pension contribution rates were increased by 3 percent of pay.
- ***12-Month PLP.*** Beginning November 1, employees are subject to a 12-month PLP during which time employees receive eight hours of unpaid leave each month and a 4.6 percent pay reduction.
- ***No Furloughs.*** The temporary furlough program that began in August 2010 ended on November 1, 2010. During the 12-month PLP, no furloughs will be imposed on these employees. However, furloughs could be reinstated November 2011.
- ***3 Percent Pay Raise to Top Step in 2013.*** Effective July 1, 2013, manager and supervisor classifications will be adjusted by increasing the maximum step of the pay range by 3 percent.
- ***Two Professional Development Days.*** Employees are granted two days of professional development leave per fiscal year. The term "professional development" is defined the same way as in the Local 1000 MOUs.
- ***Continuous Appropriation of Employee Compensation Through 2013.*** The Governor will seek legislation to grant continuous appropriation of employee compensation through July 1, 2013.

# Extension of Ratified MOU Terms to Unrepresented Executive Employees

*(Continued)*

- ***Reduced Pension Benefits for New Employees.*** For new employees, the Governor proposed that pension benefit formulas revert to pre-SB 400 (Chapter 555, Statutes of 1999 [Ortiz]). Through Chapter 3, Statutes of 2010 Sixth Extraordinary Session (SBX6 22, Hollingsworth), the Legislature extended the pre-SB 400 retirement formulas to employees not subject to collective bargaining and to employees subject to collective bargaining whose MOUs have expired. Figure 6 summarizes the new contribution rates and the pension formulas for new state employees.

**Figure 6**

**New Pension Contribution Rates for All Employees and Retirement Formulas for New State Employees**

| Retirement Categories | Contribution Rates (Percent of Monthly Pay) | New Employee Retirement Formulas (Based on Three Year Highest Compensation) |
|---|---|---|
| Miscellaneous/Industrial (with social security) | 8% | 2% at age 60 |
| Miscellaneous/Industrial (without social security) | 9 | 2% at age 60 |
| State Safety | 9 | 2% at age 55 |
| Peace Officer/Firefighter | 11 | 2.5% at age 55 |

# Current Employee Compensation Policies Affecting State Employees

☑ ***Most Employees Have New MOUs.*** As Figure 7 shows, about 60 percent of executive branch employees now have new MOUs.

Figure 7

**Status of State Employee Collective Bargaining Agreements**

| | Percent of Workforce | MOU Ratification Bill |
|---|---|---|
| **Bargaining Units With New Contracts** | | |
| 1-Administrative, Financial, and Staff Services | 22.1% | AB 1625 (J. Pérez) |
| 3-Educators and Librarians (Institutional) | 1.0 | AB 1625 (J. Pérez) |
| 4-Office and Allied | 12.9 | AB 1625 (J. Pérez) |
| 5-Highway Patrol | 3.1 | SB 846 (Correa) |
| 8-Firefighters | 1.9 | AB 1592 (Buchanan) |
| 11-Engineering and Scientific Technicians | 1.2 | AB 1625 (J. Pérez) |
| 12-Craft and Maintenance | 4.9 | SB 846 (Correa) |
| 14-Printing Trades | 0.2 | AB 1625 (J. Pérez) |
| 15-Allied Services (Custodial, Food, Laundry) | 2.1 | AB 1625 (J. Pérez) |
| 16-Physicians, Dentists, and Podiatrists | 0.8 | AB 1592 (Buchanan) |
| 17-Registered Nurses | 2.3 | AB 1625 (J. Pérez) |
| 18-Psychiatric Technicians | 2.8 | SB 846 (Correa) |
| 19-Health and Social Services/Professional | 2.3 | AB 1592 (Buchanan) |
| 20-Medical and Social Services | 1.6 | AB 1625 (J. Pérez) |
| 21-Education and Libraries (Noninstitutional) | 0.3 | AB 1625 (J. Pérez) |
| **Percentage of Workforce With New Contracts** | **59.6%** | |
| **Bargaining Units With Expired Contracts** | | |
| 2-Attorneys | 1.7% | Expired |
| 6-Correctional Peace Officers | 13.9 | Expired |
| 7-Protective Services and Public Safety | 3.1 | Expired |
| 9-Professional Engineers | 5.1 | Expired |
| 10-Professional Scientific | 1.2 | Expired |
| 13-Stationary Engineer | 0.5 | Expired |
| **Percentage of Workforce With Expired Contracts** | **25.4%** | |
| **Supervisors and Managers** | **15.0%** | Not Applicable |

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# Current Employee Compensation Policies Affecting State Employees *(Continued)*

☑ ***Different State Employees Under Different Employee Compensation Policies.*** There have been many changes to state employee compensation policies in 2010. Figure 8 illustrates what policies apply to the three largest groups of executive branch employees: managers and supervisors, employees in bargaining units that have a new MOU, and employees in bargaining units that have expired MOUs.

**Figure 8**

**Major Employee Compensation Policies Resulting From Collective Bargaining and Administrative Actions**

*(Excludes Legislative, Judicial, and University Employees)*

| | | Employees in Bargaining Units | |
|---|---|---|---|
| | Managers and Supervisors | With Current Collective Bargaining Agreements | With Expired Collective Bargaining Agreements |
| **Unpaid Leave Days** | | | |
| One per month for 12 months, "Personal Leave Program" | Yes | Yes, except Units 5 and 8 | No |
| Three per month "furlough" pursuant to executive orders | No | No | Yes, with limited exceptions |
| **Retirement** | | | |
| Increased employee contributions | Yes | Yes | No |
| New formula for new state employees | Yes | Yes | Yes |
| **Other** | | | |
| Two floating paid leave days annually | Yes | Yes, except Units 5, 8, 12, 16, 18, and 19[a] | No |
| Employees at top step get a pay increase in 2012 or 2013 | Yes | Yes | No |
| During collective bargaining agreement, salaries continuously appropriated during late budgets | No | Yes | No |

[a] Unit 19 receives one floating paid leave day annually.