

AGENDA ITEM

111 November 7, 2014

DATE: November 7, 2014

TO: Members, Board Executive Committee
Members, Board of Trustees

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: Rules and Regulations Pertaining to the Employment of
Confidential Employees: Amendment to Section 20
[Vacations]

EXECUTIVE SUMMARY

An amendment is proposed here for adoption by the Board of Trustees to the rules that regulate the non-union Confidential Employees of the State Bar. Confidential Employee Rule 20 [Vacations] is amended to add an option for Confidential Employees to “cash out” one week vacation per year if the employee is at the vacation maximum (the maximum being based on years of service, but not exceeding 55 days), is unable to take vacation to reduce the cap and will lose vacation accrual as a result. This conforms to other employee groups (Executive Staff and Bargaining Unit Employees) who have some form of vacation “cash out.” This item is before the Board Executive Committee because that committee has oversight of personnel matters. Public comment is not required for internal personnel standards such as these. If you have questions, please call Robert Hawley at 415-538-2277 or Robert.Hawley@calbar.ca.gov.

BACKGROUND

The terms and conditions of employment for State Bar Confidential Employees are established by Rules and Regulations Pertaining to the Employment of Confidential Employees first adopted in 1982. Confidential Employees are defined in Section 4 (E) of the Confidential Employee Rules and in the Rules and Regulations for the Administration of Employer and Employee Relations as follows:

“Confidential Employee shall mean an employee, regardless of classification or job title, who acts in the formulation, determination and effectuation of management policies in the field of employer

employee relations or who assists such a person in a confidential capacity.”

The key component of Confidential Employee status is that, like Executive Staff, they are excluded from union representation and assist management in addressing union issues. The terms and conditions of employment for Confidential Employees are governed the Confidential Employee Rules adopted and amended by the Board of Trustees and administered by the Executive Director.

The majority of the State Bar’s Confidential Employees are employed in the Offices of Human Resources, General Counsel, Payroll/Finance and the Executive Director/Secretary. Each Senior Director is assigned a Confidential Employee. There are also Confidential Employees in other strategic locations throughout the organization where the administration of employer-employee and labor relations occurs.

The rules governing Confidential Employees align with the rules governing Executive Staff rather than with the union negotiated Memoranda of Understanding governing bargaining unit employees. They are amended from time to time to conform to evolutionary changes in the management of the State Bar and the standards governing institutional administration of personnel.

The amendment here seeks to offer an option to Confidential Employees to “cash out” one week vacation per year if the vacation maximum cap is reached and the employee will start losing vacation accrual. This option is available to Executive Staff at the rate of two weeks per year. As Executives and Confidential Employees serve at the will and pleasure of the Executive Director, it is not uncommon for their work schedules to be unpredictable making vacation scheduling challenging at times. Taking vacation is recommended by State Bar policy. But in those cases where vacation cannot be taken due to work demands, a “cash out” option is equitable.

The proposed amendment is set forth in Attachment 1.

ISSUE

Should the proposed amendment to the Confidential Employee Rules to allow a vacation “cash out” option of one week per year be approved?

CONCLUSION

It is recommended that the proposed amendment to the Confidential Employee Rules to allow a vacation “cash out” option of one week per year be approved as set forth in Attachment 1, to be effective January 1, 2015.

DISCUSSION

See Background above.

FISCAL / PERSONNEL IMPACT

Any fiscal or personnel impact is within existing budget and policy standards. Under California law, accrued vacation is the equivalent of wages. [Labor Code Section 227.3]. It has a cash value upon separation if not taken. The “cash out” value of one week adds little to the expenses of the State Bar.

RULE AMENDMENTS

Amends the Rules and Regulations Pertaining to the Employment of Confidential Employees, effective January 1, 2015.

BOARD BOOK IMPACT

None.

RECOMMENDATION

It is recommended that the Board Executive Committee and the Board of Trustees adopt the Amendment proposed here.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Executive Committee agree with the above recommendation, the following resolution is appropriate:

RESOLVED, that the Board Executive Committee recommends that the Board of Trustees approve the Amendment to Section 20 of the Rules and Regulations Pertaining to the Employment of Confidential Employees consistent with the item before the Board Committee and Board this date.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Board Executive Committee’s recommendation, the following resolution is in order:

RESOLVED, that upon the recommendation of the Board Executive Committee, the Board of Trustees hereby approves the amendment to Section 20 of the Rules and Regulations Pertaining to the Employment of Confidential Employees consistent with the item before the Board Committee and Board this date.

ATTACHMENT I

CONFIDENTIAL EMPLOYEE RULES

SECTION 20. VACATIONS

A. Confidential Employees shall accrue vacation at the following rates:

Less than ten(10) years of service, 1-1/4 work days per month (15 working days per year)

At least ten (10) but less than fifteen (15) years of service, 1-2/3 work days per month (20 working days per year)

Fifteen (15) or more years of service, 2-1/2 work days per month (25 working days per year)

B. The term "years of service" for purposes of vacation accrual shall mean the number of years of regular full time continuous employment with the State Bar, irrespective of classification or position title.

C. Notwithstanding any other provision of this section, vacation accrual shall be limited as follows:

1. An Employee with less than ten (10) years of service shall accrue a maximum of forty-five (45) working days of vacation.

2. An Employee with at least ten (10) years but less than fifteen (15) years of service shall accrue a maximum of fifty (50) working days of vacation.

3. An Employee with fifteen (15) or more years of service shall accrue a maximum of fifty-five (55) working days of vacation.

D. Upon termination, an Employee shall be paid for all unused, accrued vacation time.

E. If a paid holiday falls during a Confidential Employee's vacation, that day shall not be charged as a day of vacation.

F. Vacations shall be scheduled at a time mutually agreeable to the State Bar and the Confidential Employee.

G. Vacations shall not be taken in segments of less than one-half (½) workday.

H. Accrued vacation days may be used in place of Paid Sick Leave days when the latter are exhausted.

I. When a Confidential Employee's vacation accrual bank is approaching the maximum cap as set forth above, and the Employee is unable to take vacation to reduce the cap, the Employee may, at the discretion of the Executive Director, cash in accrued and unused vacation in increments of one week, not to exceed a total of one week per calendar year.

Source: Confidential Employee Rules §24 [Vacations]; minor revisions January 30, 1999. Major revision January 1, 2001; Section 20.I added effective January 1, 2015.