



The State Bar *of California*

OPEN SESSION AGENDA ITEM 703 APRIL 2020

DATE: April 16, 2020

TO: Members, Board of Trustees

FROM: Steve Mazer, Chief Administrative Officer
Jay Lee, Assistant General Counsel

SUBJECT: Approval of 2020-2022 Memoranda of Understanding (Attorney Unit and General Unit) Between the Service Employees International Union, Local 1000, and the State Bar of California

EXECUTIVE SUMMARY

The State Bar of California (State Bar) and Service Employees International Union, Local 1000, (Union) have tentatively agreed to new Memoranda of Understanding (MOUs) for the State Bar's represented staff, for 2020 (effective upon ratification by the Union and approval by the Board), through December 31, 2022. This item requests Board approval of the Tentative Agreement, as described in the attached Tentative Agreement Term Sheet.

BACKGROUND

Under the Meyers-Miliias-Brown Act, a public corporation such as the State Bar must collectively bargain over the wages, hours, and other terms and conditions of employment with the union representing its rank and file staff.

The previous MOUs applicable to the State Bar's rank and file staff (General Unit and Attorney Unit) were scheduled to expire on December 31, 2019, but have been extended to April 16, 2020 by mutual agreement. The State Bar and the Union have held 14 bargaining sessions over the new MOUs since May 2019, and have tentatively agreed to the terms of new MOUs through December 31, 2022.

DISCUSSION

The new MOUs contain provisions that are generous for rank and file staff and provisions that are beneficial to management. Staff believes that, as a package, the terms of the new MOUs contribute to the general good of the organization.

The specific terms, and the new or revised MOU language that will implement the terms, are provided in full in Attachment A, and are summarized as follows:

1. **Cost of Living Adjustments (COLAs):** Provides no COLA in 2020; 2 percent COLA in 2021; 1 percent COLA in 2022.
2. **Retiree Health Benefits:** Provides the same health insurance coverage for qualified retirees as provided to active, regular, full-time State Bar employees.
3. **Paid Bonding Leave:** Provides a new 160 hour bank of paid parental bonding leave for qualified employees.
4. **Bilingual Differential:** Increases the bilingual pay differential by 50 percent.
5. **Licensing or Certification Subsidy:** Provides a new subsidy of up to \$250 per year per General Unit employee for certain job-related licenses and certifications.
6. **Paid Personal Days:** Increases the number of paid personal days from two to four after five years of service.
7. **Salary Range Increases for Certain Job Classifications:** Provides salary range increases for four job classifications (Paralegal, Court Specialist, Legal Secretary, and Administrative Supervisor) that were determined to be under-market or out of alignment with comparable classifications.
8. **Fitness for Duty/Medical Separation:** Establishes a new process to medically separate employees who are unable to perform the essential functions of their employment.
9. **Probationary Period:** Increases the initial probationary period from three to six months for all newly hired General Unit employees.
10. **Make Up Time:** Modifies the Make Up Time provision to be more flexible, but limited to the workweek, not the pay period, in which the time off is taken.
11. **Lunch Break Flexibility:** Adds the option of a 45-minute lunch break to the existing 30- and 60- minute options.
12. **Vacation Cash Out:** Increases the cash-out option from two to three weeks of accrued vacation.

13. **Performance Evaluations:** Makes minor language changes to the Performance Evaluation provision.
14. **Designation of Union Stewards:** Allows the Union to determine the number of Union Stewards it appoints.
15. **Severance Pay for Layoff:** Clarifies the payment date for severance pay due for a termination caused by a layoff.
16. **Bereavement Leave:** Expands Bereavement Leave to cover nieces and nephews.
17. **Dress Code:** Makes a minor modification to the Dress Code provision.
18. **Waiving Minimum Qualifications:** Provides management the discretion to waive minimum educational qualifications for internal candidates for transfers and promotions.
19. **Promotions-in-Place:** Establishes a new promotion-in-place process for management to promote well-qualified internal candidates to the next promotional job classification.
20. **Consideration for Entry-level to Journey-level Advancement:** Creates a new system for automatic consideration for advancement from entry-level to journey-level in selected classifications.
21. **Training & Development Assignments for Legal Secretary III:** Provides for Legal Secretary III Training & Development assignments to assess the use of this classification.
22. **Hiring Above Minimum Report:** Modifies the monthly report documenting when the State Bar hires above the minimum of the salary range for the job classification.
23. **Out-of-Class Work:** Creates a new mechanism for resolving out-of-class claims.
24. **Term of MOUs:** Provides for a term commencing upon ratification by the Union and approval by the Board, through December 31, 2022.

FISCAL/PERSONNEL IMPACT

The MOU provisions with major fiscal impact are the cost of living adjustments and retiree health benefits. The 2021 and 2022 COLAs will be provided to all represented staff except those who are already at the maximum of the new salary range for their classification, or are above the maximum due to prior red-circling that resulted from the implementation of the new classification and compensation system in 2018. The cost of the COLAs will add approximately \$2.96 million over two years to salary and benefits costs for represented employees. The cost of new retiree health benefits for represented employees is estimated at \$3.66 million per year;

funding for this benefit was included in the fee increase in the 2020 licensing fee legislation, SB 176 (Stats. 2019, ch. 698).

Two provisions of the new MOU will have a more modest fiscal impact, with the actual cost determined by the number of represented employees using the benefit. These are the increased bilingual pay differential, estimated at \$40,000 per year; and the new subsidy for licenses and certification, estimated at \$24,000 per year.

Salary range increases for four classifications (Paralegal, Court Specialist, Legal Secretary, and Administrative Supervisor) have minimal immediate impact, but will increase salary costs in future years.

Two provisions of the new MOUs offer significant economic value to employees without imposing a direct cost on the State Bar. These are paid bonding leave, with an estimated annual value of \$250,000; and the addition of two paid personal days, with an estimated annual value of \$350,000.

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees approves the terms of the tentative agreement between the State Bar and the Union for 2020-2022 Memoranda of Understanding, as described in Attachment A.

ATTACHMENT(S) LIST

- A.** Tentative Agreement Term Sheet

ATTACHMENT A

2020-2022 MOUs

TENTATIVE AGREEMENT TERM SHEET

April 3, 2020

The State Bar of California (State Bar) and the Service Employees' International Union, Local 1000's (Union) have reached a tentative agreement for the new Memoranda of Understanding (MOUs) that will cover members of the General and Attorney Bargaining Units from April 16, 2020 until December 31, 2022.

1. COLAs
 2. RETIREE HEALTH BENEFITS
 3. PAID BONDING LEAVE
 4. BILINGUAL DIFFERENTIAL
 5. NON-JOB-REQUIRED LICENSING OR CERTIFICATION SUBSIDY
 6. PAID PERSONAL DAYS
 7. SALARY RANGE INCREASES FOR CERTAIN JOB CLASSIFICATIONS
 8. FITNESS FOR DUTY / MEDICAL SEPARATION
 9. PROBATIONARY PERIODS
 10. MAKE UP TIME
 11. LUNCH BREAK FLEXIBILITY
 12. VACATION CASH-OUT
 13. PERFORMANCE EVALUATIONS
 14. DESIGNATION OF UNION STEWARDS
 15. SEVERANCE PAY FOR LAYOFF
 16. BEREAVEMENT LEAVE
 17. DRESS CODE
 18. WAIVING MINIMUM QUALIFICATIONS
 19. PROMOTIONS-IN-PLACE
 20. CONSIDERATION FOR ENTRY-LEVEL TO JOURNEY-LEVEL ADVANCEMENT
 21. LEGAL SECRETARIES III – Training and Development Assignment
 22. HIRING ABOVE MINIMUM: SUPPLEMENTAL INFORMATION IN MONTHLY REPORTS
 23. OUT OF CLASS WORK
 24. TERM OF MOUs
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1. COLAs: The parties have agreed to the following Cost of Living Adjustments (COLAs) during the three year term of the 2020-2022 MOUs:

2020 – None

2021 – 2%

2022 – 1%

The parties agree that the following language will be added to Section 20.D of the 2020-2022 MOUs:

SECTION 20

D. Employees shall receive the following salary adjustments:

1. *In January 1, 2021, all salary range minimums and maximums for State Bar job classifications shall be adjusted upward by 2%. All salary ranges adjusted by this 2% are reflected in Appendix B.2. Beginning January 1, 2021, all Employees shall receive 2% salary increases, except that no Employee may receive a salary increase that exceeds the maximum of their adjusted salary range.*

2. *In January 1, 2022, all salary range minimums and maximums for State Bar job classifications shall be adjusted upward by 1%. All salary ranges adjusted by this 1% are reflected in Appendix B.3. Beginning January 1, 2022, all Employees shall receive 1% salary increases, except that no Employee may receive a salary increase that exceeds the maximum of their adjusted salary range.*

3. *The State Bar will grant Employees regular merit salary increases for satisfactory performance. To effectuate this, effective on the Employee anniversary dates in 2020 and after, and assuming a "Meets Requirements" or better overall performance rating on annual performance evaluations, Employees shall be granted a 5% increase to their salaries, except that any such increase shall be capped if it would cause the employee's salary to exceed the maximum of their job classification's salary range.*

2. **RETIREE HEALTH BENEFITS:** The parties have agreed that the State Bar will provide Bargaining Unit employees, who retire under CalPERS as State Bar employees on or after the effective date of the 2020-2022 MOUs, comparable health care plan benefits (including spouse, dependent and domestic partner coverage benefits) as currently provided to full-time State Bar Employees, in addition to the PEMHCA minimum monthly stipend. It would include health and vision, but not dental benefits. Employees would be eligible for retiree health benefits if they have 15 years of CalPERS service credit, regardless of where those service credits were earned. The parties have agreed that the following MOU language be added to current General Unit MOU section 35 and current Attorney Unit MOU section 36:

SECTION 35/36:

E. *In addition to the PEMHCA minimum retirement benefit described above, the State Bar shall provide to Employees who are members of CalPERS and who retire under CalPERS as State Bar employees a retiree health benefit on the terms described in the State Bar of California Post-Retirement Welfare Benefits Plan (the "Plan"). The Plan presently provides eligible retirees with a comparable percentage contribution to the purchase of health insurance and vision benefits as the State Bar provides to its then active, regular, full-time Employees. Under the Plan, Employees must meet the following criteria in order to be eligible for the State Bar's contribution toward retiree health and vision benefits:*

- 1. Employees must retire from employment by the State Bar on or after January 1, 2020;*
- 2. Employees must be eligible to receive medical/hospital coverage from CalPERS at the time of their retirement from employment with the State Bar;*
- 3. Employees must, at the time of their retirement from the State Bar, have earned at least 15 years of service credit from a CalPERS-contracting agency, excluding any purchased service credit, as determined solely by CalPERS;*
- 4. Employees must also elect to receive CalPERS retirement benefits within one hundred twenty (120) days of retirement from State Bar employment.*

3. PAID BONDING LEAVE: The parties agreed that employees meeting the eligibility requirements of the Family Medical Leave Act/California Family Rights Act, and who require leave due to a pregnancy or child-birth related medical condition, or who desire to bond with a newly born, adopted or foster-placed child, shall receive a lump sum of 160 hours of paid leave time for these purposes. The parties have agreed that the following new language will be added to the current Attorney Unit MOU section 31 and General Unit MOU section 30:

Section 30/31: PAID BONDING LEAVE

 : *Employees who have been employed with the State Bar for at least one calendar year and who have worked at least 1250 hours in the preceding 12 months, shall be eligible to receive, in a lump sum amount, 160 hours of paid leave to be used after the birth, adoption, or foster care placement of a child of the employee, and/or being unable to work due to pregnancy or child birth (paid bonding leave). Employees eligible for paid bonding leave need not exhaust any of their other accrued paid leave balances before accessing or using the 160 hours of paid bonding leave. Employees remain eligible to use available paid sick leave, paid vacation and paid personal days for child bonding purposes or not, at their option. While employees may coordinate the use of paid bonding leave to supplement their salaries while receiving State Disability Insurance payments,*

there is no requirement that they do so. Eligible employees may use the 160 hours of paid bonding leave intermittently, although not in increments of less than a full eight (8) hour workday. Eligible employees must use the 160 hours of paid bonding leave within twelve (12) months of either the day of birth, adoption or foster-placement of the child, or the day the employees take leave from work due to a pregnancy or child-birth related condition. Paid bonding leave not used at the end of this twelve month period will expire and be lost. Any remaining paid bonding leave that an employee may have will not be paid upon termination of employment, but will be lost.

Employees shall also be permitted to use paid sick leave, vacation leave, and personal days to cover leave taken for the same reasons the paid bonding leave may be taken, either to supplement state benefits or to take additional time for bonding with a new child.

The parties also agree to add language to Section 30/31 into the MOUs clarifying employees' obligation to pay for health, dental and vision insurance coverage during their leaves of absence.

 . *Employees taking any extended leaves of absence, whether paid or unpaid, are required to continue paying their employee contribution toward the State Bar-sponsored health, dental and vision insurance plans they have selected, if any, during the duration of their leave of absence. Employees who do not return to State Bar employment from an unpaid leave of absence granted under the Family Medical Leave Act or the California Family Rights Act shall reimburse the State Bar for the employer contribution the State Bar made to continue such employees' health, dental and/or vision coverage during their protected leave of absence.*

4. BILINGUAL DIFFERENTIAL: The parties agree to increase the current bilingual differential by 50% and to change how employees are eligible for this differential. The parties have agreed to the following new subsection P the current Section 22 of the Attorney and General Unit MOUs:

SECTION 22:

P. Once an employee has passed the certification requirements designated by Human Resources demonstrating ability in a language in addition to English, they will be placed on the State Bar's Bilingual List. Employees on this list will be eligible for rotational bilingual assignments. If an employee has passed the verbal certification requirement, they will be eligible for a \$45 differential for each biweekly pay period they are approved to receive rotational bilingual assignments. If an employee has passed the verbal and written certification requirements, they will be eligible for a \$90 differential for each biweekly pay

period they are approved to receive rotational bilingual assignments. Employees receiving bilingual pay must perform translations or interpreting services upon the request of their managers. All Employees in the Public Service Representative classification will receive a \$90 differential for each biweekly pay period upon passing the verbal certification requirements. PSRs will not be eligible for any additional differential beyond the \$90 for passing the verbal exam.

5. NON-JOB-REQUIRED LICENSING OR CERTIFICATION SUBSIDY: The parties have agreed that the State Bar will provide a subsidy, capped at \$250 per calendar year, per General Unit employee, for the following licenses and certifications:

- License to practice law, from the State Bar of California
- Private Investigator (PI) License from the California Bureau of Security and Investigative Services
- Clinical Social Worker License (LCSW) from the California Board of Behavioral Sciences
- Certified Fraud Examiner (CFE) Certification from the Association of Certified Fraud Examiners

The \$250 subsidy is per General Unit employee, per year, not per license or certificate. The \$250 subsidy may be applied to more than one of the above-listed licenses/certifications. The parties have agreed that a new Section 23 will be added to the General Unit MOU, which states:

SECTION 23: *SUBSIDY FOR CERTAIN JOB RELATED LICENSES AND CERTIFICATIONS*

The State Bar will provide a maximum annual subsidy of \$250 for the following licenses and certifications:

- *License to practice law, from the State Bar of California;*
- *Private Investigator (PI) License from the California Bureau of Security and Investigative Services;*
- *Clinical Social Worker License (LCSW) from the California Board of Behavioral Sciences;*
- *Certified Fraud Examiner (CFE) Certification from the Association of Certified Fraud Examiners.*

Employees wishing to receive all or some of this annual subsidy must provide to the Office of Human Resources proof they hold one of the licenses or certifications listed above, an invoice of the annual fee they are assessed to hold the license or certificate, proof of payment of the annual fee, as well as a brief statement of how the license or certification is useful for their job position. Upon approval, employees will be reimbursed, up to a total of \$250 per calendar year,

per employee, for the annual fees or dues associated with holding one of the above-listed licenses or certifications. Employees may request reimbursement of one or more of the above-listed licenses or certifications, but in no event will the State Bar subsidy exceed \$250 per employee, per year. This shall apply for payments made for licenses and certifications in effect in 2020 or later.

6. PAID PERSONAL DAYS: The parties agree that the number of personal days per calendar year shall be increased from two (2) to four (4) when employees reach five years of service with the State Bar. The parties further agree that employees who receive an overall "Exceeds Expectation" rating on their annual performance evaluation shall receive an additional paid personal day, to be used within a 12-month period following the date they receive said "Exceeds" rating. The parties also agree that the following language shall replace current Section 27.G of the Attorney and General Unit MOUs:

SECTION 27:

G. An Employee with less than five years of service may take a maximum of two (2) Paid Personal days per calendar year. An Employee with five or more years of service may take a maximum of four (4) Paid Personal days per calendar year. Regardless of years of service, any Employee who receives an "Exceeds Expectations" rating on their performance evaluation shall be awarded one additional Paid Personal day to be used within one year of receiving the qualifying performance evaluation. Employees will not be paid for Paid Personal days not taken within the timeframes set forth in this subsection, and unused Paid Personal days shall never be cashed out.

7. SALARY RANGE INCREASES FOR CERTAIN JOB CLASSIFICATIONS: The parties have agreed to the salary range increases for Paralegals by 5.72%, Court Specialists by 11.23%, Legal Secretaries (I, II, and III) by 5%, and Administrative Supervisors by 18% upon the date this MOU is ratified and becomes effective. No employee will receive automatic salary increases unless an employee's current salary is below the minimum of their salary range after these salary range increases are implemented. The parties agree that these salary range increases will be reflected in Appendix B.1 to the 2020-2022 General Unit MOU.
8. FITNESS FOR DUTY/MEDICAL SEPARATION: The parties have agreed to add a new section to the MOUs that will allow the State Bar to medically separate employees who are unable to perform the essential functions of their employment due to a disability or other medical condition. The parties agree to the following new MOU language:

SECTION ____: **Fitness For Duty Examination**

A. *The State Bar may medically separate an Employee who becomes unable to perform the essential functions of their position because of a disability as defined under the California Fair Employment and Housing Act or the federal Americans with Disabilities Act. Prior to initiating the medical separation procedures described in this Section, the State Bar and the Employee will engage in the interactive process, as appropriate, and the State Bar will have determined that no reasonable accommodation can be provided to the Employee that will allow them to perform the essential functions of the position without undue hardship to the State Bar.*

B. *Except as provided in Subsection C, below, a medical separation shall be based on:*

1. *A statement from the State Bar describing the essential job functions that the Employee is not able to perform satisfactorily, with or without reasonable accommodation;*

2. *The results of the interactive process; and*

3. *Any medical or other pertinent information provided by the Employee, the Employee's licensed health care provider and/or the written report from the State Bar-designated physician described in Subsection D, below, and/or other work-related information provided from appropriate State Bar personnel.*

C. *The Notice of Medical Separation shall inform any CalPERS vested employee that the State Bar will file an application for disability retirement with CalPERS on behalf of the employee unless the employee opts out of said application. The employee shall notify the State Bar no later than five (5) working days after the effective date of the medical separation whether the employee opts out of the Employer-Originated Disability Retirement Application. An employee's failure to opt out of the Employer-Originated Disability Retirement Application shall not be considered in a consideration of any grievance challenging the Medical Separation. If the employee does not opt out of the Employer-Originated Disability Retirement Application, the State Bar shall file an Application for Disability Retirement no later than the (10) working days after the effective date of the Medical Separation.*

D. *In determining whether an employee should be medically separated, the State Bar may require an Employee to submit to a medical examination by a physician(s) designated by the State Bar to evaluate the capacity of the Employee to perform the essential functions of the position. In designating the examining physician, the State Bar will limit itself to those physicians associated with and*

approved by California Medical Examiners. The State Bar will pay all fees and costs for such a medical examination. The Employee is required to provide an authorization for release of necessary medical records and information, either directly to the examining physician or to the State Bar, to forward to the examining physician. The examining physician will make a written report to the State Bar and the State Bar will share this report with the Employee and, at the Employee's written request, their representative.

E. The State Bar shall give the Employee written notice that it will medically separate the Employee. Such notice shall be provided by either personal delivery or mailing the notice to the employee's last known address via U.S. Mail or overnight courier. The notice of medical separation will include:

- 1. A statement that the Employee will be medically separated from work;*
- 2. A statement of the reason(s) for the medical separation;*
- 3. The effective date of the separation, which will be at least ten (10) working days from the date of the notice of medical separation;*
- 4. A statement of the Employee's right to respond to the notice of medical separation within ten (10) working days from the date of that notice;*
- 5. The individual to whom the Employee should direct their response.*

F. The Employee will have a right to respond, either orally or in writing, to the State Bar's medical separation decision before the effective date of the medical separation to the individual identified in the notice of medical separation.

G. The Employee may challenge the State Bar's medical separation decision by filing a grievance under Section 17 of the MOU within seven (7) working days of the effective date of the medical separation. Grievances of medical separations proceed directly to arbitration under the terms of the MOU. The sole issue for the arbitrator to decide is whether the Employee can, with or without reasonable accommodation, perform the essential functions of the position without undue hardship to the State Bar.

H. Employees who are medically separated, and for whom the State Bar has submitted or will submit an Employer Originated Disability Retirement Application, are eligible to apply for and eligible to receive up to twelve (12) weeks of Catastrophic Leave. Catastrophic Leave granted to medically separated

Employees shall be provided in the form of post medical separation severance pay, which shall be periodically disbursed to such Employees on the State Bar's regular pay days. This post medical separation severance pay, funded by the Catastrophic Leave Bank, will end either when CalPERS grants disability retirement or after twelve (12) calendar weeks, whichever is earlier in time.

~~I~~H. Employees who do not have fifteen (15) years of CalPERS service credit are ineligible to receive retiree health benefits under the State Bar's retiree health benefit plan described in Section _____. Employees with less than five years of State Bar service are ineligible to receive the minimum statutory retirement benefit under the Public Employees' Medical and Hospital Coverage Act ("PEMHCA"). Employees who are otherwise not eligible for retiree health benefits under the State Bar's retiree health benefit plan or the minimum statutory retiree health benefit under PEMHCA, may receive a retiree health benefit if they can identify a current or subsequently enacted CalPERS statute, regulation or rule that mandates the provision that that specific retiree benefit.

The parties also agree to add new Subsection 8 to MOU SECTION 26/27.M

M. CATASTROPHIC LEAVE BANK

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8. Notwithstanding any language to the contrary in this subsection M, the State Bar and the Union agree that Employees who are medically separated, and for whom the State Bar had submitted or will submit an Employer Originated Disability Retirement Application to CalPERS, are eligible to apply for and eligible to receive up to twelve (12) weeks of Catastrophic Leave pursuant to Section _____.H.

9. EXTENSION OF PROBATIONARY PERIOD: The parties agree to extend the probationary period for all General Unit employees hired after the effective date of this MOU to six (6) months. The parties have also agreed to change when and how long initial probationary periods may be extended due to employees' approved use of sick and vacation leaves during the initial probationary period. The parties also agreed to clarify the length of the probationary period to be served upon promotion to each Attorney Unit classification.

General Unit SECTION 9.

INITIAL PROBATIONARY PERIOD

A. Beginning on the date this MOU is ratified and becomes effective, employment as a regular full-time or regular part-time Employee in a General Unit job classification shall be subject to an initial probationary period of six (6) months.

B. The six (6) month period shall be extended by two weeks if any Employee misses a tenth (10th) day of work during their initial probationary period. Thereafter, the initial probationary period shall be extended by one day for each day or partial day of work the Employee misses beyond ten. Employees' use of sick leave and vacation leave, or any unpaid absence from work, shall count towards extending their probationary period.

C. The employment of an initial probationary Employee shall be terminable at will upon notice by either the State Bar or the initial probationary Employee. Termination of probationary Employees shall not be subject to the grievance procedure.

General Unit SECTION 13.L:

L. An Employee who is promoted or transfers shall serve a probationary period of ~~three (3)~~ six (6) months in the new position for a General Unit position. The new probationary period shall commence on the effective date of the Employee's promotion or transfer.

Attorney Unit SECTION 13.L:

L. An Employee who is promoted from the General Unit to the Attorney Unit shall serve a twelve (12) month probationary period. An Employee who is promoted from the Attorney classification to the Senior Attorney classification shall serve a six (6) month probationary period. An Employee who is promoted to Supervising Attorney shall serve a twelve (12) month probationary period. The new probationary period shall commence on the effective date of the Employee's promotion or transfer.

General Unit MOU Section 25.B and Attorney MOU Section 26.B are amended as follows:

B. ~~Regular full-time and regular part-time~~ Employees may request, and if approved, use accrued vacation time during their initial probationary period. However, using vacation time during an Employee's initial probationary period may extend that probationary period under Section 9.B. ~~shall extend his or her probationary period. Probationary periods shall be extended in one week increments, rounded up to the nearest week. For example, using one to five days of vacation shall extend the probationary period by one week, and use of six to ten days of vacation will extend the probationary period by two weeks. Extensions of an initial probationary period pursuant to Section 9.B by this subsection will not alter an Employee's anniversary date.~~

Current General Unit MOU Section 26.D and Attorney Unit Section 27.D are amended as follows:

D. Regular full-time and regular part time Employees may request, and if approved, use any Paid Sick Leave from the onset of employment. However, using Paid Sick Leave during an Employee's initial probationary period may extend that probationary period under Section 9.B. ~~shall extend his or her probationary period. Probationary periods shall be extended in one week increments, rounded up to the nearest week. For example, using one to five days of Paid Sick Leave shall extend the probationary period by one week, and use of six to ten days of Paid Sick Leave will extend the probationary period by two weeks. Extensions of an initial probationary period pursuant to Section 9.B by this subsection will not alter an Employee's anniversary date.~~

10. MAKE UP TIME: The parties have agreed to amend current Section 20.E.8 of the MOUs to increase the flexibility of make-up time and further agree that such make-up time can only be done within the same workweek as the missed time.

SECTION 20:

E.8. With the ~~advance~~ approval of their immediate supervisor, a nonexempt Employee may make up, up to four (4) hours per pay period for occasional absences from work for medical, dental or eye care of the Employee or a member of his or her immediate family, including a domestic partner, or for school related functions of minor children that cannot be accommodated at times other than during the individual work day.. The time must be made up within the same ~~pay period~~ workweek of the absence. Supervisor approval must be obtained prior to the scheduling or working of make-up time. Approval of such requests shall not be unreasonably denied by supervisors. Employees will not make such requests excessively. Time made up under this provision shall not constitute overtime under this Section.

11. LUNCH BREAK FLEXIBILITY: The parties agree to allow Employees, either at a designated time after the ratification of the successor General Unit MOU or the beginning of their State Bar employment, whichever is later, to choose between a 60, 45 or 30 minute lunch break. The parties have further agreed to effect this agreement with the following MOU language:

F. Non-Exempt Employees shall be entitled to a fifteen (15) minute paid rest period during each half-day and shall have the option of selecting either a thirty (30) minute, forty-five (45) minute, or a one (1) hour unpaid lunch period as part of their regular work schedule. Employees shall choose the length of their lunch

period by either, May 1, 2020, or their first day of employment, whichever is later. Variations to an Employee's scheduled lunch period shall be addressed through the make-up time provision in Section 20.E.8, approved by the direct supervisor, or shall be treated as tardiness or an unapproved absence if that variation was not approved in advance or is not otherwise excused by management. Lunch periods shall not be taken at the beginning or end of the workday.

12. VACATION CASH OUT: The parties have agreed to allow Employees who have at least three weeks of accrued vacation to cash out those weeks in one-week increments. The parties have agreed to the following amendment to current General Unit Section 25.H and Attorney Unit Section 26.H:

SECTION 25/26

H. Employees who have fifteen (15) or more days of accrued and unused vacation, may, upon written notification to the Office of Human Resources, cash in accrued and unused vacation in increments of one week, ~~one at a time~~, not to exceed a total of ~~two~~ three weeks per calendar year.

13. PERFORMANCE EVALUATIONS: Period of review and availability of an overall Exceeds rating: The parties have agreed to add the following language to current General Unit and Attorney Unit MOUs Section 22.H to clarify that the period of review for annual performance evaluations is one year from Employees' anniversary date and that an overall "Exceeds Requirements" rating is available.

SECTION 22

H. Each Employee shall receive an annual written performance evaluation from their first level manager on or about the anniversary date of their employment in their current position. Only performance issues within the given evaluation time period may be mentioned in the performance evaluation. An overall rating of 'Exceeds Requirements' shall be available to employees who exceed requirements.

14. DESIGNATION OF UNION STEWARDS: The parties agree that the MOU shall not specify the number of Stewards the Union may designate. To effect this tentative agreement, the parties agree to amend Section 7.A of the General and Attorney MOUs to state as follows:

SECTION 7

A. *The Union may appoint Union Stewards. ~~The number of such Union Stewards shall not exceed ten (10) from the General Unit. An Employee shall be eligible for appointment to Steward only after completion of their probationary period.~~*

15. SEVERANCE PAY FOR EMPLOYEES ACTUALLY TERMINATED AS A RESULT OF A LAYOFF: The parties have agreed to amend current Section 15.C of the General and Attorney Unit MOUs so that employees whose State Bar employment is actually terminated as a result of a layoff can be paid their severance pay on the effective date of the termination. To effect this tentative agreement, the parties agree to the following amendments to Sections 15.B and 15.C of the General and Attorney Unit MOUs:

SECTION 15

B. *Subject to Appendix F, the State Bar will pay severance pay of one week's salary for each completed year of employment as a regular full-time or regular part-time Employee. The maximum amount of severance pay shall be two weeks. This severance pay shall be payable on the Employee's final day of employment as set forth in the Employee's notification of layoff.*

~~C. — Severance payments made to Employees pursuant to this Section shall be paid on the normal State Bar paydays commencing with the payday next following the effective date of the layoff. Such payments shall be in an amount equal to the Employee's daily pay computed at his/her straight time hourly rate, for each workday during the period that he/she has been laid off and has not been recalled to employment by the State Bar pursuant to Section 14, Subsections J and/or K. Such payments shall continue until the Employee is recalled or until he/she has received the full amount of severance pay to which he/she is entitled pursuant to Subsection B of this Section, whichever occurs first.~~

16. EXPANDING BEREAVEMENT LEAVE: The parties agree to expand the categories of family members whose deaths qualify employees to take bereavement leave to include nieces and nephews. To effect this tentative agreement, the parties agree to the following amendment to current Section 27 of the General Unit MOU and current Section 28 of the Attorney Unit MOU:

SECTION 27/28: BEREAVEMENT LEAVE:

27/28. In the event of a death in the immediate family (i.e., spouse, including domestic partner; child, including foster, step or adopted; parent; brother; sister; father-in-law, including father of domestic partner; mother-in-law, including mother of domestic partner; grandparent; grandchild, aunts and uncles, nieces and nephews), Employees shall be entitled to bereavement leave of five (5) days with pay to attend a funeral. Such leave shall not be charged to vacation, paid personal leave or paid sick leave.

17. DRESS CODE: The parties agree to amend the State Bar's dress code and consequently agreed to the following amendment to current Section 23 of the Attorney and General Unit MOUs:

SECTION 23:

E. Dress Code. The Union and the State Bar agree that dress worn to work shall not be indecent or unsafe and shall present a professional image consistent with Employees' work assignments.

1. At all times, Employees shall not wear to work any of the following: dress that reveals undergarments or is otherwise objectionable to the reasonable observer; flimsy shoes such as rubber flip flops, or other foot wear that creates safety risks; sweat clothes or gym wear, including sneakers or tennis shoes; overalls or utility pants designed for outdoor labor; or clothing that is soiled or has holes or rips. The prohibition on gym wear shall not apply for the period Employees are coming to or leaving a work station. Upon a first violation of these standards, Employees shall receive an oral counseling and may also be required to return home to change clothing with no loss of compensation. Subsequent to a first oral counseling, violations may result in progressive discipline under Section 16 [Discipline].

2. Beyond the above, Employee dress shall present a professional image consistent with the Employee's work assignments. The State Bar's standard professional image is business casual dress (which excludes jeans, T-shirts and tennis shoes). The State Bar's professional image for court and other professional appearances is formal business attire, such as a dress suit or a suit and tie. Employee dress is a component of the Annual Performance Evaluation rating category "Professionalism/Presentation" and is subject to evaluation consistent with the Employee annual performance evaluation process governed by Section 10 [Evaluations].

3. Every Friday, Employees shall be permitted to wear casual clothing, subject to the requirements of Subsection 23.E.1, above, when

not engaged in work assignments that require formal business attire. Casual dress includes jeans that are neat, clean and otherwise consistent with Section 23.E, as well as sneakers or tennis shoes that are neat and clean.

18. WAIVING MINIMUM QUALIFICATIONS: The parties agree that State Bar management may waive the minimum educational job qualifications for incumbent State Bar employees applying for internal transfers or promotions. Thus, the parties agree to amend Attorney Unit and General Unit MOU Sections 13.E to state as follows:

SECTION 13:

E. If the designated representative of the Office of Human Resources initially determines that the Employee applicant appears to meet the minimum qualifications for the position, the designated representative will forward the application to the first level manager responsible for filling the position or their designee. Employee applicants will be considered for the position as internal applicants as long as the Employee applicants are qualified and apply within the open posting period. At its sole discretion, the State Bar may elect to waive minimum educational qualifications of a position for internal candidates who have shown through exceptional job performance that they have the requisite knowledge and skill to perform in a job position for which they may not meet the educational minimum qualifications.

19. PROMOTIONS-IN-PLACE: The parties agree to a promotions-in-place mechanism under which State Bar management may, at its discretion, promote incumbent employees outside of the normal process for applying to fill a vacant position. To effect this, the parties agree to add the following language as a new subsection in the Attorney and General Unit MOUs, with the existing subsections that follow the current subsection K being re-lettered:

SECTION 13

K. The State Bar may grant promotions-in-place. Promotions-in-place provide promotional opportunities for Employees ready to assume a role of greater responsibility and more complex duties by upgrading their current position to the next promotional job classification without having to wait for a job vacancy. A promotion-in-place may occur only under the following circumstances: (1) the Employee has demonstrated outstanding job performance in the their current job classification; (2) the Employee has shown based on their past performance the likelihood that they have the ability and willingness to succeed in the next promotional job classification; (3) the Employee meets the minimum qualifications for the next promotional

job classification under subsection E; and (4) the promotion-in-place will not result in a change to the Employee's Group or geographic office location as reflected in Appendix A, or to the Employee's Office. A promotion-in-place will not be subject to the normal process for applying for and filling regular job vacancies and will only be available to incumbent employees. Employees in their initial probationary period are ineligible for promotions-in-place. The Employee's salary upon a promotion-in-place shall be set consistent with Section 22.J. Employees who are promoted-in-place shall serve a six (6) month probationary period. The State Bar may grant a greater salary adjustment than required under Section 22.J concurrent with the promotion-in-place at its sole discretion. The decision to upgrade an incumbent Employee through the promotion-in-place process is at the sole discretion of the State Bar. The decision to grant a promotion-in-place or to not grant a promotion-in-place shall not be subject to the grievance procedure of the MOU. Promotions-in-place shall not be used to fill already posted vacancies or vacancies created by the departure or promotion of another employee.

20. CONSIDERATION FOR ENTRY-LEVEL TO JOURNEY-LEVEL ADVANCEMENT: The parties agree for a mechanism under which entry-level employees in 10 specific job series are automatically considered for advancement to the journey-level position in that job series. The parties also agree to add the following language as a new subsection in Section 13.L of the General Unit MOU, with the existing subsections that follow being re-lettered.:

SECTION 13

- L. The State Bar shall consider advancement to journey-level positions for entry-level employees in the Office Assistant I, Public Service Representative I, General Services Specialist I, Investigator I, Administrative Assistant I, IT Support Technician I, IT Analyst I, IT Business Analyst I, Legal Secretary I and Program Assistant I job classifications if all of the following conditions are met:*
- 1. Employees have completed at least two years of service in that job classification;*
 - 2. Employees have been rated as "Meets Requirements" or "Exceeds Requirements" in their last two annual performance evaluations;*
 - 3. Employees are deemed by their manager to meet the Knowledge and Abilities set forth in the job description for the journey-level position (e.g., Investigator II, PSR II) in their job series; and*

4. *Employees have been assessed by their manager to meet certain core competencies that journey-level employees in that job series must exhibit.*

Management has the sole discretion to identify, and modify in the future, the core competencies needed to be successful in the journey-level position. Management shall maintain documents listing currently applicable core competencies for the Office Assistant II, Public Service Representative II, General Services Specialist II, Investigator II, Administrative Assistant II, IT Support Technician II, IT Analyst II, IT Business Analyst II, Legal Secretary II and Program Assistant II job classifications and will make them available to members of the General Unit Bargaining Unit upon request.

Employees in the above-listed entry level positions or their managers may initiate a review for advancement to a journey-level position within the job series after two years of service with two annual performance evaluations with at least Meets Requirements ratings.

The decision to advance entry-level Employees to journey-level positions within the job series shall not be subject to the grievance procedure. However, advancing an eligible Employee from entry-level to journey-level positions shall not be unreasonably denied. If an entry-level employee is denied advancement under this subsection, the manager making the assessment shall provide the unsuccessful employee with a written statement detailing the reason why the advancement was denied and identify improvements which, if achieved, will lead to advancement from the entry-level position to the journey-level position in the future.

The salary of employees who are successfully advanced from entry-level to journey-level shall be set consistent with Section 22.J. Employees who are successfully advanced from entry-level to journey-level shall serve a six (6) month probationary period. If they fail their probationary period, such employees shall be returned to their entry-level position and returned to their prior salary as it existed prior to their advancement.

Advancement from entry-level to journey-level under this subsection shall not be used to fill already-posted vacancies or vacancies created by the departure or promotion of another employee. Nothing in this subsection is intended to imply that Employees cannot apply for vacant positions that are internally posted, even if they have been determined to not meet the requirements or core competencies for advancement from entry to

journey-level position after they have been automatically considered under this subsection.

21. REALISTIC CAREER PATHWAYS FOR LEGAL SECRETARIES: The parties have agreed that the State Bar will place one Legal Secretary II from OCTC Los Angeles and one Legal Secretary II from OCTC San Francisco in six-month T&D assignments as Legal Secretary IIIs. This T&D placement is intended allow the State Bar to assess the need for a Legal Secretary III position in OCTC. The parties agree that this agreement need not be reflected in the language of the successor MOUs.
22. HIRING ABOVE MINIMUM – SUPPLEMENTAL INFORMATION IN MONTHLY REPORT: The parties agree that the State Bar will provide supplemental information in the monthly report the Office of Human Resources provides to the Union when the State Bar hires a new employee at above the minimum of the salary range associated with the job classification for which the new employee was hired. To effect this agreement, the parties agree to amend the Attorney and General Unit MOUs, Section 22.B, as follows:

SECTION 22:

B. The general rule is that the State Bar will offer newly hired Employees starting salaries at the minimum of the applicable salary ranges for the vacant positions they will be occupying. The State Bar has the discretion to deviate from this general rule under the following circumstances:

- 1. An applicant has, in the judgment of the State Bar, exceptional qualifications (such as advanced education, job experience, licensure/certification or special skills that the State Bar deems relevant for a vacancy); or*
- 2. Recruitment difficulties in the job classification to which the applicant is being hired; or*
- 3. A former State Bar employee returning to the State Bar into a position he or she previously held.*

The State Bar shall provide the Union with a monthly report listing the names of all Employees that have been newly hired at above the minimum salary for their job classification, the dates of hire, their starting salaries, and a brief statement identifying the circumstances supporting deviating from the general rule. If the hire above minimum salary is based on advanced education, the statement shall specify the school, the type of degree, and the minimum education level (for the job description hired into). If the hire above minimum salary is based on years of experience, the statement shall specify the number of years of experience above the minimum required for the job description and the nature of that work experience. If the circumstances are based on licensure/certification or special skills, the statement shall specify the type of license or special skill.

The State Bar's decision to hire at above minimum of the applicable salary range shall not be subject to the grievance process. However, the State Bar's failure to provide the above-described monthly reports of those hired at above the minimum shall be subject to the grievance process. No other aspect of Section 22.B shall be subject to the grievance process.

23. OUT OF CLASS WORK: The parties agree to a new procedure for resolving disputes involving claims that Employees are working outside of their assigned job classification. The parties agree to the following language:

SECTION 22:

- C. *Employees are working "out-of-class" when they spend a majority (i.e., more than fifty percent [50%]) of their time over the course of at least two (2) consecutive work weeks performing duties and responsibilities associated with a higher level existing classification that do not overlap with the job classifications said employees hold.*

Training and Development assignments are not deemed out-of-class work.

For purposes of this section, a job classification is at a "higher level" if its salary range has a higher maximum salary than the salary range of the classification said Employee holds.

1. *When Employees are assigned out-of-class work, they shall be paid a pay differential for out-of-class work equal to the minimum salary of in the salary range of that higher level position, or five percent (5%) in excess of their current State Bar salary, whichever is greater.*
2. *Out-of-class work may be discontinued by Offices at any time; however, Offices may not rotate employees in and out of out-of-class assignments to avoid payment of out-of-class compensation.*
3. *No position covered by this Memorandum of Understanding shall remain unposted for more than sixty (60) days while filled on an acting basis. In no event shall the position continue to be filled on an acting basis for more than six (6) months. In the event that the State Bar and Union disagree on whether employees are performing out-of-class work, these time periods regarding posting of positions or the filling of positions on an acting basis shall run from the date the State Bar and the Union agree, during the grievance process, that the out-of-class work is being performed or from the date of an arbitral award finding that out-*

of-class work occurred. The time period regarding the posting of positions or the filling of positions shall not apply when out-of-class work is being performed due to a leave of absence of employees holding higher level job classifications.

- 4. Out-of-class pay shall not be considered as part of an Employees' base pay when computing the rate due upon promotion to a higher level, as set forth in Section 22.J, below.*
- 5. Employees who believe they are working out-of-class without additional compensation may file a grievance.*
- 6. The only remedy that shall be available is retroactive pay for out-of-class work. Said pay shall be limited to out-of-class work performed (a) during the one (1) year calendar period before the employee's grievance was filed;-and (b) the time between when the grievance was filed and finally resolved by either an informal agreement or under the grievance process. Thus, Arbitrators may only have the authority to determine whether grievants are working out-of-class and if so, the amount of out-of-class compensation they are owed. Arbitrators shall have no authority to order reclassification of grievants' positions or discontinuance of out-of-class work assignments.*
- 7. This Subsection shall not apply to Employees assigned to work or who perform work in job classifications that have a maximum salary to its salary range that is lower than said Employees' official job classification.*

SECTION 17 GRIEVANCES

K. The term "grievance" as used in this Section shall not include...

~~*2. The contents of a position description, changes in a position description, and classifications, such matters being exclusively governed by the procedure set forth at Section 22.C;*~~

- 24. TERM OF THE MOUs: The parties agree that the term of the MOUs shall begin April 16, 2020, or the date both parties have ratified the agreement, whichever comes later. The MOU's shall expire on December 31, 2022.*

SECTION ____ TERM OF THE MEMORANDUM OF UNDERSTANDING

A. This Memorandum of Understanding shall be effective April 16, 2020, or the date both parties have ratified the agreement, whichever comes later, and shall remain in full force and effect through December 31, 2022, and continue from year to year thereafter, unless either the Union or the State Bar serves notice upon the other to amend or modify said Memorandum of Understanding on or before the fifteenth day of March 2022.