

## **ARTICLE 1 AGREEMENT**

This Agreement, effective July 1, 2003, is entered into between The Regents of the University of California, a corporation (hereinafter referred to as the "University", or "management", or "employer"), represented by the Office of the President of the University of California system, and the University Professional and Technical Employees - Communications Workers of America Local 9119 union, (hereinafter referred to as "UPTe" or the "union", pursuant to the provisions of the Higher Education Employer-Employee Relations Act (HEERA).

### **A. PURPOSE**

It is the intent and purpose of the parties that this Agreement constitutes an implementation of the provisions of HEERA, and provides for orderly and constructive employment relations in the public interest, in the interests of the employees represented by UPTe, and in the interests of the University. The parties hereby acknowledge that this Agreement represents an amicable understanding reached by the parties as a result of the unlimited right and opportunity of the parties to make any and all demands with respect to the employer-employee relationship that exists between them relative to the scope of bargaining.

### **B. EXCLUSIVE REPRESENTATIVE**

The University recognizes UPTe-CWA 9119, which was certified by the Public Employment Relations Board (PERB) on September 15, 1997 in SF-PC-1053-H as the sole and exclusive representative for the purposes of collective bargaining with respect to wages, hours, and terms and conditions of employment for all employees, excluding employees defined by HEERA as managerial, supervisory and/or confidential and all student employees whose employment is contingent upon their status as students, in the Health Care Professionals (HX) bargaining unit.

### **C. EMPLOYEE DEFINED**

The term "employee" as used in this Agreement shall refer to employees of the University of California in the HX unit, except for those excluded pursuant to Section B., above. The classes and title codes included in the HX unit are listed in Appendix A.

### **D. CREATION OF NEW CLASSIFICATIONS**

1. UPTe recognizes that the University has the exclusive right to establish new title codes and titles for any individual, position, or title included in or excluded from the bargaining unit, as defined in Section B. of this Article. The University shall advise UPTe of any such new title/title code.
2. When the University creates a new classification and title within the bargaining unit, the University shall provide a notice to UPTe of the classification's bargaining unit assignment at least sixty (60) calendar days before the proposed date of implementation. The notice to the union shall include a statement of reason(s) for the creation of the new classification. UPTe shall have 30 calendar days after mailing of such notice to contest the University's assignment of the newly created classification/title to the HX bargaining unit. Employees shall not be placed in the new classification/title until the thirty (30) day notice period is complete. If UPTe does not contest the bargaining unit assignment of the newly created position within the 30 calendar day notice period, the unit assignment of the new classification shall be deemed agreeable to the parties and employees shall be assigned to the newly created classification.
  - a. If the new classification is in the bargaining unit in accordance with the provisions of Section D.1., above, the University and UPTe shall meet and confer regarding the salary range and ancillary pay practices for that new classification in accordance with its protocols.

- b. If UPTE contests the bargaining unit assignment of the newly created classification/title within 30 calendar days of receiving notice from the University, the University and UPTE shall meet in an effort to reach agreement on the bargaining unit assignment for the classification. If the parties are unable to reach agreement regarding the bargaining unit assignment of the title/classification, the dispute shall be submitted to PERB for resolution.
  - c. No employee shall be assigned to the newly established classification or title until the bargaining unit assignment is either agreed to or resolved by PERB, although the duties associated with the position may be assigned to the affected employees.
3. When the University creates a new classification and title outside the bargaining unit the University shall mail a notice to UPTE of the classification's bargaining unit assignment, if any.
  4. UPTE shall notify the University within 30 calendar days of the mailing of the notice if UPTE intends to challenge the University's bargaining unit assignment of the new title and classification. The parties will meet to discuss UPTE's concerns. Following the discussions, any unresolved disputes may be submitted to PERB for resolution.

**E. RECLASSIFICATION FROM UNIT TO NON-UNIT POSITIONS**

In the event the University determines that a position should be reclassified or designated for exclusion from the unit, or the University intends to replace the major portion of a bargaining unit position with a position in a classification outside of the unit, the University shall notify UPTE in writing at least thirty (30) calendar days prior to the proposed implementation. If UPTE believes that the action violates this Agreement, UPTE shall, within thirty (30) calendar days of the mailing of the University's notice, notify the University in writing that it wishes to challenge the action. The parties will meet to discuss UPTE's concerns. Any unresolved disputes that remain following these discussions may be submitted to PERB for resolution. The discussions shall not delay the exclusion.

**F. ABOLITION OF CLASSES**

The University shall inform UPTE when classifications are abolished. The University will provide UPTE with sixty (60) days notice of its intent to abolish a classification. The notice to the union shall include a statement of the reason(s) for the abolition. In the event employees will be affected by the abolition of a classification, the University and UPTE shall, following the request of UPTE, meet at least 30 days before the intended date of implementation unless the parties agree otherwise. The University shall not abolish the classification unless the parties have reached an agreement. If the parties are unable to reach an agreement, the dispute shall be submitted to PERB for resolution.

**ARTICLE 2  
ACCESS**

**A. GENERAL PROVISIONS**

The parties acknowledge that it is in the union's interest that it be granted access to University facilities for union business for the purpose of ascertaining whether the terms of this Agreement are being met; engaging in the investigation, preparation, and adjustment of grievances; conducting union meetings; explaining to bargaining unit members their rights and responsibilities under the Agreement; and informing Healthcare Professionals Unit employees of union activities, including collective bargaining.

1. The University has the right to enforce reasonable access rules and regulations as promulgated at each campus/hospital/laboratory.

**B. PATIENT CARE AREAS**

Union representatives shall have access to patient care areas only as necessary for travel to and from union business. UPTe representatives shall not contact employees in, or use patient care areas when conducting union business. When the designated campus/hospital/laboratory official and the union representative mutually agree that a visit to a patient care area is necessary to adjust grievances, and contract related issues, access to patient care areas will be granted. "Patient care area" includes:

1. Chart rooms and rooms that function as or are in the nature of chart rooms;
2. Nursing stations;
3. Patient and/or visitor lounges including patient conference rooms, sitting rooms, and solaria;
4. Libraries or study areas located within patient care areas;
5. Patient floor and operating room area corridors; and
6. Patient rooms, operating rooms, laboratories, clinics, and other treatment and patient care areas.

**C. ACCESS BY THE UNION/UNION REPRESENTATIVES — GENERAL PROVISIONS**

1. Designated union UPTe representatives who are not University employees, or who are not employed at the facility visited, may visit the facility at reasonable times and upon notice to the designated campus/hospital/laboratory representative to discuss with the University or bargaining unit members matters pertaining to this Agreement. In the case of visits for the purpose of conducting unscheduled meetings with bargaining unit members, the union representative shall give advance notice upon arrival in accordance with local campus/hospital/laboratory procedures.

2. UPTe will furnish the University with a written list of all UPTe representatives, employee representatives and UPTe officers who are authorized by the union to conduct union business.

This list shall be maintained in a timely manner by UPTe and any changes, additions or deletions to the list must be made in writing to the University.

3. Union business or activities such as membership recruitment, campaigning for union office, hand-billing or other distribution of literature, drafting of information to employees about union business/activities, and all other union activities shall take place during non-work time. Employee rest and meal periods are non-work time for the purposes of this Article.

**D. EMPLOYEE REPRESENTATIVES**

1. The University shall recognize UPTe designated employee representatives who have been identified in accordance with the terms of this Agreement. The function of the UPTe designated employee representative is to inform employees of their rights under this Agreement, to ascertain that the terms and conditions of this Agreement are being observed, and to investigate and assist in the processing of grievances.
2. For the purposes of receiving paid release time as provided in this section, each hospital/campus/laboratory may have one UPTe-designated employee as UPTe designated employee representative (for example, one representative from the San Diego campus & hospitals). If a campus/hospital/laboratory has more than 100 bargaining unit members,

UPTE may additionally designate one UPTE-designated employee representative for each 100 bargaining unit members thereafter, up to a maximum of six UPTE-designated employee representatives per campus/hospital/laboratory. UPTE shall not designate more than one UPTE designated employee representative per department.

- a. The total cumulative use of paid release time for any UPTE designated employee representative shall be limited to ten hours in any one month. University convened meetings pursuant to Article 8 - Grievance Procedure, shall not be deducted from this block of time.
- b. The use of the maximum of ten hours shall be for grievance-related activity such as:
  - 1) The initial hand-delivered filing of a grievance and the retrieval of University documents provided pursuant to a written request for information related to a grievance;
  - 2) One on one meetings with a grievant concerning a filed grievance, or an alleged violation of this Agreement which is at the Informal Review stage of Article 8, Grievance;
  - 3) Meetings with the University representative to whom written grievances are presented or to whom documents related to filed grievance are presented/signed or with whom time limit agreements are achieved;
  - 4) Informal Review meetings held pursuant to Section E. of Article 8, Grievance;
- c. A request for release time will be made to the UPTE designated employee representative's supervisor prior to the activity. Such approval shall be granted solely based on operational needs and shall not be denied unreasonably.
- d. At its sole discretion, the University may authorize use of release time for more than ten hours in a month per department. The exercise of this discretion and/or the enforcement by the University of the ten hour maximum shall under no circumstances establish a precedent for the UPTE designated employee representative or department involved. Furthermore, the allowance of greater than ten hours in a month for an UPTE designated employee representative shall not have any effect or bearing on the University's ability to enforce the ten hour maximum on any other UPTE designated employee representative.
- e. Should a question of possible abuse of these release time provisions arise, the University will so notify UPTE, and the parties will attempt to resolve the matter. If a question remains, the University may take corrective action when warranted.

#### **E. MEETING ROOMS AND BULLETIN BOARDS**

1. UPTE shall be granted use of designated general purpose meeting rooms. Such use shall be arranged in advance with the designated campus/hospital/laboratory office and will not be unreasonably denied. Room reservations shall not be canceled by the University except where unforeseen circumstances require the room to be used for purposes such as teaching, or patient care-related purposes, or staff conferences. If a reserved room is canceled, the University will attempt to provide a comparable alternative.
2. UPTE shall have access to general purpose bulletin boards and shall have the use of those bulletin boards. Any materials posted must be dated and initialed by the union representative responsible for the posting and a copy of all materials posted must be provided to the appropriate University representative at the location at the time of posting. At those

locations where the University is responsible for posting material on bulletin boards, the University will post copies of the UPTe-provided material within one business day.

**F. MAIL DELIVERY**

United States mail, which is received by the University bearing an employee name and accurate address, will be placed in the employee mailboxes in the normal manner. In departments where employee mailboxes exist, the union shall have reasonable use of them. In departments where individual mailboxes are in a restricted work area, UPTe may make arrangements with the responsible University official in the restricted work area to have the UPTe mail placed in the employee mailboxes. Where mailboxes do not exist for employees, the University will distribute UPTe mail to employees by the normal method.

**G. TELEPHONE USE**

Employee representatives may use University telephones to conduct union business which is specifically authorized by Article 8, Grievance Procedure. Employees are responsible for paying any costs associated with such telephone usage in accordance with the departmental procedures in effect at the time. The frequency and duration of permitted telephone calls shall not be such as to interfere with or disrupt the employees' completion of work assignments, nor impair the efficiency of University operations. UC may audit employees use of telephone system.

**H. E-MAIL USE**

Any use of e-mail by employee representatives shall conform to and be in accordance with applicable University policy regarding mail/electronic communications.

**I. EMPLOYEE LISTS**

On a yearly basis, the University shall provide UPTe with an alphabetized list by campus/laboratory/hospital of all employees at each campus/laboratory/hospital. This list will be on disk in the format requested by UPTe and will contain the name, title, campus mailing address, appointment type, last date of hire with continuous employment, pay rate, and department to which the employee is assigned. Home address will be provided if the employee has agreed to release of the home address.

1. Once each month each campus/laboratory/hospital will provide to UPTe a list of changes (e.g. salary adjustment, new hire, transfer, promotion, discharge, home address, etc.) that have occurred within the bargaining unit.
2. UPTe agrees that this monthly list of changes will not be implemented until approximately three months after execution of this Agreement: prior to that time, the previous practice regarding Master Lists will remain in effect.

**J. DISTRIBUTION OF AGREEMENT**

The University shall make available a copy of this Agreement to each employee in the Health Care Professionals Bargaining Unit. The University and UPTe shall split the cost of printing contracts for unit members. In addition, the parties shall each pay for the number of copies they need for administrative and other purposes.

**K. NEW EMPLOYEE ORIENTATION**

UPTe may be permitted to meet with new bargaining unit employees in accordance with local Campus/Medical Center/Laboratory timetables, policies and practices for a reasonable period of time not to exceed 30 minutes immediately after new employee orientation sessions, if any, for the purpose of sharing information with new bargaining unit employees.

**ARTICLE 3  
ARBITRATION PROCEDURE**

**A. GENERAL CONDITIONS**

1. An appeal to arbitration may be made only by the union and only after the timely exhaustion of Article 8, Grievance Procedure. The appeal to arbitration must be signed by the President of UPTE-CWA Local 9119, and filed with the Office of Labor Relations, Office of the President.
  - a. When hand delivered, proof of service must accompany the appeal to arbitration. The date of receipt will be used to determine the date of the appeal for hand-delivered appeals.
  - b. When mailed, the appeal must arrive in an envelope with a U.S. Postal Service Postmark. The U.S. Postal Service Postmark will be used to determine the date of the appeal for mailed appeals.
2. For the purposes of this Article, time limits are calculated in calendar days, and deadlines which fall on a day which is not a University/campus business day will automatically be extended to the next business day. All time limits may be extended by written agreement of the parties in advance of the expiration of the time limit. The union's failure to meet any time limit, or extension to a time limit, will render the Appeal to Arbitration ineligible for further processing and the University's Step 3 answer will be considered final.
3. If the appeal to arbitration is withdrawn or an arbitration hearing otherwise does not take place, the University's Step 3 answer will be considered final.
4. The decision of the arbitrator on any issue properly before her/him shall be final and binding.
5. An appeal to arbitration shall not prohibit efforts by the University and UPTE to resolve the grievance during the time the appeal is pending and until such time that an arbitrator has rendered her/his decision.
6. UPTE shall have full authority to settle, withdraw or otherwise dispose of any grievance brought on behalf of the union and/or on the behalf of employees. An agreement by the parties to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration shall be binding upon the grievant(s).
7. Where two (2) or more grievances are appealed to arbitration, all grievances by or related to the same employee(s), or grievances which relate to the same incident, issue or course of action, may be consolidated by agreement of the parties.
8. **TIME LIMITS**
  - a. **INITIAL FILING** - An appeal to arbitration must be filed within thirty (30) calendar days of the issuance of the University's Step 3 decision to the union. Appeals which do not contain the appropriate union signature will be considered ineligible for appeal to arbitration.
  - b. **UNIVERSITY ACKNOWLEDGMENT OF RECEIPT** - Within fifteen (15) calendar days of the postmark or, in the case of hand delivery the date of receipt, of the union's appeal to arbitration, the University shall mail to the union an acknowledgment of the receipt of the appeal and the identity of the location to which all relevant correspondence should be directed.
  - c. **SCHEDULING OF THE HEARING DATE** - Within ninety (90) calendar days from the date the grievance was originally appealed to arbitration; the parties shall select an arbitrator and schedule an

arbitration date. Should the parties be unable to agree to a hearing date, the authority to schedule the hearing rests with the arbitrator. The parties may extend the ninety (90) day limit for scheduling the arbitration by mutual written agreement in advance of the expiration of the time limit. In such cases the arbitrator shall be provided with a copy of the written agreement.

d. UPTe REQUEST THAT A GRIEVANCE BE PLACED IN ABEYANCE - Should UPTe make a request that the grievance be placed in abeyance for any reason, the period of abeyance shall not exceed ninety (90) days. The provisions of Section H.1 shall apply to grievances placed in abeyance by UPTe. Failure by UPTe to reactivate the grievance within the ninety (90) day time limit following agreement by the parties that it be held in abeyance will render the grievance ineligible for arbitration and the last preceding University written answer shall become final.

9. An appeal of an expedited grievance to arbitration may be made only by UPTe in accordance with this section. Requests for arbitration under the expedited grievance, Section F.2.e., of Article 9, Grievance Procedure must include a copy of the completed grievance form.

## **B. DEFINITIONS**

For the purposes of this Article, the terms:

1. "GRIEVANT" means any employee covered by this contract who has a grievance or complaint (as defined by this Article);
2. "WITNESS", for the purposes of release time, means any employee covered by this contract who is serving as a witness in a grievance proceeding;
3. "EMPLOYEE REPRESENTATIVE" means any employee covered by this contract who is a designated union representative of UPTe, in accordance with the provisions of Article 2, Access; and
4. "UPTe REPRESENTATIVE" means any person who is a non-university employee acting in the interest of or on behalf of UPTe.
5. "THE PARTIES" means the University and
  - a. the grievant; and/or
  - b. the "UPTe representative" or the "employee representative" serving as the grievant's representative.

## **C. EMPLOYEE REPRESENTATION**

Union representation at the arbitration hearing may consist of up to two (2) representatives, with only one (1) of the two (2) representatives being eligible for without-loss-of-straight-time-pay status. Only one (1) of these individuals may be designated as the employee advocate for the course of the hearing.

## **D. SELECTION OF ARBITRATOR**

Within forty-five (45) calendar days of the date of the appeal to arbitration, the arbitrator shall be selected using the following permanent panel procedures:

1. On a case by case basis, the parties may agree to the selection of any qualified and available person to serve as an arbitrator. Absent such agreement, the parties may agree to the selection of an arbitrator from their respective panel.
2. In the event the parties cannot agree to an arbitrator, the parties shall select the names of seven (7) arbitrators from the appropriate panel, as provided in Section L.6., below, by blind lot. The parties shall then alternately strike one (1) name each from the seven names. The first

strike will be determined by a flip of a coin, and the last name remaining shall be the arbitrator.

3. If both parties disagree with the arbitrator who has been selected, the process shall be repeated once in its entirety.
4. A separate arbitrator shall be selected for each grievance appealed to arbitration, unless the parties agree otherwise in writing.
5. The parties may agree in writing to extend the forty-five (45) day limit for selecting the arbitrator. Failure to select the arbitrator within forty-five (45) calendar days, or to achieve a written extension of the time period, will render the appeal to arbitration ineligible for further processing and the University's Step 3 answer will be considered final.
6. If UPTE initiates the selection process in writing to the University with a preferred arbitrator from the arbitration panel and there is no written University response by the deadline for selection of the arbitrator (45 days from UPTE's appeal to arbitration), then the UPTE choice shall be final unless UPTE initiates the selection process within 15 business days of the deadline for selection of the arbitrator. In such case, the University shall have 15 business days to respond to UPTE's choice of an arbitrator and the period for scheduling the arbitration hearing shall be extended by 10 business days.
7. All arbitrability disputes, substantive or procedural, shall be subject to arbitration under this Article 3 including disputes arising from University claims that UPTE has lost the right to pursue arbitration of a pending grievance because of untimely processing or that the grievance is ineligible for further processing.
8. The process set forth herein to pursue an arbitrability hearing when the University claims that UPTE has failed to select an arbitrator in a timely manner shall be the exclusive process for such purpose, superceding and/or replacing any other claimed process.
9. When the University refuses to proceed to arbitration on a grievance on the grounds that UPTE has failed to participate in the selection of arbitrators in a timely manner as required by Article 3, Section D.5., of the contract, only UPTE will make a demand for arbitration of that issue in writing to the Office of the President within 30 days of the postmark of the campus notification to the union that the case is ineligible for further processing.

#### **E. SCOPE OF ARBITRATION**

1. Unless there is an agreement by both parties to modify the scope of the hearing, the issue(s) to be heard by the arbitrator shall solely and in its entirety be restricted to the issue(s) stated by Step 3. Issues or allegations which were known or should have been known to either party but not introduced by the Step 3 process shall not be introduced by either party at the arbitration hearing, except as provided in Section E.2., below.
2. When practicable, the University shall inform UPTE in writing of its intent to assert the issue of arbitrability prior to the selection of the arbitrator in its Acknowledgement of Receipt, according to A.8.b above. The issue(s) of arbitrability shall be resolved in a hearing prior to and separate from the hearing (if any) about the substantive facts and/or allegations in dispute, except as provided in Section E.3., below. In such case the parties shall use the selection process described in Section D. above to select two arbitrators. The first arbitrator will be selected to hear the issues of arbitrability and the second arbitrator will be selected to decide the merits of the case if the issues are determined to be arbitrable. Unless either party requests a full and complete arbitration proceeding on the arbitrability issue, the first arbitrator shall issue either a bench decision, or upon either party's request, a written decision with 7 calendar days of the completion of the arbitrability hearing. In the event that the first arbitrator, as a result of the hearing referenced above determines a matter to be



arbitrable, the first arbitrator shall have no authority to decide the issues pursuant to the merits of the case. A hearing on the merits of the case will be scheduled with the second arbitrator, unless the parties agree otherwise.

3. If, following the University's acknowledgement of UPTe's appeal to arbitration in A.8.b, the University raises for the first time issue(s) of arbitrability a single hearing on the issue of arbitrability and the substantive facts will be held, unless the parties agree otherwise. If the arbitrator finds the grievance to be not arbitrable, the substantive facts of the case need not be heard and the grievance shall be denied. If the arbitrator finds in favor of arbitrability, the hearing shall proceed to the substantive issues raised.
4. Section E.1. and Section E.2. above, shall not prevent the parties from agreeing in writing to combine the arbitrability hearing with the hearing on the merits of the case.
5. If the union requests a postponement of the scheduled arbitration hearing following the University's raising issue(s) of arbitrability, the hearings on arbitrability and facts, if any, shall be separate, and the provisions of Section E.3. above, shall apply.

#### **F. ARBITRATION PROCEEDING**

1. The parties will attempt to agree on a location for the arbitration hearing.
2. The arbitration hearing shall be closed to anyone other than the participants in the arbitration hearing, unless the parties otherwise agree in writing.
3. The arbitration hearing shall provide an opportunity for UPTe and the University to examine and cross-examine witnesses under oath or affirmation, and to submit relevant evidence.
4. Settlement offers made any time during the Grievance and/or Arbitration Procedure shall not be introduced as evidence in the arbitration hearing.
5. Either or both parties may, at their discretion, file briefs with the arbitrator. The order and time limits of briefing shall, on a case by case basis, be as agreed upon by the parties or as specified by the arbitrator. Briefing time limits shall be extended by the Arbitrator upon the agreement of both parties.
6. The arbitrator shall consider the evidence presented and render a written decision within thirty (30) calendar days of the close of the record of the hearing.
7. In all cases appealed to arbitration pursuant to the terms of this Article and this Agreement, UPTe has the burden of initiating the steps in the procedure. With the exception of those cases in which the issue is that of actions taken by the University pursuant to Article 6 – Corrective Action, Discipline and Discharge, UPTe shall have the burden of proof. The burden of proof in cases in which the issue is that of actions taken by the University pursuant to Article 6 – Corrective Action, Discipline and Discharge, shall be the University's.
8. Prior to the hearing, the parties may endeavor to exchange the names of known witnesses and relevant materials to be introduced at the hearing.

#### **G. AUTHORITY OF THE ARBITRATOR**

1. The arbitrator's authority shall be limited to determining whether the University has violated the provision(s) of this Agreement. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify or ignore in any way the provisions of this Agreement and shall not make any award which would, in effect, grant UPTe or the employee(s) any terms which were not obtained in the negotiation process.

2. The arbitrator shall have the authority to subpoena documents and to require the attendance of witnesses upon the reasonable request of either party but not upon his/her own motion.
3. The expense of service and appearance fees, if any, shall be borne entirely by the party requesting the subpoena of witnesses and each party shall, in advance of the hearing date, inform the other party of the identity of witnesses it subpoenaed.
4. The arbitrator shall have the obligation of assuring that all necessary facts and considerations are brought before her or him by the representatives of the parties at the hearing. In all respects s/he shall assure that the hearing is a fair one. The arbitrator shall be the sole judge of the relevancy and materiality of the evidence and testimony offered. The arbitrator may receive and consider evidence but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed at the hearing, or within the post-hearing time lines agreed to by the parties during the hearing.

#### **H. ARBITRATION REMEDIES**

1. No remedy by an arbitrator with respect to any grievance which shall be submitted to her/him shall in any case be made retroactive to a date earlier than thirty (30) calendar days prior to the filing of the Step 1 grievance, except for the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages. For grievances involving the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages, an award of an arbitrator shall not in any case be made retroactive to a date earlier than three (3) years prior to the initiation of the written grievance in Step 1 of the Grievance Procedure. Additionally, no remedy shall be provided for any period of time during the grievance and/or arbitration procedure for which an extension of time limits has been granted at the request of UPTE; any period of time between the date a hearing was originally scheduled to be held, and due to a request from UPTE to postpone or change the scheduled hearing, the rescheduled date of the hearing; or any time an employee was on strike.
2. In any decision of a grievance appealed to arbitration involving retroactive payments, the appropriate University and UPTE representatives shall expeditiously determine the identity of the payees and the specific amount owed each payee. Such amount of payment shall be final and no employee or group of employees may subsequently grieve the amounts owed.
3. Remedies involving monetary payment and/or credit shall be limited in their calculation to the utilization of the employee's actual and appropriate wage or benefit amount at the time of the violation and shall not include the awarding of interest or any other payment/credit unrelated to a University benefit amount or the employee's hourly wage.
4. Upon the motion of either party, or at his or her own discretion, an arbitrator may retain jurisdiction in cases involving an award of retroactive monetary payment and/or credit.
5. If the grievance is sustained in whole or in part, the remedy shall not exceed restoring to the employee the pay, benefits or rights lost less any compensation from any source, including but not limited to Workers' Compensation, Unemployment Compensation or other employment.

#### **I. COST OF ARBITRATION**

1. The cost of the arbitrator and expenses of the hearing will be shared equally by the University and UPTE. If either party requests that a stenographic record of the hearing be made and/or transcripts of the stenographic record or a taped record be provided, the parties shall equally share the entire cost of such service and the cost of the provision of a transcript to each party and the arbitrator.

2. In the event either party requests the cancellation or postponement of a scheduled arbitration proceeding which causes an arbitrator to impose a cancellation or postponement fee, the party requesting such cancellation or postponement shall bear the full cost of the cancellation/postponement fee. In the event the parties agree to settle or postpone the arbitration during the period of time in which the arbitrator will charge a cancellation/postponement fee, the parties will equally bear the cost of the fee, unless the parties agree otherwise.

**J. PAY STATUS**

1. The grievant, as defined in Article 8, Grievance Procedure, Section A.5.a., (one [1] grievant in a group grievance) shall be in a without-loss-of-straight-time-pay status at the arbitration hearing.
2. The University and UPTE shall establish a reasonable schedule for witness(es)' testimony at the arbitration proceeding. Employee witnesses who appear at the arbitration hearing at the request of UPTE shall be in a without-loss-of-straight-time-pay status for the time spent actually giving testimony or waiting to testify in accordance with the established schedule. Every effort shall be made by UPTE to avoid the presentation of repetitive witnesses.
3. Total release time for the grievant, employee representative and witness(es) for travel to/from the hearing and for participation in the hearing shall not exceed either their normally scheduled hours of work for the day(s) of the hearing or their actual participation in the hearing. Participants shall travel to/from the hearing via the most expeditious method of transportation available.
4. Not more than one employee representative will be released in without-loss-of-straight-time-pay status for attendance at any one (1) arbitration hearing.
5. The University shall not be responsible for any lodging, travel expenses or other expenses incurred by grievants, witnesses, employee or UPTE representatives with regard to the union's presentation in the arbitration hearing.

**K. EXPEDITED ARBITRATION**

The parties may agree to use an expedited form of arbitration, to be agreed to by the parties and the arbitrator.

**L. ARBITRATION PANEL**

1. The parties will make an attempt to agree on the panel of thirty (30) arbitrators, with fifteen (15) on a Northern Panel, and fifteen (15) on a Southern Panel. Nothing shall preclude the parties from including an arbitrator on both the northern and southern lists. If agreement cannot be reached on the names of the arbitrators on each list, the remaining number of arbitrators needed to complete a panel will be selected alternately by the parties. The party selecting first shall be determined by a flip of a coin.
2. After one (1) year from the date the panel members were initially selected, and annually thereafter, each party shall have the right to eliminate up to one (1) arbitrator from the panel. A party exercising this right shall notify the other party in writing of the name of the arbitrator to be stricken from the panel.
3. In replacing arbitrators who were eliminated from the panel, the procedure in Section L.1. shall be used again but any arbitrator eliminated in Section L.2. above, may not be placed back on the panel until at least one (1) year from the date on which such arbitrator was stricken.

4. In the event one (1) vacancy in the panel of arbitrators occurs, other than the elimination of an Arbitrator by the parties pursuant to Section L.3., above, such vacancy may be filled by the parties within thirty (30) calendar days, using the procedures in Section L.1. and 2. above, if the parties agree that a replacement is necessary. In the event more than one vacancy in the panel of arbitrators occurs, such vacancy shall be filled by the parties within thirty (30) calendar days by using the procedures in Section L.1. and 2. above, unless both parties agree that no replacement is necessary prior to the annual panel review.
5. The northern list of arbitrators shall be used for arbitrations arising at the Davis, the Office of the President, Lawrence Berkeley Laboratory, Berkeley, San Francisco, and Santa Cruz locations, unless the parties agree to use an arbitrator from the southern panel. The southern list of arbitrators shall be used for arbitrations arising at the Santa Barbara, Los Angeles, Irvine, Riverside, and San Diego locations, unless the parties agree to use an arbitrator from the northern panel.
6. The Lists of Arbitrators are listed in Appendix J.

## **ARTICLE 4 CAMPUS CLOSURE**

### **A. GENERAL PROVISIONS**

1. Consistent with its management rights, the University has the sole, non-grievable right to curtail or shut down some or all of its activities, on a location-by-location basis, for periods of specific duration. By way of example and not limitation, such curtailment periods may represent: opportunities for energy/cost savings; adjustments to reduce levels of work activity due to transition periods in the academic calendar; "seasonal" or "holiday" influences on scheduled work activities; the occurrence at or on University facilities of major public events; and/or the occurrence of emergency or "forces of nature" situations adversely affecting normal University operations.
2. When feasible, the University shall provide UPTE and affected members of the bargaining unit with 45 calendar days advance notice of a closure. In the event an alleged violation of the notice is grieved/arbitrated, any remedy or arbitrator's award or decision acknowledging improper notice shall be limited to an amount of back pay and/or reinstatement of benefits which would make employees whole for the number of days the notice was deficient.

### **B. PAY STATUS**

During a total or partial closure or curtailment of operations described in Section A., above, whether or not the University is able to anticipate such event, one or a combination of the following pay-status options may apply to affected employees.

1. Employees may elect to use accumulated vacation leave during the closure period. Newly-employed unit members will be allowed to use accrued vacation even if the required six continuous months or quadri-weekly cycles on pay status have not been completed. Employees without sufficient accrued vacation time will be allowed to use up to three days vacation leave prior to actual accrual.
2. Employees may elect to use accrued compensatory time to cover the scheduled time off or to offset the use of vacation time.
3. Employees who do not use vacation or compensatory time off may elect to take a leave without pay during the closure. Notwithstanding the provisions of Article 41, Vacation, and Article 36, Sick Leave, if an employee is in leave-without-pay status due to a location closure which is three consecutive days or less in duration, such a full-time or part-time employee shall continue to accrue vacation and sick leave at her/his normal rate.

**C. UNPAID STATUS**

Employees who do not select from Section B1., 2., or 3., above or who do not qualify for Section B.1., 2., or 3., above, shall, for the period of time necessary, be placed in a leave-without-pay status. The hourly accrual provisions in Section B.3. above, related to location closure(s) shall also apply to employees who are placed in leave-without-pay status.

**ARTICLE 5  
COMPENSATION**

**A. GENERAL PROVISIONS**

1. Following receipt of written notification from UPTe of its ratification and acceptance of this Agreement, effective July 1 or the nearest bi-weekly pay date, the University will increase the salary for classifications in the Health Care Professional Unit (HX) for contract years 2003-2004, 2004-2005 and 2005-2006 as set forth in Provisions B, and C, below and in accordance with Appendix A. The parties recognize that the actual salary rate adjustment may vary slightly due to rounding. For contract year 2003-2004, the processing shall occur as soon as practicable but not more than 90 calendar days following the first pay date following the effective date of this agreement.
2. Salary increases, when provided, will be provided to eligible non-probationary employees in career HX positions whose salary is not at the maximum of their respective salary range and in accordance with a and b below.
  - a. During the term of this agreement, any Campus or Medical Center may, with a thirty-day notice to the union, and in accordance with campus procedures, implement a merit award program subject to availability of additional funding. The union may request to meet and discuss the implementation within the thirty-day notice period.
  - b. Employees within the salary range who are not eligible for the full amount of the within range increase shall be compensated as follows:
    - 1) The employee's individual salary rate shall be raised to the maximum of the range and the amount above the range shall be paid in a one-time, non-base building lump sum and coded in the payroll system as covered\_compensation, or
    - 2) The employee's individual salary rate shall be raised to the maximum of the range and the amount above the range shall be paid as a base building increase above the maximum of the range or
    - 3) The maximum of the classification range shall be increased to encompass the full value of the increase the employee would have received had the employee not been at the top or near the top of the previous range.

The selection of option 1), 2) or 3) above shall be at the non-grievable, non-arbitrable discretion of the campus or Medical Center.

3. Salary ranges will be adjusted in accordance with Appendix A, effective July 1, 2003 or nearest bi-weekly pay date.
4. For each annual increase the employee's most recent overall performance evaluation preceding the applicable payment date will be used as the basis for determining the eligibility for the general salary increase and/or merit award amount.

5. To be eligible for the general salary increases employees must be non-probationary, in a career position and on pay status on the effective date of July 1 for this agreement for this year (2003-2004) and on the actual payout date of each year thereafter.

**B. ZONE COMPENSATION**

The salary ranges for the HX unit shall be a zone-based structure. A zone is a subdivision of the range establishing a minimum salary rate that corresponds to years of continuous UC experience in the current HX bargaining unit classification at the campus/Medical Center or continuous experience in the HX bargaining unit. When a salary range is adjusted, then the zone shall also be adjusted correspondingly.

1. Zone Implementation:
  - a. Initial zone placement of incumbents shall be at the sole non-grievable discretion of the University and shall be determined by each location based on years of continuous UC experience in the current campus/Medical Center bargaining unit classification or continuous experience in the HX bargaining unit. For rehired or inter-campus transfers, most recent date of hire at the current campus/Medical Center will be used.
  - b. Employees shall be guaranteed initial placement to at least the minimum of their respective zone as determined in Section B of this Article and shall be placed within three years from the date of the agreement.
  - c. Zone placement will be adjusted annually, if applicable, effective July 1 (or the nearest biweekly pay date) of each contract year. If the employee's performance is rated as less than satisfactory in the most recent performance evaluation, then the University may determine not to move the employee to the next zone.
  - d. Pharmacist job family classifications shall be exempt from the zone compensation program.
  - e. Upon upward reclassification and/or promotion an employee shall receive a salary increase to the minimum of the range of the new classification or 5%, whichever is greater.

**C. Campus/ Medical Center Specific Compensation Programs For Contract Years July 1, 2003-June 30, 2004, July 1, 2004-June 30, 2005, And July 1, 2005-June 30, 2006.**

1. Davis
  - a. Salary increases will be provided as described in Provisions A and B above.
  - b. A general salary base building increase shall be awarded to employees with a minimum performance rating of satisfactory as follows:
 

effective July 1, 2003	2.0 percent
effective July 1, 2004	2.0 percent
effective July 1, 2005	3.0 percent
  - c. Provide market equity adjustments on July 1, 2003 as follows:
    - Clinical Laboratory Scientist 2.0 percent
    - Clinical Laboratory Scientist Specialist 2.0 percent
    - Sr. Clinical Laboratory Scientist Specialist 2.0 percent
    - Sr. Physician's Assistant 1.0 percent
    - Physician's Assistant 1.0 percent
    - Sr. Cytotechnologist 1.0 percent

- Cytotechnologist 1.0 percent
- Sr. Pharmacist 2.0 percent
- Staff Pharmacist II 2.0 percent
- Social Worker I 1.0 percent
- Social Worker II 1.0 percent
- Licensed Clinical Social Worker 1.0 percent
- Occupational Therapist I 1.0 percent
- Occupational Therapist II 1.0 percent
- Sr. Audiologist 1.0 percent
- Audiologist 1.0 percent
- Speech Pathologist 1.0 percent
- Sr. Speech Pathologist 1.0 percent
- Genetic Counselor II 1.0 percent
- Sr. Psychometrist 1.0 percent
- Psychometrist 1.0 percent

2. Irvine

a. Salary increases will be provided as described in Provisions A and B above.

b. A general salary base building within-range increase shall be awarded to employees with a minimum performance rating of satisfactory as follows:

effective July 1, 2003	1.0 percent
effective July 1, 2004	1.5 percent
effective July 1, 2005	3.0 percent

c. Provide market equity adjustments on July 1, 2003 as follows:

- Clinical Laboratory Scientist 4.5 percent
- Clinical Laboratory Scientist, Senior Spec. 4.5 percent
- Clinical Laboratory Scientist Specialist 4.5 percent
- Senior Nuclear Medicine Technologist 4.5 percent

3. Los Angeles

a. Salary increases will be provided as described in Provisions A and B above.

b. A general salary base building increase shall be awarded to employees with a minimum performance rating of satisfactory as follows:

effective July 1, 2003	2.0 percent
effective July 1, 2004	2.0 percent
effective July 1, 2005	3.0 percent

4. San Diego

a. Salary increases will be provided as described in Provisions A and B above.

b. A general salary base building increase shall be awarded to employees with a minimum performance rating of satisfactory as follows:

effective July 1, 2003	1.8 percent
effective July 1, 2004	2.0 percent
effective July 1, 2005	3.0 percent

5. San Francisco
  - a. Salary increases will be provided as described in Provisions A and B above.
  - b. A general salary base building increase shall be awarded to employees with a minimum performance rating of satisfactory as follows:
 

2003-2004 effective July 1, 2003	2.0 percent
2004-2005 effective July 1, 2004	2.0 percent
2005-2006 effective July 1, 2005	3.0 percent
  - c. Provide market equity adjustments on July 1, 2003 as follows:
    - Cytotechnologist 5.0 percent
    - Cytotechnologist, Senior 5.0 percent
    - Nuclear Medicine Technologist 10.0 percent
    - Nuc. Medicine Technologist, Trainee 5.0 percent
    - Nuc. Medicine Technologist, Senior 10.0 percent
6. Berkeley
  - a. Within-range increases will be provided as described in Provisions A and B above.
  - b. Compensation increases for contract years 2004-2005 and 2005-2006 shall be provided as a base building salary adjustment and or merit increase provided that the funding is allocated to the University as a general salary adjustment and or merit pay, and provided that the Regents compensation budget request is in the State Budget Act as finally adopted.
7. Riverside
  - a. Within-range increases will be provided as described in Provisions A and B above.
  - b. Compensation increases for contract years 2004-2005 and 2005-2006 shall be provided as a base building salary adjustment and or merit increase provided that the funding is allocated to the University as a general salary adjustment and or merit pay, and provided that the Regents compensation budget request is in the State Budget Act as finally adopted.
8. Santa Cruz
  - a. Within-range increases will be provided as described in Provisions A and B above.
  - b. Compensation increases for contract years 2004-2005 and 2005-2006 shall be provided as a base building salary adjustment and or merit increase provided that the funding is allocated to the University as a general salary adjustment and or merit pay, and provided that the Regents compensation budget request is in the State Budget Act as finally adopted.
9. Santa Barbara
  - a. Within-range increases will be provided as described Provisions A and B above.
  - b. Compensation increases for contract years 2004-2005 and 2005-2006 shall be provided as a base building salary adjustment and or merit increase provided that the funding is allocated to the University as a general salary adjustment and or merit pay, and provided that the Regents compensation budget request is in the State Budget Act as finally adopted.



**D. LAWRENCE BERKELEY NATIONAL LABORATORY**

1. For each annual increase during the term of this agreement individual salary increases at LBNL will be from an overall amount of up to 3.0% of LBNL's September 30, 2003 HX payroll base, up to 3.0% of LBNL's September 30, 2004 HX payroll base, and up to 3.0% of LBNL's September 30, 2005 HX payroll base. Individual salary increases will be made as merit increases in accordance with the Laboratory's usual distribution method. Provision B (Zone Compensation), above, shall not apply to LBNL.
2. Adjust ranges for all job titles by 3.0% in contract year 2003-2004, 3.0% in contract year 2004-2005, and 3.0% in contract year 2005-2006.
3. Salary adjustments taking place on the same day will be made in accordance with the Laboratory's usual method.
4. All increases will be effective October 1, 2003, October 1, 2004, and October 1, 2005, respectively.

**E. OTHER INCREASES**

1. The University may increase salary rates, salary ranges, shift differentials, on-call rates and/or extend the coverage of such rates for selected classes at selected locations.
2. The University may adjust zones during the life of the agreement.
3. The University shall notice UPTe headquarters a minimum of 30 days prior to implementing the adjustments referenced in E.1 and 2 above.
4. Union and or employee requests for market equity review shall be submitted in writing to the appropriate local Office of Labor Relations and shall include:
  - a. The specific name(s) & classifications of the individuals to be reviewed;
  - b. The data upon which the equity adjustment is being requested.

Decisions to either grant or deny market equity increases shall be at the sole, non-grievable discretion of the University.

**F. PROMOTION, RECLASSIFICATION, TRANSFER OR DEMOTION ON DATE OF SALARY INCREASES OR RANGE ADJUSTMENTS**

If more than one salary adjustment takes place on the same date, actions occur in the following order:

1. salary range adjustment;
2. general salary increase
3. merit, if any
4. equity adjustments
5. zone placement
6. Salary action resulting from promotion, reclassification, transfer, or demotion.

In the event an individual's salary remains below the new range minimum after the implementation of all base building increases, his or her salary will be increased to the new range minimum.

**G. BONUS AND INCENTIVE AWARDS**

The University shall have the sole non-grievable right to establish, continue, modify or abolish campus/hospital/laboratory incentive award programs.

**ARTICLE 6**  
**CORRECTIVE ACTION, DISCIPLINE AND DISCHARGE**

**A. GENERAL PROVISIONS**

Corrective Action is an action designed to improve conduct or performance, which does not involve an adverse impact on rights, pay, or benefits. Discipline is an action imposed on a non-probationary employee when corrective action has proven ineffectual or when the employee's misconduct or failure to perform satisfactorily is serious enough to warrant discipline. The University has the authority to discharge or to take other appropriate disciplinary action against a non-probationary employee for just cause.

**B. TYPE OF ACTIVITY**

The University may use an oral reprimand or counseling memorandum as corrective action. Discipline may involve a written warning, suspension without pay for up to five working days without prior notice, suspension beyond five working days with notice, salary reduction, demotion for failure to meet performance standards, as defined in Section C., below, or discharge. Employees who are suspended without pay for up to five working days, and who wish to contest the suspension, must grieve within the time limits established by the grievance procedure of this Agreement. Corrective actions are not subject to the grievance or arbitration procedures of this Agreement.

**C. DEMOTION**

The University may demote an employee to a lower classification, with concurrent reassignment to work of lesser duties and responsibilities, based on a demonstrated failure to meet the performance standards of the higher classification. Such action shall take place only after reasonable attempts to correct the deficient performance have failed. Demotion shall be subject to the grievance and arbitration procedures.

**D. INVESTIGATORY LEAVE**

The University may place an employee on investigatory leave with pay in order to review or investigate allegations of conduct which, in the University's view, would warrant relieving the employee immediately from all work duties. An investigatory leave with pay shall not be considered corrective action or discipline as defined in this Article.

**E. NOTICE**

1. When the University intends to suspend for more than five working days, reduce an employee's salary for more than 30 working days, demote, or discharge an employee, written notice of its intent shall be given to the employee. Such notice shall be made either by delivery of the notice to the employee in person, or by placing the notice of intent in the United States mail with first class postage paid in an envelope addressed to the employee at her/his last known home address. In either case, a copy of the notice of intent shall be sent by United States mail, first class postage paid, to UPTC. It shall be the responsibility of the employee to inform the University in writing of any change of home address. Whether delivery is made in person or by mail, the notice of intent shall contain a proof of service indicating the date on which the notice of intent was personally delivered or mailed. Such date of personal delivery or mailing shall be the "date of issuance" of the notice of intent.
2. The notice shall:
  - a. Inform the employee of the action intended, the reason for the disciplinary action and the effective date of the action;
  - b. Include a copy of the charge and material upon which the charge is based; and

- c. Inform the employee of the right to respond and to whom to respond within the time limit in Section F., below, either orally or in writing in accordance with Section F., below.

#### **F. EMPLOYEE RESPONSE**

1. The employee shall be entitled to respond, orally or in writing, to the notice of intent described in Section E., above. If the written notice of intent is delivered in person to the employee, the employee's response must be received within ten calendar days from the date of issuance, in accordance with instructions given by the University in the written notice. If the written notice of intent is mailed to the employee and UPTE, the employee's response must be received within 14 calendar days from the date of issuance.
2. After review of the employee's timely response, if any, the University shall notify the employee of any action to be taken. Such action to be taken may not include discipline more severe than that described in the notice of intent; however, the University may reduce such discipline without the issuance of a further notice of intent. When such action includes a suspension without pay for five days or longer, a copy of the letter of discipline/suspension will be sent concurrently to UPTE.

#### **G. PERSONNEL RECORDS**

1. A counseling memorandum may be placed in the employee's personnel records.
2. A copy of a written warning given or mailed to an employee shall be placed in the employee's personnel records. The University agrees that written warning shall be accompanied by a proof of service. Written warning shall be destroyed after two consecutive years during which there have been no further written warnings issued to the employee.
3. There shall be no charge for the first copy of the contents of the employee's personnel file.

#### **H. REPRESENTATION**

1. A non-probationary employee shall have the right of representation at any scheduled investigatory meeting the outcome of which may be a disciplinary act of written warning, suspension without pay, demotion or discharge. The University shall advise an employee of any scheduled investigatory meeting the outcome of which may be a written warning, suspension without pay, disciplinary demotion or discharge. An employee may request a representative of the employee's choice other than a University employee who has been designated as supervisory, managerial, or confidential to be present when there is reason to believe that a meeting may result in disciplinary action as defined above. If the employee's preferred representative is not available to attend a meeting scheduled by the University, the employee shall arrange for an alternative representative for the meeting. If no alternative representative can be found for the scheduled meeting, the University may reschedule the meeting within eight calendar days, unless otherwise agreed to by the parties.
2. The term "meeting" does not include the occasion in which the University only presents an employee with written confirmation of the results of the prior meeting referenced in Section H.1., above.

### **ARTICLE 7 UNION DUES AND AGENCY FEE DEDUCTIONS**

#### **A. GENERAL CONDITIONS**

1. UPTE-CWA shall establish the monthly amount it requires for union members' dues and initiation fees, and the amount required of unit members for agency fees. UPTE shall certify to the University in writing

the monthly union dues and agency fee amounts, and the amount of members' initiation fees. The amount of the agency fee shall not exceed the monthly dues that are payable by members of UPTE. The University agrees to deduct from the pay of represented employees the amount of agency fees and dues UPTE has certified in writing.

2. UPTE may change the amounts to be deducted from unit employees' pay once per calendar year. Any annual changes in the amounts to be deducted for UPTE dues or agency fees shall be certified to the University, in writing, at least forty-five (45) calendar days prior to the effective date of such change. All actual costs associated with changing the dues/agency fee amount (machine, programming, etc.) shall be paid by UPTE, following discussion with UPTE.
3. Dues/agency fee deductions shall be monthly, or, where applicable, more frequently, in accordance with University payroll procedures in place at the time the deduction is made, unless there are insufficient net earnings in that period to cover said deduction.

## **B. DUES AND FEES**

The payment of fair share fees and union dues through payroll deduction will continue even if the collective bargaining agreement expires.

### **1. Union Dues**

- a. The University will deduct from the pay of union members who have submitted a written individual authorization for the deduction of union dues, the monthly amount certified by the Union to be the dues required for the employee's membership in the Union. The employee's authorization must be provided on a form agreed upon by the parties.
- b. Dues deductions shall be effective following the University's receipt of the authorization form and completion of the appropriate programming and/or payroll changes.
- c. An employee may at any time cancel her/his authorization for payroll dues deduction by presenting her or his written request for termination and cancellation to the designated University office. The University will send a copy of the written request for cancellation of dues deduction to UPTE.

### **2. Agency Fees**

- a. Employees who do not pay union dues shall pay agency fees as a condition of employment. The amount of the fee shall be deducted by the University from the wages or salary of the employee and paid to UPTE.
- b. Employees who are conscientious objectors to the payment of agency fees must apply for objector status with UPTE.
  - 1) UPTE shall determine the validity of the employee's status as a conscientious objector.
  - 2) If UPTE agrees to the objector status of the employee it shall provide monthly to the University proof of payments made to Charitable Organizations.

## **C. PROCESSING PAYROLL DEDUCTIONS FOR DUES AND FEES**

1. For each dues/fee deduction check submitted to UPTE, each campus/lab/hospital shall deduct from the total dues amount remitted, an administrative fee of \$.07 per employee for who dues deductions are being made in addition to \$10.00 for each check remitted. These costs will continue to be charged to UPTE on an ongoing basis.

2. Each campus/lab/hospital shall remit to UPTE, in the form of a check to an address designated by UPTE, an amount representing the dues/fees deductions less any reduction(s) referenced in Section C.1. above. Accompanying the check shall be a standard electronic and printed deduction report, which shall contain by campus/lab/hospital, by local number, an alphabetical listing of the UPTE unit members for who payroll deductions were made. The report shall include the employee identification number, employee name, bargaining unit code, campus code, employee within unit salary, and amount withheld. Any costs associated with changing the deduction report referenced above shall be fully paid by UPTE. The report shall be provided electronically via the FTP site.

#### **D. CORRECTION OF ERRORS**

1. If the University fails to make appropriate authorized payroll dues or fee deductions, or any part thereof, the University shall correct the deduction amounts within 30 days of notice from the Union.
2. If the University's error resulted in deductions less than the correct amount, the University shall make the additional required deductions to make up the difference between the actual and correct amounts in accordance with current payroll policy regarding additional deductions. However, additional deductions shall not exceed two times the normal dues amount in any given pay period.
3. If the error results in payment of more than the correct amount and the Union has received the funds, the Union shall reimburse the employees accordingly.

#### **E. OTHER DEDUCTIONS**

Payroll deductions shall be made for UPTE-sponsored programs pursuant to the provisions of the University's Accounting Manual requirements. For insured benefit programs the section of the Accounting Manual entitled "Special Regulations for Non-University Insured Benefit Program" applies. For other than insured benefit programs the section of the Accounting Manual entitled "Employee Organizations" applies.

#### **F. INDEMNIFICATION**

It is specifically agreed that the University assumes no obligation other than that specified in §A., above, or liability, financial or otherwise, arising out of the provisions of this Article. UPTE shall inform the University when the amount of the monthly dues changes. Such notice should be sent in time to provide for appropriate programming. Further, UPTE hereby agrees that it will reimburse the University for any cost and indemnify and hold the University harmless from any claims, actions, or proceedings by any person or entity, arising from deductions made by the University pursuant to this Article.

### **ARTICLE 8 GRIEVANCE PROCEDURE**

#### **A. GENERAL CONDITIONS**

1. A grievance is a written complaint by an individual employee, a group of employees, or UPTE that the University has violated a specific provision of this Agreement. The University shall not have the right to use the grievance procedure.
2. No employee shall be subject to reprisal for using or participating in the grievance procedure of this Agreement.
3. Filing
  - a. All grievances must be filed with the campus/hospital/laboratory Labor Relations office at the campus that employs the grievant

within the time frames specified in this Article, on a form agreed to by the parties.

- b. The grievance form must be signed and dated by the employee(s) or the employee's representative upon submission to the University. Union grievances must be signed by the UPTE President or designee.
- c. The grievance form (see Appendix H) shall be furnished to the employee by either UPTE or the University designee, although failure of a University Representative to provide a grievance form upon request shall not constitute cause for an extension of the time lines for filing, nor shall the employee of UPTE be able to grieve the University's failure to provide a grievance form.
  - 1) Only one subject matter shall be covered in any one grievance. A formal grievance must identify the specific Article(s) and section(s) of this Agreement alleged to have been violated; describe the action(s) which allegedly violated the identified Article(s) and Section(s), together with the date(s) of the action(s); and describe the remedy requested.
  - 2) Receipt of the grievance shall be acknowledged in writing by the University as soon as practicable following receipt, and sent to the non work address listed on the grievance form. If the grievance is incomplete or does not identify the information required in a.3.c.1. above, the University will advise the representative to complete the information within seven (7) days of the date of the acknowledgement. The provision of information does not in any way extend the original 30 days to file the grievance.
  - 3) For the initial filing of a grievance, the date filed shall be the date received. However, if the grievance is mailed, the date of the US Postal Service postmark shall be considered the date filed. For grievance appeals and responses, the date of issuance shall be the date hand-delivered, or the date of the US Postal Service postmark, if mailed. Additionally, a grievance may be filed by facsimile if a signed hard copy is received by the University within five business days. The date and the time registered by the University's facsimile machine shall constitute the official date of receipt. If the registered date on the facsimile falls outside the campus's business hours, the following business day shall constitute the official date of receipt.
4. No remedy shall exceed restoring to the grievant the pay, benefits or rights lost as a result of the violation of the contract, less any income earned from any other source including, but not limited to, workers' compensation, or any other employment.

## 5. TERMS/DEFINITIONS

For the purposes of this Article, the terms:

- a. "grievant" means any eligible employee covered by this contract who has a grievance or complaint (as defined by this Agreement);
- b. "other grievance representative" means any person representing an employee covered by this contract, other than an UPTE-designated employee representative or an UPTE representative, in the resolution of her/his grievance other than a person who has been designated as supervisory, managerial, or confidential;
- c. "UPTE-designated employee representative" means any employee covered by this contract who is a designated union

representative of UPTE, in accordance with the provisions of Article 2, Section C.;

- d. "UPTE representative" means any person who is a non-university employee designated by UPTE to act in the interest of or on behalf of UPTE;
- e. "the parties" means the University and
  - 1) the "grievant(s)", when the grievant(s) is self-represented or is represented by an individual, as defined in Section A.5.b. above; or
  - 2) the "UPTE representative" or the "UPTE-designated employee representative" when the grievant(s) is represented by an individual, as defined in Section A.5.d. or Section A.5.c. above; or
  - 3) UPTE, when UPTE is itself the grievant.
- f. "witness" means any employee who is serving as a witness in a grievance proceeding; for the purposes of release time, said employee must be covered by this contract.

#### **B. EMPLOYEE REPRESENTATION**

A grievant shall have the right to be represented at all steps of the grievance procedure by an UPTE representative or an UPTE-designated employee representative, or any other one person of the grievant's choice other than a University employee who has been designated as supervisory, managerial, or confidential.

#### **C. TIME LIMITS**

- 1. Other than the time limits for the initial Step 1 filing of a grievance, the time limits as specified in this article may be extended by mutual agreement of the parties. Extensions must be in writing and must be signed by the parties in advance. The parties may mutually agree to skip any steps of the grievance procedure. Such an agreement must be in writing and must be signed by the parties.
- 2. Deadlines that fall on a day that is not a regular business day will automatically be extended to the next business day.
- 3. If a grievance is not appealed to the next step of the procedure within applicable time limits, and an extension has not been agreed to in advance, the grievance will be considered resolved on the basis of the last University response to the grievance and shall be considered ineligible for further appeal.

#### **D. GRIEVANTS WHO HAVE RESIGNED**

Grievants who voluntarily resign or retire their employment with the University shall have their pending grievances immediately withdrawn and will not benefit by any subsequent settlement or disposition of any individual, union, or group grievance.

However, if the group or union grievance is related to the implementation of a compensation provision negotiated in a UC/UPTE Agreement, the grievance may be continued if it has moved to Step 2 before the date of the employees' resignation or retirement. The foregoing provision shall not apply to LBNL.

#### **E. GRIEVANCE PROCEDURE - INFORMAL REVIEW**

Before commencing the formal grievance procedure, an individual employee, or group of employees, with or without their representative, may first attempt to resolve informally the grievance with the immediate supervisor.

## **F. GRIEVANCE PROCEDURE - FORMAL REVIEW**

1. Step 1:
  - a. All grievances (individual, group, or union) must be filed either by U.S. mail or hand delivery, and received by the Labor Relations Office at the campus/hospital/laboratory which employs the grievant(s) within 30 calendar days after the date on which the employee or UPTE knew or could be expected to know of the event or action giving rise to the grievance. Informal attempts of settlement to resolve shall not extend time limits including the initial 30 day filing limit.
  - b. Grievances received after the filing deadline will be processed solely for the purposes of determining whether the grievance was untimely. Any formal grievance which is not received in accordance Section F.1., or this section, shall be reviewed only in accordance with the review procedures in Section Q.
  - c. University Review:
    - 1) The University's written response will be issued to the grievant and the representative, if any, within 15 calendar days after the formal grievance is filed. If the response is not issued within this time limit, or if the grievance is not resolved at Step 1, the grievance may proceed to Step 2.
    - 2) Resolution of the grievance at Step 1 or earlier, although final, shall not be precedent-setting.
  - d. Sexual Harassment Complaint Resolution Procedures:
    1. An employee alleging sexual harassment may elect to substitute a campus/hospital/laboratory Sexual Harassment Complaint Resolution Procedure for Step 1 of the Grievance Procedure. An employee who elects to use the Sexual Harassment Complaint Resolution Procedure may return to the grievance procedure only if they filed a grievance within the 30-day time limit for filing. An employee who elects to resume the regular grievance procedure in place of the Sexual Harassment Complaint Resolution Procedure shall do so by sending written notice to the University. The University's Step 1 Grievance response will be issued within 15 calendar days after the notice is received by the designated University official.
    2. Grievances that allege a violation involving sexual harassment may, at the grievant's option, enter the grievance procedure at Step 2.
2. Step 2
  - a. If the grievance is not resolved at Step 1, the grievant or the Union may proceed to Step 2 by filing a written appeal with the Labor Relations Office within 15 calendar days of the date the written response is issued or, if not issued, is due.
  - b. Unless the parties agree otherwise, the designated University local official shall convene a meeting with the grievant(s) and the grievant's representative, if any, to attempt to resolve the grievance. The meeting shall be convened no later than 15 calendar days following receipt of the appeal to Step 2. During the Step 2 meeting, the parties shall discuss information and contentions relative to the grievance.
  - c. During the Step 2 process, the parties may agree in writing to amend the alleged violations stated in the original grievance.



- d. If requested by the grievant, a second UPTE representative may participate in the Step 2 meeting. In the event a second UPTE representative attends, only one representative may actively participate in the grievance meeting, and the University shall pay release time for only one representative.
  - e. If a grievance that alleges a violation of Article 6 – Corrective Action, Discipline and Discharge only is not satisfactorily resolved at Step 2, UPTE may appeal directly to arbitration in accordance with Article 3 – Arbitration Procedure.
  - f. A written decision shall be issued within 15 calendar days following the Step 2 meeting, or receipt of the Step 2 appeal if it is agreed that no meeting will be held.
3. Step 3
- a. All grievances that are not satisfactorily resolved at Step 2 may be appealed to Step 3. The appeal must be filed with the Director of Labor Relations in the Office of the President within 15 calendar days of the date the University's Step 2 written answer was issued or, if no University answer was issued, within 15 calendar days of the date the University's answer was due.
  - b. The Step 3 appeal shall identify all unresolved issues, alleged violations and remedies and shall be signed and dated by the grievant or their representative. The subject of the grievance as stated at Step 2 shall constitute the sole and entire subject matter of the appeal to Step 3.
  - c. The Office of the President Office of Labor Relations official shall issue the University's written answer to a Step 3 appeal within 30 calendar days of the receipt of the appeal. The answer will be issued to the grievant when self-represented, or to the employee's representative.
  - d. By mutual agreement between the University and UPTE, step 3 may also be the first step in the Grievance Procedure when UPTE is filing a grievance on behalf of employees at more than one location. Such a grievance must be filed within 30 calendar days of the action that gave rise to the grievance.
4. Appeals to Arbitration

If an appeal to arbitration is not post marked or hand delivered within 30 calendar days of the issuance of the University's step 3 answer, section C. of this article shall apply.

#### **G. UNION GRIEVANCES**

UPTE shall have the right to present grievances under this procedure on behalf of an individual employee, on behalf of a group of employees, or on behalf of itself. It shall be the Union's responsibility to inform an employee that it is bringing a grievance.

#### **H. GROUP GRIEVANCE**

A group grievance is defined as a grievance that covers more than one employee, and that involves like circumstances and facts. A group grievance must be so identified on the grievance form at Step 1. If an employee wishes to withdraw from a group grievance represented by UPTE, the employee shall notify UPTE. UPTE shall in turn notify the University in writing if the employee is to be withdrawn.

**I. CONSOLIDATION OF GRIEVANCES**

Grievances of two or more employees, as well as multiple grievances by or related to the same employee, or which relate to the same incident, issue, alleged violation, facts, or course of conduct, may be consolidated. Consolidation or severance of grievances shall occur by mutual written agreement.

**J. OFFERS OF SETTLEMENT**

Settlement offers made at any stage of this procedure, including informal resolution, shall not be introduced as evidence in subsequent steps, and shall not be precedent setting.

**K. RETROACTIVITY**

Settlement of grievances may or may not be retroactive as equities of a particular case may demand. In any case where it is determined that the settlement shall be applied retroactively, except for the correction of mathematical, calculation, recording or accounting errors relating to the payment of wages, the maximum period of retroactivity allowed shall not in any case be made retroactive to a date earlier than 30 calendar days prior to the initiation of the written grievance in Step 1.

**L. EXCLUSIVE PROCEDURE**

The Grievance Procedure set out in this Article shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the alleged violation of this Agreement. Unless otherwise indicated within this Agreement, any previous grievance procedure or other procedure in existence or adopted by the University shall not apply to employees covered by this Agreement for any purposes whatsoever.

**M. RELEASE TIME AND PAY STATUS FOR GRIEVANTS, EMPLOYEE REPRESENTATIVES AND/OR WITNESSES**

1. University-Convened Meetings
  - a. If the University convenes a meeting involving the parties to a grievance for the purposes of resolving the grievance and/or completing the steps of the Grievance Procedure, the grievant(s), witness(es), if any, and UPTe-designated employee representatives eligible to attend such meeting pursuant to this article and Article 2 – Access, Section C. shall be in without-loss-of-straight-time-pay status during the meeting provided:
    1. such meeting occurs during the regularly scheduled hours of work of the grievant(s), UPTe-designated employee representative, and/or witness(es); and
    2. advance request is made and approval is received from the supervisor of the grievant(s), the witness(es), and/or the UPTe-designated employee representative. Approval to attend shall be made on an operational needs basis and shall not be unreasonably denied.
    3. A grievant or the representative may request the availability of bargaining unit employee witnesses for University-convened grievance meetings. The availability of bargaining unit employee witnesses shall be determined by their immediate supervisor(s) on the basis of operational needs, and such requests shall not be denied unreasonably. Witnesses shall be in a without-loss-of-straight-time-pay status if the information they provide pertains to the subject of the grievance and the criteria enumerated above (Section M.1.a. and Section M.1.b.) are met. Grievants and UPTe agree that every effort shall be made to avoid the presentation of repetitive witnesses and the absence of any

or all witnesses shall not require the meeting to be recessed or postponed.

- b. The University is not responsible for any travel or lodging expenses or any other expenses incurred by the representative, grievant or union witnesses.
- c. Paid release time for UPTE designated employee representatives for purposes other than University convened meetings shall be provided in accordance with Article 2 – Access.

**N. EXCLUSION OF LIMITED APPOINTMENT EMPLOYEES AND PROBATIONARY EMPLOYEES**

The retention or release of limited appointment employees and probationary employees or the non-scheduling of per diem employees, if applicable, is at the sole discretion of the University, and shall not be subject to Article 8 – Grievance Procedure or Article 3 – Arbitration Procedure of this Agreement.

**O. OTHER REPRESENTATION**

Grievants may choose a representative other than an UPTE representative for purposes of grievance representation and adjustment. In the event the University is involved in the resolution of a grievance from a grievant or group of grievants who are self-represented or represented by someone other than an UPTE representative:

- 1. The University shall provide UPTE with a copy of the grievance and the proposed resolution, indicating the grievant or grievants have chosen a representative other than UPTE.
- 2. UPTE shall have 10 calendar days from the date the University provides the material referenced above in which to comment in writing on the proposed resolution.
- 3. The University shall not implement the proposed resolution of the grievance until timely receipt and review of UPTE's written comments, if any.
- 4. The resolution of grievances presented by someone other than an UPTE representative shall be consistent with the terms of this Agreement.

**P. GRIEVANCE FILE**

Records involving the processing of an employee's grievance, such as the grievance form, step appeals/responses, and settlement documents, will be kept in a file separate from the employee's personnel file. It is not the intent of this section to exclude from the employee's personnel file final disciplinary action documents, including those that result from a settlement agreement.

**Q. REVIEW OF GRIEVANCES CLOSED FOR PROCEDURAL DEFECTS**

When the University determines a grievance is ineligible for further processing due to procedural defects, including but not limited to timeliness, UPTE may make a written appeal to the Office of the President Labor Relations within 30 days of the postmark of the notification to the grievant(s). This appeal is solely limited to a review of the procedural issue(s). If the Office of the President denies this appeal UPTE may appeal the issue of the closure of the grievance directly to arbitration per Article 3, Arbitration, within 30 calendar days of the issuance of the denial of the appeal.

**ARTICLE 9  
HEALTH AND SAFETY**

**A. GENERAL CONDITIONS**

1. Within the overall University responsibility to provide medical care, the University shall make reasonable attempts to furnish and maintain in safe working condition the workplace and equipment required, in order that employees within the bargaining unit might carry out the duties of their positions.
2. UPTe and the University agree that exposure to risks from the patient populations the University treats is inherent in employment. The University shall make reasonable attempts to provide bargaining unit employees with such equipment, methods, practices, processes and procedures, as are necessary under applicable law to afford a working environment as safe and healthful as the nature of employment reasonably permits.
3. An employee may request an ergonomic evaluation of their work station. The University will provide a response to the employee within 30 calendar days after the ergonomic evaluation report is submitted. The response shall include the action(s) to be taken, if any.

**B. ASSIGNMENTS**

An employee shall not be assigned to any task abnormally dangerous or hazardous at the employee's place of employment. An abnormally hazardous or dangerous task shall be defined as those tasks, the dangers or hazards of which are identifiably greater than the dangers or hazards inherent to the usual performance of a given job. In the event an employee within the bargaining unit regards an assigned task as abnormally dangerous the employee shall notify the immediate supervisor of the claim that the task assigned is abnormally dangerous. In attempting to resolve the employee's claim, the supervisor may attempt to make workplace task performance and/or task assignment changes consistent with health and safety considerations and the availability of additional or alternate personnel, may direct the employee to perform the task, or may assign the affected employee to other available work consistent with the work usually performed by the employee.

**C. RELATED GRIEVANCES**

1. If the matter is not resolved to the satisfaction of the employee and/or the employee carries out the task, the employee may later file a grievance in accordance with the grievance procedure of this Agreement. If the employee unreasonably refuses to perform the task, the employee may be subject to discipline.
2. Any grievance filed by an employee alleging the assignment of an abnormally hazardous or dangerous task shall include a statement containing all facts, including time, place of incident, name of persons involved, type of object or substance likely to cause injury, and a description of the likely injury which might have resulted from the assignment of such task. In addition, the grievance shall contain the employee's suggested resolution for preventing the illness, injury and/or other hazards the employee alleges to be associated with the assigned task.
3. If, as a result of the filing of a grievance relative to an abnormally dangerous or hazardous task assignment, the University and UPTe agree as to the existence of such abnormally hazardous or dangerous assignment, the University shall attempt to correct such a situation within a reasonable time and utilizing such funds as may be specifically budgeted for the particular efforts.
4. The University's ability to comply with the provisions of this Article is subject to the availability of budgeted funds for the accomplishment of such actions which may be necessary in order for the University to meet

its obligations under this Article and/or pursuant to any settlement, award, and/or arbitration decision rendered pursuant to a grievance/ arbitration related to the provisions of this Agreement and Article. The availability of such specifically budgeted and available funds shall be a contingency upon which the University's compliance with a settlement award, arbitrator's decision, and/or order of enforcement of such decision relative to a grievance or arbitration related to this Article shall be dependent.

5. In the case of a suspected outbreak of a communicable disease and when the University requires testing and provides treatment for such communicable disease of patients and/or employees who are not members of this bargaining unit, the University shall offer such tests and treatment for bargaining unit employees within the appropriate affected work areas at no cost to the employees. In case of a work-incurred illness or injury which is compensable under the Workers' Compensation Act, the University shall provide such treatment to the employee within the bargaining unit as may be required by the Act.

## **ARTICLE 10 HOLIDAYS**

### **A. UNIVERSITY HOLIDAYS**

The University shall observe the following days as holidays:

New Year's Day	Veterans Day
Martin Luther King, Jr. Day	Thanksgiving Day
Third Monday in February (or announced equivalent)	Friday following Thanksgiving (or announce equivalent)
Last Monday in May	December 24 (or announced equivalent)
Fourth of July	Christmas Day
Labor Day	December 31 (or announced equivalent)

One Administrative holiday (to be selected by the University, except as provided in Section B., below)

Unless the University designates an alternate day, when a holiday falls on Saturday, the preceding Friday is observed, and when the holiday falls on Sunday the following Monday is observed as a holiday.

Each campus/medical center shall institute Cesar Chavez holiday as the replacement administrative holiday, or as the Cesar Chavez floating holiday. The total number holidays shall not exceed 13 holiday's in a calendar year.

### **B. PERSONAL HOLIDAY FOR EMPLOYEES AT MEDICAL CENTER/HOSPITAL LOCATIONS**

1. Each member of the unit who works at a medical center hospital or clinic who is not working on an academic calendar shall be entitled to one personal holiday in lieu of the administrative holiday mentioned in Section A., above, under the following circumstances:
  - a. The employee is a member of the unit on August 1st of the applicable contract year; and
  - b. The employee uses the one day between August 1<sup>st</sup> and July 31<sup>st</sup> of each contract year. In the event the employee does not use the Personal Holiday time before April 30<sup>th</sup>, the University may schedule the use of the holiday prior to July 31<sup>st</sup>. In the event the employee does not use the Personal Holiday time prior to the end of the contract year, the University will, at its sole non-grievable discretion, convert the Personal Holiday to either compensatory time and placed into the employee's holiday compensatory time bank, or pay.

2. The University shall grant requests for use of personal holiday time in accordance with hospital and clinic scheduling needs.

**C. HOLIDAY TIME PAY**

1. Compensation For Holidays

All eligible employees shall receive holiday time for the 12 holidays provided for in this Article, except as provided in Section B., above, whether or not the holiday is worked. The decision pertaining to the method of payment for the holiday, which can either in straight-time compensatory time off or in actual straight-time pay, shall be at the sole non-grievable discretion of the University.

- a. An eligible full-time, non-exempt employee shall receive eight hours of holiday time, regardless of his or her work schedule.
- b. An eligible part-time employee in pay status at least 50% of the hours in the appropriate pay cycle, excluding holiday hours, shall receive holiday pay proportionate to the percent appointment. Such holiday time is calculated on the number of hours in pay status in the month (for monthly paid employees) in which the holiday falls, or (for bi-weekly paid employees) the two pay periods immediately preceding the pay period in which the holiday occurs.

2. Pay For Holidays Worked

In addition to Section C., above, an employee shall be paid for all hours actually worked on the named holidays in accordance with the following:

- a. FLSA non-exempt employees shall be paid at the rate of time and one-half regular pay for hours worked on Thanksgiving Day, December 25<sup>th</sup>, New Year's Day (January 1<sup>st</sup>), the Last Monday in May, Fourth of July and Labor Day.
- b. FLSA non-exempt employees and all FLSA exempt employees shall be paid regular pay at the straight-time rate for hours actually worked on all other holidays.

3. Holiday Time As Compensatory Time

When holiday time is placed in a compensatory time bank, such bank shall be a straight-time holiday bank, and shall be kept separate from any other compensatory time bank. Holiday compensatory time banks shall be paid out in accordance with Article 11, Hours of Work, B.13.c, Compensatory Time Bank.

**D. RELIGIOUS OBSERVANCE**

By charging time off to vacation, compensatory time off (for non-exempt employees), or leave without pay, an employee may observe a special or religious holiday if the University determines that work schedules permit.

**E. ELIGIBILITY**

An eligible full-time employee on pay status on the employee's last scheduled work day before the holiday and first scheduled work day after the holiday shall receive holiday pay. No employee shall receive holiday pay for any holiday, which is immediately preceded by or followed by an unauthorized absence or a disciplinary suspension.

**F. TEMPORARY LAYOFF**

A full-time employee on a temporary layoff of not more than 20 calendar days, including holidays, shall receive pay for any holiday, which occurred during that period.

**G. LAWRENCE BERKELEY NATIONAL LABORATORY**

1. A new full-time employee will be paid for any holiday immediately following his or her last day of work if the holiday is the first working day(s) of a pay period. This rule does not apply to part-time employees.
2. A terminating full-time employee shall receive pay for any holiday immediately following his or her last day of work if the holiday is the last working day(s) of a pay period. This rule does not apply to part-time employees.
3. In lieu of using the Administrative Holiday during the winter shut-down, it may be used as a floating holiday, with advance supervisory approval, on Cesar Chavez Day (the last Friday in March) or Veterans Day (November 11). The Laboratory will be open on both Cesar Chavez Day and Veterans Day and closed during winter shut-down. Employees electing to use the floating holiday on either Cesar Chavez Day or Veterans Day will be required to use an additional vacation day or leave-without-pay day during the winter shut-down. The floating holiday must be taken during the calendar year and cannot be accrued for future use. Nonexempt employees working on Cesar Chavez Day and Veterans Day will be paid for hours worked only. They will not receive additional holiday pay.

**ARTICLE 11  
HOURS OF WORK**

**A. EXEMPT EMPLOYEES**

1. The normal workweek for a full-time exempt employee is considered to be 40 hours, and for part-time exempt employees the proportion of 40 hours equivalent to the appointment percentage. However, greater emphasis is placed on meeting the responsibilities assigned to the position rather than on working a specified number of hours. Exempt employees do not receive overtime compensation or compensatory time off, or additional compensation beyond the established salary for the position. After extended periods of additional time worked or unusually heavy workload, supervisors may approve an employee's request for a temporary reduction in work schedule with no loss of pay.
2. Accounting For Time Not Worked
  - a. For full-time exempt employees, leaves with and without pay shall be used in one-day increments only.
  - b. Part-time exempt employees shall account for time off work in increments not less than that portion of a day during which an employee on less than full-time pay status is normally scheduled to work; absences of less than an employee's regularly scheduled work day shall not be charged against accrued leave time.
  - c. The salary of exempt employees shall not be reduced for absences of less than a full day or less than that portion of a day during which an employee on less than full-time pay status is normally scheduled to work.

**B. NON-EXEMPT EMPLOYEES**

1. Workweek

A workweek is a period of time consisting of seven consecutive days. The workweek is from 12:00 a.m. Sunday to 11:59 p.m. the following Saturday. Workweeks beginning and ending on a day other than the above may be established by the University.

2. Work Schedule

- a. A work schedule is the normal hours of work for an employee within one or more workweeks. Employees will be scheduled in accordance with the needs of the University.
- b. Full and part-time work schedules which may be established by the University include, but are not limited to:
  - 1) Eight hours per day, excluding meal periods, on five separate days within a workweek;
  - 2) Eight hours per day, excluding meal periods, on 10 separate days within two consecutive workweeks;
  - 3) Ten hours per day, excluding meal periods, on four separate days within a workweek;
  - 4) Ten hours per day, excluding meal periods, on eight separate days within two consecutive workweeks;
  - 5) Twelve hours per day, excluding meal periods, on 10 separate days within three consecutive workweeks; or
  - 6) Twelve hours per day, excluding meal periods, on 13 separate days within four consecutive workweeks.

3. Shift Coverage

The University shall determine when coverage is needed for vacation leave, sick leave, jury duty, military leave and other leaves. The University shall consider volunteers in assignment of HX employees.

4. Alternate Work Schedules

- a. Employees may request alternate work schedules. The University will review the feasibility of implementing alternate work schedules in those work units for which the employee(s) indicate(s) there is an interest in such schedules.
- b. In the event the University decides to abolish, establish or change alternate work schedules in work areas, the University shall inform UPTE at least 30 calendar days prior to taking such action.
- c. Nothing in this section shall infringe upon, interfere with or diminish in any way the University's right to ensure adequate staffing and coverage to meet operational requirements and necessities in an efficient and orderly manner.

5. Posting Of Schedules

- a. The University shall attempt to post work schedules at least two weeks in advance. HX unit employees will be notified when changes occur to the schedule.
- b. "Posted work schedules" as used in this Article shall mean a printed, typewritten or handwritten schedule which is posted in a work site area of the affected employee.
- c. Part-time career employees who have indicated their availability for additional assignments shall, when practicable, be offered the opportunity to work additional full shifts prior to the scheduling of any per diem employee(s) for additional shifts, within the following limitations:
  - 1) The affected part-time career employee(s) are qualified for the additional assignment(s), as determined by the University; and



- 2) The University shall not be obligated to offer any additional assignment(s) to part-time employees if such assignment(s) will result in any form of premium pay as a result of the employee(s) working any additional shift(s); and
- 3) The University shall not be obligated to modify the work schedule of any Per Diem employee who has been previously prescheduled in order to provide any part-time career employee(s) with additional work.

6. Shift Preference

With regard to shift assignments, an employee may file a written indication of preference for a particular shift (i.e., day shift, evening shift, or night shift) with his/her supervisor. The University shall also consider length of University service and the skills, knowledge, and abilities of the employees who normally perform the work involved prior to deciding upon the shift assignment.

7. Meal Periods

Not more than one meal period of at least one-half ( $\frac{1}{2}$ ) hour is provided for shifts of eight continuous hours or more. Meal periods are neither time worked nor time on pay status unless an employee is required by the University to remain on the job at a workstation. Whenever an employee is required to perform work during a meal period, the meal period shall be considered time worked.

8. Rest Periods

Time normally granted for rest periods is limited to two periods of 15 minutes during an 8-hour or 10-hour shift, or three periods during a 12-hour shift.

9. Changing and Clean-up Time

The University shall determine when cleanup time or uniform changing time is necessary for employees. When the University requires that the employee must change into or out of uniform, or must engage in special washing or cleaning procedures, the time spent in such activities shall be considered as time worked.

10. Travel Time

Travel on University business during an employee's normal working hours, or outside normal working hours is considered time worked if performed pursuant to the University's instructions. Travel between an employee's home and the workplace is not considered time worked.

11. Call Back

- a. Call back pertains to an employee who is not in on-call status and is called back to work in his/her unit after completing a shift and leaving the premises and before the employee's next scheduled shift. An employee called back to work may be assigned by the University to perform available work.
- b. An employee called back to work shall be paid for the time actually worked upon return or a minimum of three hours, whichever is greater. Call back time whether worked or not is considered time worked for the purpose of calculating hours of overtime.

12. On-Call

- a. On-call is time during which an employee is required to be available for return to work as a result of a call to work. An employee is not considered to be in on-call status unless the employee had previously been scheduled by the University for the assignment. The University retains the right to determine the need for, and the assignment of, on-call time.
- b. On-call will not be considered hours worked when employees are free to engage in activities for their own purposes even through they are required to inform the employer how they can be reached or to carry a beeper or radio.
  - 1) An employee in on-call status who is called in to work shall be guaranteed a minimum of two hours of work or two hours of pay in lieu of work for each occurrence of call-in. An employee in on-call status is not eligible for minimum call-back.
  - 2) Time spent in unrestricted on-call status but not actually worked is not considered as time worked or time on regular pay status.
  - 3) An employee called in to work from on-call status shall be assigned by the University to perform available work.
  - 4) Employees are eligible for additional pay for unrestricted on-call in accordance with the rates listed in Appendix A.
- c. On-call will be considered hours worked when an employee is required to restrict personal activities so that the employee cannot use his or her time effectively for the employee's purposes. Under such circumstances, the employee will be paid at the employee's normal pay rate (or overtime when appropriate).

13. Overtime

a. Assignment of Overtime

The University shall decide when overtime is needed and which employees will be assigned overtime. When practicable, the University shall consider volunteers in the assignment of overtime and shall attempt to distribute overtime work assignments equitably based on the employee's ability to perform the work. Overtime must be approved in advance by the University. As soon as practicable after the need for overtime is determined, the University shall notify the employee that overtime must be worked. Employees are expected to work overtime when such work is assigned.

b. Compensation of Overtime

- 1) Overtime hours do not count toward accumulation of sick leave, vacation, holiday, or retirement service credit.
- 2) Actual work for the purpose of computing overtime does not include hours paid in non-work status, such as sick leave pay, vacation pay, holiday pay, compensatory time, and paid leave of absence pursuant to Article 14 - Leaves of Absence.
- 3) Except as provided in Section A, below, employees shall be compensated for overtime worked at one and one-half (1-½) times the straight-time rate when the following conditions apply:

- a) Designated eight-hour employees who are assigned to a 14 consecutive day work period shall receive the time and one-half (1-½) overtime rate after 80 hours of actual work in the 14 day period. In addition, such employees shall be compensated at one and one-half (1-½X) times the regular straight time rate for hours worked which exceed eight hours of actual work in any workday within the 14-day work period. Any payment at the time and one-half rate for daily overtime hours worked within the 14-day work period shall be credited toward any time and one-half (1-½x) compensation due for hours worked in excess of 80 hours of actual work in the work period.
  - b) Nothing shall preclude the University from paying employees, on a campus by campus basis, time and one-half (1-½X) pay after shift. For the purposes of this paragraph only, a shift is defined as a minimum of eight hours.
- c. Compensatory Time
- 1) Overtime Compensation
    - a) At the option of the University, overtime shall be compensated at the appropriate rate either by pay or by compensatory time off, if the Department offers a compensatory time program, in accordance with this section.
    - b) Unless the employee and the University agree otherwise, overtime will be paid. An employee may within 30 days of the effective date of this agreement, or upon hire, and thereafter during the month of June, file a written indication of preference for either compensatory time off or pay with his/her immediate supervisor. The University shall grant the preference indicated.
    - c) The written indication of preference referenced in 1) b) above may be withdrawn by mutual agreement of the supervisor and the employee.
  - 2) Accumulation of compensatory time is limited to no more than 240 hours. An employee shall be paid for hours of overtime which exceed this limit.
  - 3) An employee may request scheduling of compensatory time. An employee's request for the scheduling of compensatory time shall be granted subject to the needs of the University, and shall not be unreasonably denied. Once the University has approved an employee's request to schedule compensatory time, the University shall not unreasonably rescind such approval.

**C. GENERAL PROVISIONS**

There shall be no duplication, pyramiding, or compounding of any premium wage payments.

**D. CONSECUTIVE DAYS OF WORK**

- 1. Subject to operational needs, the University shall make every effort to avoid assigning HX Unit employees to work full shifts in excess of the terms outlined in D.3.a., b., and c. below. For the purpose of this Section, a full shift consists of 8, 10 or 12 hours of work.

2. The consecutive days of work provisions may be waived by the employee, either at his/her request or as the result of scheduling change requested by the employee which results in such consecutive days of work.
3. An HX Unit employee shall be paid one and one-half (1-1/2) times the employee's straight-time rate for all hours worked on each shift in excess of a., b., or c., below until a day off is granted when:
  - a. A designated eight-hours employee is scheduled to work more than six consecutive full shifts within six consecutive days.
  - b. A designated 10-hour employee is scheduled to work more than five consecutive full shifts within five consecutive days.
  - c. A designated 12-hours employee is scheduled to work more than four consecutive full shifts within four consecutive days.

**E. REST BETWEEN SHIFTS**

The University encourages supervisors to schedule shifts so as to provide adequate rest between shifts.

**F. LAWRENCE BERKELEY NATIONAL LABORATORY**

Policies, procedures, definitions, qualifications, calculations, covered hours and rates in effect at PERB's certification of UPTE-CWA local 9119, on September 15, 1997, shall remain in effect for employees at the Lawrence Berkeley National Laboratory and shall supersede the provisions of this Article where in conflict with the Agreement.

**ARTICLE 12  
JOB POSTING**

Whenever vacancies within the bargaining unit are available for recruitment, the University shall either post a notice (in writing or electronically) listing the active, available, vacant position(s), or provide for electronic matching of employee skills with vacant positions, or circulate a notice to each unit at the hospital/campus/Laboratory where the vacancies occur. The notice shall identify the unit and shift of the job opening and the duration of the recruitment. An employee may apply for posted vacancies before the closing date of the notice in accordance with local/campus/hospital procedures.

**ARTICLE 13  
LAYOFF AND REDUCTION IN TIME**

**A. GENERAL**

1. The University has the sole, non-grievable non-arbitrable right to determine when temporary, emergency, or indefinite layoffs shall occur. If, in the judgment of the University, a layoff is necessary, staffing levels will be reduced in accordance with this Article. The University shall determine the unit of layoff and which positions are to be subject to layoff.
2. Layoffs may be emergency, temporary or indefinite.
3. A layoff is an involuntary:
  - a. Separation from employment as implemented in accordance with the provisions of this Article, or
  - b. Transfer of an employee in a career position to a non-career position, or
  - c. Reduction in appointment rate of a non-probationary career employee.

## **B. DEFINITIONS**

1. An emergency layoff is one for which the need occurs suddenly and may be caused by a decrease in workload, low census, or unforeseen occurrence that limits the availability of work. An individual employee may not be subject to emergency layoffs for more than 15 calendar days. An emergency layoff requires no advance notice.
2. A temporary layoff is one for which the University specifies an affected employee's date for return to work of not more than 120 calendar days from the effective date of the layoff.
3. An indefinite layoff is one for which the affected employee receives no date for return to work, or no date of restoration to his/her former appointment rate.

## **C. TEMPORARY LAYOFF**

If the University determines that a temporary layoff of 120 calendar days or less is imminent, it shall be implemented in accordance with the provisions of this Section.

### **1. Alternatives To Layoff**

The University may, at its sole non-grievable discretion attempt to avoid a temporary layoff, or to ease its impact, by implementing the following alternatives:

- a. Temporarily reassigning the affected employee(s) to an alternative assignment for which he/she is qualified, or
- b. Scheduling the use of accrued compensatory time, or
- c. Scheduling the use of accrued vacation time.

### **2. Notice**

When the University identifies particular employees to be affected by a temporary layoff, it shall give the individual employee written notice of the expected beginning and ending dates of the temporary layoff as follows:

- a. The University shall give, if feasible, 15 calendar days' notice of the expected beginning and ending dates of the layoff to the affected employee(s) and the Union.
- b. For conversion from temporary layoff to indefinite layoff, the University shall give 30 calendar days' notice, if feasible.
- c. If less than 15 calendar days' notice is granted, the affected employee(s) may receive straight time pay in lieu of notice for each additional day the employee(s) would have been on pay status had the employee(s) been given 15 calendar days' notice. Pay in lieu of notice is provided for reductions in appointment rate only for the difference between the two rates.
- d. If the ending date of the temporary layoff is changed, the University shall give the affected employee notice. The employee shall return to work on the date provided in the notice.
  - 1) The employee shall return to work on the date provided in the Section C.2., Notice, above, and shall notify the University in advance if he/she is unable to do so. The University and the employee shall attempt to establish a mutually agreeable return date. If, due to operational considerations, the University cannot accommodate the employee's request for an alternate return date, he/she will be considered to have resigned effective on the date provided in the notice in Section C.2., above.

- 2) Notice of a change in temporary layoff dates does not invoke the 'pay in lieu of notice' provisions of this Article.
  - e. When the University determines that a temporary layoff is imminent, it shall give UPTE such notice as is reasonable under the circumstances. The notice shall describe the general area(s) which may be affected. The University shall notify the union concurrent with notification to affected HX employees that they are to be laid off, or that changes in the temporary layoff dates have occurred.
3. Conversion Of Temporary To Indefinite Layoff

In the event the University converts a temporary layoff or reduction in time to an indefinite layoff, the affected employee shall be provided all rights under Section D., Indefinite Layoff, beginning at the time of notification of conversion. If the University determines that an indefinite layoff is imminent, it shall be implemented in accordance with the provisions of Section D, below.

In the case of reduction in time, employees who are laid off following a reduction in time that occurred within 60 days of the layoff notice shall be eligible for severance, or reduced severance, on the basis of their percentage of appointment just prior to their reduction in time.

#### **D. INDEFINITE LAYOFF**

If the University determines that an indefinite layoff is imminent, it shall be implemented in accordance with the provisions of this Section.

##### 1. Alternatives To Layoff

The University may attempt to avoid an indefinite layoff, or to ease its impact, by implementing the following alternatives:

- a. Offering affected employee(s) an active available vacant career position, if any, at the same appointment rate, at the same salary level as determined by the salary range maximum within the layoff unit within the facility, provided the employee is qualified for the vacant position, or
- b. Scheduling the use of accrued vacation and/or compensatory time, in accordance with the needs of the University.

##### 2. Selection For Layoff

- a. "Seniority" is calculated by full-time-equivalent months of University service. Employment prior to a break in service shall not be counted when calculating seniority. When employees have the same number of full-time-equivalent months (or hours), the employee with the most recent date of appointment shall be considered the less senior employee.
- b. The order of indefinite layoff of employees in the same classification within the unit of layoff shall be in inverse order of seniority.
- c. The University may retain employees irrespective of seniority who possess special knowledge, skills, or abilities which are not equally possessed by other employees in the same classification in the layoff unit and which are necessary to perform the ongoing functions of the affected area.

- 1) Employees in the unit(s) affected by the layoff who have more seniority than those employees designated for layoff may volunteer to waive their seniority rights solely in order to be designated for the layoff. The University may approve

such waiver, provided that the needs of the University, as determined by the University, are met.

- 2) The employee(s) who has been designated for layoff in accordance with Section D.2.c.1), above, shall be provided all rights under Section D.4., and Section D.5., below, beginning at the time of notification of Indefinite layoff.
  - d. Where electronic job placement bulleting boards are in use, the University shall provide bargaining unit members access to such placement bulletin boards to the same degree as such bulletin boards are made available to other staff employees. Employees who are laid off may be provided information about other University locations' job placement bulletin boards according to local procedures.
3. Notice
- a. When the University identifies particular employees to be affected by an indefinite layoff, it shall give individual written notice of the effective date of the layoff to each affected employee and the Union. Advance notice will be provided as follows:
    - 1) For indefinite layoff, the University shall give 60 calendar days notice if feasible. The University may pay up to 30 days of the 60 day notice period in lieu of notice. In no event shall an employee receive less than 30 day notice of indefinite layoff. For conversion from temporary layoff to indefinite layoff, the University shall give 30 calendar days notice if feasible.
    - 2) If an HX unit employee with less seniority is to be retained, the University shall notify the union in advance of the layoff date and in writing of the special knowledge skills and abilities, which support the retention of the less senior HX employee.
  - b. An employee shall be provided all rights under Section D.4. and Section D.5., below, beginning at the time of notification of his/her indefinite layoff.
4. Recall
- a. Non-probationary career employees who are indefinitely laid off shall be recalled in order of seniority to an active available vacant career position provided:
    - 1) The position is to be filled and
    - 2) Is in the same classification within the layoff unit from which they were laid off, as determined by the University.
  - b. Probationary, per diem, and limited appointment employees shall not have a right to recall. Employees who are eligible for recall with less than five years of seniority shall retain recall eligibility for one year. Employees who are eligible for recall with five years or more seniority shall retain recall eligibility for two years.
  - c. The right to recall terminates:
    - 1) Upon the employee's retirement; or
    - 2) At the end of the eligibility period; or
    - 3) If an employee refuses and/or fails to respond affirmatively within ten (10) calendar days to a University inquiry concerning the employee's desire to remain on the recall list for possible return to work; or

- 4) If an employee refuses or fails to respond within ten (10) calendar days to a written recall to work in the same classification within the layoff unit, at the same or greater appointment rate, and at the same or greater rate of pay earned by the employee at the time of layoff, or
  - 5) If an employee refuses an offer of reemployment at the same or greater appointment rate, at the same or higher salary level as determined by the salary range maximum, and at the same or higher rate of pay earned by the employee at the time of layoff within ten (10) calendar days, or
  - 6) If an employee accepts a career position within the University at the same or higher salary level as determined by the salary range maximum, the same or greater appointment rate, and the same or higher rate of pay earned by the employee at the time of layoff, or
  - 7) If a career employee who has received her/his notice of indefinite layoff elects to receive severance pay in lieu of recall.
- d. Recall rights, once terminated, may be reinstated at the sole discretion of the University, upon the request of the employee.
5. Preference For Reemployment
- a. A non-probationary career employee who is on indefinite layoff, or who has received written notice of an indefinite layoff shall be granted preference for reemployment or transfer to any active vacant career bargaining unit position at the same campus/Laboratory from which the employee was laid off and for which the employee is qualified when the position is to be filled is:
    - 1) At the same or lower salary level (as determined by the salary range maximum); and
    - 2) At the same or lesser percentage of time as the position held by the employee at the time of layoff.
  - b. Preference for reemployment or transfer is not extended to probationary, per diem, or limited appointment HX employees. A regular status HX employee with preference for reemployment or transfer may be rejected only if the employee lacks qualifications required of the position sought.
  - c. HX employees eligible for preference for reemployment with less than ten years seniority at the time the layoff occurs shall retain preference for reemployment status for one year. HX employees with 10 or more years of seniority at the time the layoff occurs shall retain preference for reemployment for two years.
  - d. HX employees preferentially rehired from layoff status or assigned to a new position after receiving notice of layoff who fail to perform satisfactorily may, at any time during the six months following such return, be returned to or placed on layoff status. Previous time on layoff status prior to rehire shall be deducted from the employee's period of eligibility.
  - e. The right to preference for reemployment terminates:
    - 1) Upon the employee's retirement; or
    - 2) At the end of the eligibility period; or
    - 3) If a HX employee refuses recall under the provisions of Section D.4., Recall, above; or



- 4) If a HX employee refuses and/or fails to respond to a University inquiry concerning the employee's desire to remain on the preference for reemployment list; or
  - 5) If a HX employee accepts a career position; or
  - 6) If a HX employee refuses to accept a position offered by the University which is at the same or higher salary level (as determined by the salary range maximum); and, is at the same or higher appointment rate held by the HX employee at the time of layoff; or
  - 7) If a career employee who has received her/his notice of indefinite layoff elects to receive severance pay in lieu of preferential rehire.
- f. The right to preference for reemployment continues during, but is not extended by, temporary periods of employment in limited appointment and/or Per Diem positions.
6. Severance – Effective August 25, 2003 through the Duration of the Agreement.
- a. A career employee who has received notice of indefinite layoff may elect, in writing, to receive severance pay in lieu of preferential rehire and recall rights within fourteen (14) calendar days of receipt of the notice of layoff. Election is irrevocable. The University offer severance in lieu of preferential rehire rights to all employees in the department who receive notice for indefinite layoff. Severance pay shall be in accordance with the following:
    - 1) Payment. An employee who elects severance pay in lieu of preferential rehire and recall rights shall be paid a lump sum as follows:
      - a. Employees with less than five (5) years of University service shall receive two (2) weeks severance pay.
      - b. Employees with five (5) or more years of University service shall receive five (5) weeks severance pay, plus one week for each additional year of service, up to a maximum of sixteen (16) weeks.
      - c. Employees who are laid off following a reduction in time that occurred within 60 calendar days of the layoff shall be eligible for severance, or reduced severance, on the basis of their percentage of appointment just prior to their reduction in time.
      - d. This section shall not apply to temporary layoff or reduction in time.
      - e. Failure to make an election as provided in Section 6 will result in the employee receiving preferential rehire and recall rights and extinguish the right to severance pay.
  - b. Reduced Severance (with Preference and Recall)
    - 1) A career employee who has received notice of indefinite layoff may elect, in writing, to receive preferential rehire and recall rights with reduced severance within 14 days of receipt of the notice of layoff. Election is irrevocable. The University shall offer severance in lieu of preferential rehire and recall rights with reduced severance to all eligible employees in the department affected by the layoff.

Reduced severance pay shall be in accordance with the following:

- 2) Employees with less than five (5) years of service are not eligible for reduced severance under this section.
  - 3) Employees with five (5) or more years of service shall receive four (4) weeks reduced severance.
  - 4) Employees with 13 or more years of service shall receive eight (8) weeks reduced severance.
  - 5) Employees who are laid off following a reduction in time that occurred within 60 calendar days of the layoff notice shall be eligible for reduced severance on the basis of their percentage of appointment just prior to their reduction in time.
  - 6) This section shall not apply to temporary layoff or reduction in time.
  - 7) Failure to make an election as provided in Section 6 will result in the employee receiving preferential rehire and recall rights and extinguish the right to the reduced severance pay option.
- c.
- 1) UPTe will be notified if an employee has been provided severance or reduced severance.
  - 2) Should an employee, as a result of a grievance, arbitration, or settlement agreement, be returned to work or be rehired or preferentially rehired or recalled, related to the layoff, the severance or reduced severance received will be deducted from the back pay award, if any, or credited as an advance on earnings, if proportional severance is to be returned.
- d.
- 1) An employee cannot be returned to work without first repaying the severance or reduced severance or signing a severance repayment agreement. The employee's failure to complete the severance repayment obligation shall not increase the University's back pay liability, if applicable.
  - 2) Repayment. An employee who has received severance pay under this provision and who returns to work in a career position with the University at the same or higher salary and same or higher percentage of time as the position held at the time of layoff shall repay to the University the portion of severance pay received that exceeds the time the employee was laid off. Before returning to work, the employee must make repayment in full or sign a repayment agreement.

#### **E. CONTINUITY OF SERVICE UPON REEMPLOYMENT**

1. A layoff of 120 calendar days or less does not create a break in service.
2. Reemployment in a career position within the period of right to recall or preference provides continuity of service and reinstates previous seniority.
3. Seniority accrues, and benefit accruals are accumulated, only when an employee is on pay status.

#### **F. BENEFIT COVERAGE**

Medical and retirement plan coverage may be provided to employees in layoff status, in accordance with the Plan Regulations and Documents. An employee in

layoff status should discuss his/her medical and/or retirement coverage with the campus/hospital benefits office representative.

**G. LAWRENCE BERKELEY NATIONAL LABORATORY**

Policies, procedures, definitions, qualifications, and calculations in effect at PERB's certification of UPTC-CWA Local 9119, on September 15, 1997, relative to severance pay, preferential rehire, and recall shall remain in effect for employees at the Lawrence Berkeley National Laboratory and shall supersede the provisions of this Article where in conflict with the agreement.

**ARTICLE 14  
LEAVES OF ABSENCE**

**A. GENERAL PROVISIONS**

Subject to the provisions of this Article, leaves of absence may be with or without pay, may be for medical purposes and/or non-medical reasons, and are subject to the approval of the University. Nothing shall preclude the University, on a campus-by-campus basis, from establishing, implementing, or continuing a Catastrophic Illness or Injury Leave policy covering Health Care Professional unit employees.

1. Definitions

- a. Non-medical leaves of absence, with or without pay, include: Family Care Leave, leave for jury duty, voting, blood donations, administrative or legal proceedings, emergencies, and University functions.
- b. Medical Leaves with or without pay, include Pregnancy Disability Leave, Family Care/Medical Leave, and Disability Leave.
- c. FMLA is the federal Family and Medical Leave Act of 1993.
- d. CFRA is the California Family Rights Act of 1995.

2. Use Of Family Care And Medical Leave Entitlement

- a. If an employee eligible for a Family Care/Medical Leave takes a leave for her/his own serious health condition, (as defined in Section B.1.e. below), the absence from work shall be deducted from the employee's Family Care/Medical Leave entitlement.
- b. If an employee is ineligible for Family Care/Medical Leave or if the employee has exhausted her/his leave year entitlement, an approved disability leave of absence may be provided for the period(s) an eligible employee is absent from work for verifiable medical reasons as provided in Section C. and Section D. of this Article.

3. Benefit Eligibility While On Leave Without Pay

- a. Special Benefit Eligibility For Family Care/Medical Leaves - An eligible employee shall have University-provided health benefits continued for the period of the Family Care/Medical Leave in accordance with Section B.9. of this Article.
- b. An approved leave without pay shall not be considered a break in service.
- c. The provisions of Article 36, Sick Leave, Article 41, Vacation, and Article 40, University Benefits, shall apply when employees are on an approved leave without pay.

- d. An eligible employee on approved leave without pay may elect to continue University-sponsored insurance coverages (as determined by plan documents or regulations) for the period of the leave by remitting the entire premium amount due for the period of the approved leave, in accordance with the provisions of the applicable plan(s). Regulations of the retirement systems determine the effects of leave without pay on retirement benefits.

#### 4. Requests For Leave

Except as provided under Section B.3., Family Care/Medical Leave Notification, requests for leaves of absence and extensions, with or without pay, shall be submitted in writing to the University. Such requests shall be submitted sufficiently in advance of the requested leave date to provide the University time to assess the operational impact of granting the request. All requests for leaves of absence shall contain the requested beginning and end date of the leave, and any additional information as required.

#### 5. Duration

- a. The start date of the leave, the terms of the leave and the date of return from the leave are determined when the leave is granted, and shall be communicated to the employee, in accordance with the provisions of this Article. Except as provided under Section B.4.b., Family Care/Medical Leave, written confirmation shall be provided when the University determines such confirmation is appropriate.
- b. Except as provided for under Pregnancy Disability, Section C.1.b.2., the aggregate maximum of leaves taken in any combination shall not exceed six months in any one year period.
- c. No employee with a predetermined appointment end date or predetermined date of separation shall be granted a leave of absence beyond her/his appointment end date or the predetermined date of separation.

#### 6. Return To Work

- a. Except as provided in Section B, Family Care/Medical Leave, Section C, Pregnancy Disability Leave, and Article 18, Military Leave, an employee who has been granted an approved leave with or without pay shall be reinstated to the same or a similar position in the same department upon expiration of the leave, in accordance with the Provisions of this Article. If the position held has been abolished or affected by layoff during the leave, the employee shall be afforded the same considerations which would have been afforded had that employee been on pay status when the position was abolished or affected by layoff.
- b. Failure to provide a medical release to return to work, as required in Section B.5 and Section D.4., may result in the delay of reinstatement until the employee submits the required medical release certification.
- c. An employee who has exhausted her/his original leave entitlement and who has been granted additional leave under another section of this Article, shall be reinstated in accordance with the provisions of the section under which the additional leave was granted. The employee shall be advised in writing, at the time the additional leave is granted.
- d. An employee who fails to return to work from a leave of absence on the approved anticipated date of return shall be considered to have abandoned her/his job, in accordance with Article 33 – Resignation/Job Abandonment.

## B. FAMILY CARE AND MEDICAL LEAVE

Family Care Leave includes Parental Leave and Family Illness Leave. Medical Leave is provided for the employee's own serious health condition.

### 1. Definitions

- a. "Parental Leave" is leave to care for the employee's newborn or a child who has been placed with the employee for adoption or foster care.
- b. "Family Illness Leave" is leave to care for the employee's child, parent, or spouse with a serious health condition.
- c. "A Family Member" for the purposes of family care leave is the employee's biological, adopted, or foster child, stepchild or legal ward who is under 18 years, a child for whom the employee stands in loco parentis, or an adult dependent child; a biological, foster, or adoptive parent, stepparent or legal guardian, an individual who stood in loco parentis while the employee was a child; or spouse, or partner in marriage as defined in California Civil Code Section 4100, or same-sex domestic partner.
- d. "A Serious Health Condition For The Purposes Of Family Illness Leave" is an illness, injury, impairment, or physical or mental condition which warrants the participation of the employee to provide supervision or care during a period of treatment or incapacity including psychological comfort.
- e. "Medical Leave" is leave granted for the employee's own serious health condition which makes the employee unable to perform any one or all of the essential assigned functions of the employee's position. An employee disabled because of pregnancy-related conditions is covered under Section C. - Pregnancy Disability, below.
- f. "An Employee's Own Serious Health Condition" is an illness, injury, impairment, or physical or mental condition, that renders the employee unable to perform any one or all of the essential functions of the employee's position and involves the following:
  - g.
    - 1) Inpatient care in a hospital, hospice, or residential medical care facility, or
    - 2) Continuing treatment by a health care provider for:
      - a) A period of incapacity of more than three consecutive calendar days, or
      - b) Any period of incapacity or treatment due to a chronic serious health condition, or
      - c) Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.
- h. "A Health Care Provider" is an individual who is licensed in California or is duly licensed in another State or jurisdiction, to hold either a physician's and surgeon's certificate or an osteopathic physician's and surgeon's certificate, or who is duly licensed as a podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to the treatment of the spine to correct a subluxation as demonstrated by x-ray to exist), nurse practitioner or nurse mid-wife performing within the scope of her/his duties, or Christian Science practitioner or any health care provider that the

employee's health plan carrier recognizes for purposes of payment.

- i. "1,250 Hours Of Actual Service" means time actually spent at work and does not include any paid time off including but not limited to an employee's use of accrued vacation, compensatory time, or sick leave, nor does it include time paid for holidays not worked or time spent in unrestricted on-call status.

## 2. Eligibility Criteria And Duration

- a. Employees who have at least 12 cumulative months of University service, and have at least 1,250 hours of actual service during the 12 month period immediately preceding the commencement of the leave, are eligible for and shall be granted up to a total of 12 workweeks of Family Care/Medical Leave in the leave year. For the purposes of this Article and section, only, all prior University service, including service with the Department of Energy Laboratories, shall be used to calculate the twelve-month service requirement.
- b. Family Care/Medical Leave is unpaid leave, except as otherwise provided in this Article.
  - 1) An employee's use of her/his accrued Compensatory Time Off cannot be deducted from the 12 workweek Family Care/Medical Leave maximum, and shall not be granted. All other time off used for family care and/or medical leave purposes, including Work Incurred Injury and Illness leave, shall be deducted from the 12 workweek Family Care/Medical Leave maximum.
  - 2) Family Care/Medical Leave shall not exceed 12 workweeks in any 12 month period, and the leave year shall commence on the date the employee first takes leave. In the event the leave year for all other University employees becomes a calendar year, the commencement period for employees in this bargaining unit shall be the same as the commencement period for all other staff employees.
- c. If the employee has exhausted her/his entitlement to Family Care/Medical Leave, s/he may apply for additional leave pursuant to this Article.

## 3. Notification

- a. If the employee learns of the event giving rise to the need for leave more than 30 calendar days in advance of the leave's anticipated initiation date, the employee shall give the University at least 30 calendar days notice of the need for leave. An employee who fails to give 30 days' notice for a foreseeable leave with no reasonable basis for the delay, may have the family care and/or medical leave delayed until 30 days after the date on which the employee provides notice.
  - 1) If the need for leave is foreseeable due to a planned medical treatment or the supervision of a family member's medical treatment, the employee shall make reasonable efforts to schedule the treatment so as to not unduly disrupt the University's operations.
  - 2) If the need for leave is unforeseeable or actually occurs prior to the anticipated date of foreseeable leave, the employee shall provide the University with as much notice as practicable and, at a minimum, within five calendar days after learning of the need for leave.

- b. The University shall determine whether the employee meets the eligibility requirements and therefore qualifies for a Family Care/Medical Leave and shall, as soon as practicable, notify the employee whether the leave is designated or provisionally designated as Family Care/Medical Leave. The start date of the leave, the terms of the leave and the date of return from the leave are determined when the leave is granted.
- c. Extensions to the Family Care/Medical Leave, up to the aggregate maximum of 12 weeks in the leave year, may be granted in accordance with Section B.2.b. of this Article.

#### 4. Certification

- a. For The Employee's Own Serious Health Condition. When a leave of absence is requested for the employee's own serious health condition, the University may, at its discretion, require that an employee's request for leave be supported by written certification issued by the employee's health care provider. When the University requires certification, the University shall inform the employee of its requirement in writing. Certification may be provided by the employee on a form given to the employee by the University and shall, regardless of the format in which it is provided, include:
  - 1) Certification that the employee has a serious health condition as defined in Section B.1.f., above, and
  - 2) A statement as to whether the employee is unable to perform any one or more of the essential assigned functions of the position including a statement of the function(s) the employee is unable to perform, and
  - 3) The date on which the employee's serious health condition began, if known, the probable duration of the condition and the employee's probable date of return, and
  - 4) Whether it will be necessary for the employee to take leave intermittently or to work on a reduced work schedule, and if so, the probable duration of such schedule, and,
  - 5) If the condition is chronic and the employee is presently incapacitated, the duration and frequency of episodes of incapacity.
- b. For The Employee's Family Member. When a leave of absence is requested for the serious health condition of the employee's family member, the University may, at its discretion, require that an employee's request for leave be supported by written certification issued by the family member's health care provider. When the University requires certification, the University shall inform the employee of its in writing. Certification may be provided by the employee on a form given to the employee by the University and shall, regardless of the format in which it is provided, include:
  - 1) Certification that the employee's family member has a serious health condition as defined in Section B.1.d., above, and
  - 2) A statement that the family member's serious health condition warrants the participation of the employee to provide supervision or care during a period of the treatment or incapacity or psychological comfort, and
  - 3) Whether the employee's family member will need care intermittently or on a reduced work schedule and the probable duration that the employee is needed to provide care.
  - 4) In addition, the employee will be required to certify either on the form or separately the care s/he will provide the

family member and the estimated duration of the period of care.

- c. Confirmation Of Family Relationship. The University may, at its sole non-grievable discretion, require an employee requesting leave to care for a family member with a serious health condition or requesting Parental leave, to provide documentation of the familial relationship or proof of birth, placement for adoption or in foster care. The employee's failure to provide documentation within 15 calendar days of the University's request may, at the sole non-grievable discretion of the University, result in either
  - 1) A delay of the leave until the required documentation is provided or
  - 2) If the leave has not begun, it will be denied. If the leave has begun, the leave will not be designated as Family and Medical Care Leave and may be discontinued by the University.
- d. Questioned Medical Opinions. Should the University question the validity of the employee's certification for her/his own serious health condition the University may, at its sole non-grievable discretion, require the employee to obtain a second medical opinion from a second health care provider selected by the University. Should the second medical opinion differ from the opinion of the employee's own health care provider, the University may, at its sole non-grievable discretion, require a third medical opinion from a third health care provider, jointly agreed to by the employee and the University. The University shall bear the cost of the second and third opinions, and the third opinion shall be final.
- e. Additional Certification And/Or Recertification. If additional leave is requested or should the circumstances of the leave change, the University may, at its sole non-grievable discretion, require the employee to obtain recertification. Such requests for subsequent certification and/or recertification may be either verbal or in writing.
  - 1) If certification and/or recertification are required, the employee shall return the certification within 15 calendar days of the University's request, where practicable.
  - 2) Failure to provide certification and/or recertification for a foreseeable leave within the requested time may result in delay of the leave until the required certification is received. Failure to provide certification for an unforeseeable leave within the requested time period may result in discontinuance of the leave until the required certification is provided. If the employee fails to provide certification, the leave is not Family Care/Medical Leave and will be denied as family care leave, in accordance with the provisions of Section B.4.c.2).
- f. Failure To Provide Complete Certification And/Or Recertification. If the employee fails to provide a completed certification and/or recertification, the employee shall be given at least 15 calendar days to perfect the certification and/or recertification. Failure to perfect an incomplete certification and/or recertification within the requested time period may result in delay of the leave or discontinuance of the leave until the required certification and/or recertification is provided. If the employee fails to provide a complete certification and/or recertification, the leave is not Family Care/Medical Leave will be denied in accordance with the provisions of Section B.4.c.2.)



5. Return From Family Care/Medical Leave For Own Health Condition
  - a. The employee shall provide her/his employing department at least ten (10) days notice of her/his anticipated return to work.
  - b. An employee who has been granted a Family Care/Medical Leave for her/his own serious health condition, must provide a written medical release to return to work prior to returning to work.
  - c. The employee who has been medically released to perform the essential assigned functions of her/his job, shall be returned in accordance with the provisions of Section B.10.
  - d. Failure to provide a medical release to return to work may result in the delay of reinstatement until the employee submits the required medical release certification.
  
6. Use Of Accrued Paid Leave
  - a. Family Care/Medical Leave is unpaid, except for the use of sick leave and/or the use of accrued vacation, as provided in this Article:
  - b. An employee on leave for her/his own serious health condition:
    - 1) Shall use accrued sick leave in accordance with the University's disability plan requirements; or
    - 2) If not eligible for University disability benefits and not on leave as a result of a work-incurred injury or illness, shall use all accrued sick leave prior to taking leave without pay; or
    - 3) If on leave due to a work-incurred injury or illness, may use accrued sick leave as provided in Article 44 - Work Incurred Injury or Illness.
  - c. An employee on leave for her/his own serious health condition shall use accrued vacation time prior to taking leave without pay, if all accrued sick leave has been exhausted.
  - d. An employee on Family Care Leave for Family Illness may use sick leave in accordance with Article 36 - Sick Leave, Section B.3., and shall use accrued vacation time prior to taking leave without pay.
  
7. Duration
  - a. For the purposes of Family Care/Medical Leave, only, 12 workweeks is equivalent to 480 hours of scheduled work for full-time career and casual employees who are normally scheduled for an eight hours per day five days per workweek (8/40) schedule. While the use of Family Care/Medical Leave need not be consecutive, in no event shall an employee's aggregate use of Family Care/Medical Leave exceed a total of 12 workweeks within the leave year.
  - b. Hourly Conversion For Part-Time or Alternatively Scheduled Employees. For employees who work part-time or a schedule other than an 8/40, the number of Family Care/Medical Leave hours to which the employee is eligible shall be adjusted in accordance with her/his normal weekly work schedule. An employee whose schedule varies from week to week is eligible for a pro-rated amount of Family Care/Medical Leave based on her/his hours worked over the previous 12 weeks preceding the leave.

- c. Employee Requests For Reduced Work Schedules. When medically necessary and supported by medical certification, the University shall grant an eligible employee's request for a reduced work schedule or intermittent leave including absences of less than one day. When granted, the University will count only the time actually spent on the intermittent leave or reduced work schedule towards the employee's entitlement of 480 hours in the leave year.
  - d. Alternate Assignments To Accommodate Intermittent Leave Or Reduced Work Schedule. When the employee requests an intermittent leave or a reduced work schedule, the University may, at its sole, non-grievable discretion, require the employee to transfer temporarily to an available alternate position for which the employee is qualified and which better accommodates the employee's recurring period of leave. Such transfer shall have equivalent pay and terms and conditions of employment, but does not need to have equivalent duties.
8. Parental Leave
- a. Parental Leave is a form of Family Care/Medical Leave to care for the employee's newborn or a child placed with the employee for adoption or foster care. Such leave must be initiated and concluded within one year of the birth or placement of the child. The University shall grant a Parental Leave subject to the limitations described below. If requested and taken immediately following a Pregnancy Disability Leave, an employee eligible for FMLA/CFRA at the beginning of her Pregnancy Disability leave shall be granted the unused portion of CFRA/FMLA leave for Parental Leave purposes, up to a maximum of 12 workweeks. The amount available for use is determined by the amount which the employee has previously used under CFRA/FMLA in the leave year.
  - b. Requests For Parental Leave. The employee shall request Parental Leave sufficiently in advance of the expected birth date of the child or placement of a child for adoption or foster care to allow the University to plan for the absence of the employee. The anticipated date of return from Parental Leave shall be set at the time such leave commences, or if requested in conjunction with a Family Care/Medical Leave on account of the pregnancy/childbearing disability, shall be set at the time such Family Care/Medical Leave commences. Parental Leave, when taken for adoption or foster care, could commence prior to the date of placement.
  - c. Duration. Parental Leave, alone, shall not exceed 12 workweeks within the leave year as defined in Section B.2.b.2) and B.7., above. However, when Parental Leave is combined with a leave for pregnancy-related and/or childbearing disability only, the total Family Care/Parental Leave shall not exceed seven months in the leave year.
    - 1) An employee on Parental Leave shall use accrued vacation time prior to taking leave without pay.
    - 2) The University shall grant a Parental Leave of at least two weeks duration on any two occasions during the leave year.
    - 3) The University, at its sole non-grievable discretion, may require that any additional Parental Leave requested during this same time period be for a minimum duration of two weeks, unless otherwise required by law.

9. Continuation Of Health Benefits

An eligible employee who is on an approved Family Care and/or Medical Leave shall be entitled to continue participation in health plan coverage (medical, dental, and optical) as if s/he were on pay status for a period of up to 12 workweeks in the leave year. However, an employee on an approved Pregnancy Disability Leave who is dually eligible for leave under the federal Family and Medical Leave Act and the California Family Rights Act, shall be entitled for up to 12 workweeks of health plan coverage for the combined Pregnancy Disability Leave/Parental Leave which runs concurrently with FMLA and/or CFRA. Other group insurance coverage and retirement benefits shall be continued in accordance with the provisions of the applicable group insurance and retirement system regulations.

10. Return To Work

When an employee has been granted an approved Family Care/Medical Leave of Absence and returns within 12 workweeks of the initiation of the leave, s/he shall be reinstated to the same or an equivalent position upon expiration of the leave. If the position has been abolished or otherwise affected by layoff and an equivalent position is not available, the employee shall be afforded the same considerations that would have been afforded had the employee been on pay status when the position was abolished or affected by layoff. No employee with a predetermined appointment end date or predetermined date of separation shall be granted a leave of absence beyond her/his appointment end date or the predetermined date of separation. An employee who has been granted a Family Care/Medical Leave for her/his own health condition, may be required by the University to provide a written medical release to return to work prior to her/his return to work.

**C. PREGNANCY DISABILITY LEAVE**

1. Duration

- a. During the period of verified pregnancy-related and/or childbearing disability, an employee is entitled to and the University shall grant up to four months of Pregnancy Disability Leave for pregnancy/childbearing disability purposes.
- b. Duration. If the employee is eligible for Family Care/Medical Leave, pursuant to Section B, above, such leave shall be deducted from an employee's federal Family and Medical Leave entitlement.
  - 1) If the pregnancy-related/childbearing medical disability continues beyond four months, a medical disability leave of absence may be granted in accordance with Section D., below, for a total medical absence not to exceed six months.
  - 2) Additionally, the employee may be eligible for Parental Leave, pursuant to Section B.8., above, to care for her newborn child. The total Family Care Leave, when combined with a Pregnancy Disability Leave, shall not exceed seven months in the leave year.
- c. Pregnancy Disability Leave May Consist Of leave with or without pay; however, an employee shall be required to use accrued sick leave in accordance with the University's Disability Plan. If sick leave is exhausted, the employee may elect to use accrued vacation time before taking leave without pay.
- d. Additional Family Care Leave In The Leave Year. Upon termination of the Pregnancy Disability Leave, which runs concurrently with federal Family Care/Medical Leave, an eligible employee shall also be entitled to the unused portion of

CFRA/FMLA leave up to a maximum of 12 workweeks for any covered reason except leave for a pregnancy-related medical condition. The amount available for use is determined by the amount that the employee has previously used under FMLA/CFRA in the leave year.

2. As An Alternative To Or In Addition To Pregnancy Disability Leave, the University shall temporarily transfer a pregnant employee to a less strenuous or hazardous position upon the request of the employee and with the advice of the employee's health care provider, if the transfer can be reasonably accommodated. For the purpose of this section, a temporary transfer includes a temporary modification of the employee's own position to make it less strenuous or hazardous. A temporary transfer under this section is considered time worked and shall not be counted toward an employee's entitlement of up to four months of pregnancy disability leave, unless the employee is also on a reduced work schedule or an intermittent leave schedule.
3. Reduced Work Schedule - When medically necessary, and supported by medical certification, the University shall grant an employee Pregnancy Disability Leave on a reduced work schedule or on an intermittent basis including absences of less than one day. Only the time actually spent on the intermittent or reduced leave schedule shall be counted towards the employee's entitlement of four months in any twelve month period.
4. Return To Work - An employee who has been granted a temporary transfer and/or Pregnancy Disability Leave shall be reinstated to the same position, provided that the employee returns to work immediately upon termination of the Pregnancy Disability Leave and provided that the aggregate duration of all leaves granted for a given pregnancy does not exceed four months. If the same job has been abolished or affected by layoff, the employee shall be reinstated to a similar job. If a similar position is not available, the employee shall be afforded the same considerations which would have been afforded had that employee been on pay status when the position was abolished or affected by layoff. The date of reinstatement is determined when the leave is granted.
5. Continuation Of Benefits

An employee on Pregnancy Disability Leave who is also eligible for leave under the federal Family and Medical Leave Act and the State of California Family Rights Act, shall be entitled, if eligible, to continue participation in health plan coverage (medical, dental, and optical) as if on pay status for up to twelve (12) workweeks in the leave year. Other group insurance coverage and retirement benefits shall be continued in accordance with the provisions of the applicable group insurance and retirement system regulations.

#### **D. DISABILITY LEAVES OTHER THAN FMLA/CFRA/PREGNANCY DISABILITY ENTITLEMENT**

1. A disability leave of absence is the period(s) an eligible career employee is granted leave from work for medical reasons in accordance with Section D.2., below. This leave includes the combined use of accrued sick leave and the disability leave of absence without pay in accordance with the provisions of this Article and Article 36 - Sick Leave. Disability leaves of absence with or without pay are provided for leaves due to non-work related illnesses or injuries.
2. Eligibility
  - a. An employee may be eligible for a disability leave of absence with or without pay when s/he has exhausted her/his 12 workweek Family Care/Medical Leave entitlement in the leave year, or s/he is not otherwise eligible for Family Care/Medical Leave, or the employee has exhausted her four month entitlement under Pregnancy Disability Leave, and s/he:

- b. Is medically incapable of performing the essential assigned functions of her/his job due to a non-work related illness or injury; and
  - c. Has furnished evidence of disability satisfactory to the University.
3. Duration
- a. When the use of accrued sick leave and a disability leave of absence without pay are combined, the University may grant a disability leave for a total period of verified disability not to exceed six months.
  - b. An employee granted a disability leave who is also applying for University disability for non-work related disability purposes shall use all accrued sick leave in accordance with the University's disability plan prior to taking leave without pay.
  - c. In the event that the employee's accrued sick leave is greater than six months, a disability leave of absence without pay in addition to the use of all accrued sick leave, shall not be granted.
  - d. If an extension to a disability leave of absence within the total six month period is not granted, an employee will be medically separated in accordance with Article 17 - Medical Separation of this Agreement.
  - e. An employee who is receiving long term disability payments from a retirement system to which the University contributes will be medically separated on the basis of medical condition in accordance with Article 17 - Medical Separation of this Agreement.
4. Return To Work

The employee shall not be reinstated from a medically-related leave of absence until a medical release certification is provided to the University within the time limits specified by the department. A medical release certification shall include a statement by the employee's health care provider of the employee's ability to perform the essential functions of the position.

**E. PERSONAL LEAVE OF ABSENCE WITHOUT PAY**

- 1. A non-probationary career employee may be granted a Personal Leave of Absence without Pay at the sole non-grievable discretion of the University. Such leave shall not exceed six calendar months. Personal Leave without Pay shall not be considered a break in service and shall not determine eligibility for benefits except that the regulations of the retirement systems must be specifically checked to determine the effects of such leave without pay on retirement benefits.
- 2. The University, at its sole non-grievable discretion, may approve extension of a personal leave of absence without pay. Total leave time is normally not more than 12 months.

**F. LEAVES OF ABSENCE WITH PAY**

- 1. Jury Duty

A full-time employee in a career position on any shift or work schedule shall be granted leave with pay for actual time spent on jury service and in related travel, not to exceed the number of hours in the employee's normal work day and the employee's normal workweek. A part-time employee in a career position shall be granted leave with pay for actual time spent on jury service and in related travel which occur during the employee's regularly scheduled hours of work.

2. Voting

An employee shall be granted leave with pay, up to a maximum of two hours, for voting in a statewide primary or general election if the employee is scheduled to work eight hours or more on that day and does not have time to vote outside of working hours.

3. Blood Donations

An employee may be granted leave with pay, up to a maximum of two hours, for donating blood during regularly scheduled hours of work.

4. Administrative Or Legal Proceedings

a. When an employee is attending administrative or legal proceedings as directed by the University or is subpoenaed by the University to appear as a witness in an administrative or legal proceeding, leave without loss of straight time pay will be granted for actual time spent in the proceedings and in related travel not to exceed the number of hours in the employee's normal work day and workweek.

b. An employee subpoenaed by the State or a political subdivision thereof when the State or political subdivision is prosecuting a person for an offense which the employee, by virtue of being on University premises during scheduled work hours, witnessed, shall be granted leave without loss of straight time pay for actual time spent in the proceedings and in related travel time not to exceed the employee's normal work day and workweek.

c. The granting of leave without loss of straight time pay status for other employment-related situations where an employee has been subpoenaed shall be at the sole non-grievable, non-arbitrable discretion of the University.

5. Emergencies

In the event of natural or man-made emergencies, an employee may be granted leave with straight time pay during regularly scheduled hours of work for the period of time authorized by the University. The granting of such leave and the period of time shall be at the sole, non-grievable discretion of the University.

6. University Functions

At the sole, non-grievable discretion of the University and on a campus basis and within a campus basis, an employee may be granted leave during regularly scheduled hours of work to attend Commencement exercises, Charter Day exercises and other University meetings or functions as designated by the University. Such leave, when granted, shall be without loss of straight-time pay.

**ARTICLE 15  
LEAVE OF ABSENCE FOR UNION BUSINESS**

**A. GENERAL PROVISIONS**

1. Employee Eligibility for Leave

For each campus/hospital/lab with more than 500 bargaining unit employees the University shall grant no more than two FTE (261 days) paid reimbursed leave or reduction in time for union business per calendar year without loss of compensation. For each campus/hospital/lab with less than or equal to 500 bargaining unit employees the University shall grant no more than one FTE (130 days) paid reimbursed leave or reduction in time for union business per calendar year without loss of compensation. However, only one

employee shall be released per department per leave. The University need not grant the leave when it can demonstrate compelling business needs, or if a campus/hospital or laboratory has fewer than 50 bargaining unit employees. The University may postpone the leave when it can demonstrate compelling business needs.

2. Pay Status

During the paid reimbursed leave, the employee shall be paid by the University and shall continue to accrue service credit; and shall retain all benefits to which the employee was entitled prior to the start of the leave. Employee benefit contributions will continue to be deducted during the leave.

- a. During the paid reimbursed leave, the employee shall be eligible for increases in accordance with campus practices.
- b. Any leave granted in accordance with this section shall not constitute a break in service.
- c. During the paid reimbursed leave, the employee shall not be eligible for Workers Compensation benefits arising out of an injury occurring during the leave from the University. While on paid reimbursed leave, University employees shall be covered by UPTe's Workers Compensation carrier.

3. Union Reimbursement

The Union shall reimburse the University for all costs of employee compensation, including but not limited to, salary plus all benefits paid to the employee for the time the employee is on leave without loss of compensation (36%). The Union shall submit payment to the University within 30 days of receipt of confirmation of payment to the employee. The University has the right to terminate the leave if the Union fails to provide timely payment.

4. Long-term Leave of Absence

Upon at least thirty (30) calendar days advance-written request to the local Labor Relations office from UPTe and the employee, no more than 1 per department UPTe-represented non-probationary career employees per campus/hospital and laboratory shall be granted a leave of absence to engage in Union business pursuant to A.1. above. The duration of the leave of absence shall be specified at the time the employee commences the leave. No such leave shall be granted unless the written request specifies the duration of the leave.

- a. Such leaves of absence shall be for a period of not less than 30 calendar days. In no situations shall the leave of absence be granted for a period of more than three (3) years.
- b. The University, due to operational requirements, may postpone the date such leave of absence is scheduled to begin.

5. Short-term Leave

Subject to operational considerations, upon at least thirty (30) calendar days written request to the local Labor Relations office from UPTe and the employee, no more than 1 per department non-probationary career employees, pursuant to A.1. above, will be granted a leave of absence for union business for not less than two days and not longer than twenty-nine (29) days. Requests for this short-term leave shall not be unreasonably denied.

6. Reduction in Time

The University will approve requests from employees for temporary reductions in time for up to three (3) calendar years for union business. Requests for reduction in time will not be unreasonably denied.

7. Attendance at Local Meetings

Upon seven (7) calendar days advance written notice to her/his supervisor, local union officers and local employee representatives included on the list provided to the University by UPTE, as set forth in Section C.2. of Article 2, Access, shall be granted time off without pay or, at the employee's option, such time would be charged to accrued compensatory time off or accrued vacation time, to attend local union meetings. Approval for such leave shall not be granted for a period to exceed four (4) hours and such approval shall not be granted to any individual employee more than once per month. The supervisor may grant additional time over four (4) hours on a case-by-case basis. The granting of such approval to local employee representatives and officers shall be subject to the operational needs of the University and may be granted to one (1) or more but not necessarily all such employees on the same shift in the same operational area. Such approval shall not be unreasonably denied.

**B. RETURN FROM LEAVE**

The University shall not be required to return an employee on a leave of absence for union business prior to the return date specified at the start of the leave.

1. For leaves longer than 60 days, at least forty-five (45) calendar days prior to the completion of the long-term leave of absence, the Union shall notify the University of the employee's intent to return to the University's employ and the employee shall likewise so advise the University. For leaves of less than 60 days, at least 15 days notice shall be required if the requested return date is other than the return date specified at the start of the leave.
2. Upon return, the employee shall be placed in the same position from which the employee took the leave of absence and at the rate of pay which would place the employee at the same relative position in the range for the position as that range exists when the employee returns. Placement of the employee in his/her previous position shall be consistent with staffing reductions and/or layoffs which may have occurred during the period of the paid reimbursed leave.

**ARTICLE 16  
MANAGEMENT RIGHTS**

**A.** Management of the University is vested exclusively in the University. The parties agree that all rights not specifically granted in this Agreement are reserved solely to the University. Except as otherwise provided in this Agreement, UPTE agrees that the University has the right to make and implement decisions relating to areas including but not limited to those enumerated below. Although the University may upon request consult with UPTE concerning the following areas, the University is not obligated to bargain with UPTE as to such areas during the term of this Agreement.

**B.** Examples of the rights reserved solely to the University administration and its agents and officials include, but are not limited to, the right:

1. To establish the University's missions, programs, objectives, activities, and priorities;
2. To plan, supervise, direct and control the use of resources to achieve the University's missions, programs, objectives, activities, and priorities;
3. To develop, implement and administer affirmative action programs;



4. To establish and administer procedures, rules and regulations and determine the methods and means by which operations are to be carried on;
  5. To introduce new or improved methods, programs, equipment, or facilities or change or eliminate existing methods, equipment, or facilities;
  6. To determine the location or relocation, reorganization, or discontinuance of operations; to determine where employees shall work; or subcontract all or any portion of any operation;
  7. To assign, reassign, and schedule work; to determine the need for overtime;
  8. To establish the size, composition, and qualifications of the work force;
  9. To recruit, hire, develop, train, evaluate, promote, transfer, demote, or layoff limited appointment, career, or probationary employees;
  10. To determine the basis for, and to determine the amount granted for merit increases;
  11. To establish, modify, and enforce standards of performance, conduct, and safety for employees; and to determine the process by which employee performance is evaluated;
  12. To reprimand, suspend, release, or otherwise discipline or discharge employees for misconduct or failure to perform satisfactorily;
  13. To maintain safety standards and programs;
  14. To determine and modify job classifications and job descriptions.
- C.** The above enumerations of management rights are not inclusive and do not exclude other management rights not specified, nor shall the exercise or non-exercise of rights retained by the University be construed to mean that any right is waived.
- D.** No action taken by the University with respect to a management right shall be subject to the grievance or arbitration procedure or collateral suit, unless the exercise thereof violates an express written provision of this Agreement.

## **ARTICLE 17 MEDICAL SEPARATION**

### **A. GENERAL CONDITIONS**

1. When the University determines that a non-probationary career employee is unable to satisfactorily perform the essential assigned functions of her/his position due to any disability or other medical condition, that employee may be medically separated. Prior to medical separation, the University will determine what accommodation, if any, may be reasonably provided. Such accommodation, if any, shall be provided in accordance with the provisions of Article 30, Reasonable Accommodation. An employee who is medically separated is eligible for special reemployment procedures as set forth in Section E., below.
2. Except as provided in Section A.3., below, a medical separation shall be based on:
  - a. University statement describing the essential functions the employee is not able to perform satisfactorily; and
  - b. Any pertinent information, including medical information provided by the employee's licensed health. Practitioner and/or the

University's physician, and/or work-related information provided by appropriate University officials.

3. A medical separation may also be based on the employee's receipt of long term disability payments from a retirement system to which the University contributes, such as UCRS or PERS.
4. An employee who is on an approved leave of absence of 180 days or less shall not be medically separated provided:
  - a. The leave is related to a medical condition, and
  - b. The employee's medical health practitioner (who is licensed by the state in which she/he practices) has established a specific return to work 180 days of the beginning of the leave of absence.

**B. PROOF OF DISABILITY OR OTHER MEDICAL CONDITION**

Proof of the employee's disability is required and is subject to verification by the University. When the University requests a second medical opinion as verification of disability, the University shall pay the costs of the medical examination(s) requested.

**C. NOTICE OF INTENT TO MEDICALLY SEPARATE**

The University shall give the employee a written notice of intent to medically separate. Such notice shall be provided either by delivery of the notice to the employee in person, or by placing the notice of intent in the U.S. mail, first class postage paid, in an envelope addressed to the employee at the employee's last known home address. Proof of service shall accompany the notice of intent. The notice shall:

1. Inform the employee of the action intended, the reason for the action and the effective date of the action;
2. Inform the employee of the right to respond and to whom to respond within ten calendar days from the date of issuance of such notice of intent, in accordance with the instructions given by the University in the written notice provided to the employee. A copy of the notice of intent shall be provided to UPTE.

**D. EMPLOYEE NOTICE**

After review of the employee's timely response, if any, the University shall notify the employee of any action to be taken. An effective date of separation shall follow the employee's timely response or, if no response is provided, shall be at least ten calendar days from the date of issuance of the notice of intention to separate, pursuant to Section C., above.

**E. RE-EMPLOYMENT**

1. For a period of one year following the date of a medical separation, a medically separated former non-probationary career employee may be selected for a position without the requirement that the position be publicized. However, if the former employee is receiving disability benefits from a retirement system to which the University contributes the period shall be three years from the date benefits commenced. In order to be eligible for rehire under this Article, the medically separated employee must provide a medical certification from a University-approved medical physician describing in detail the medically separated employee's ability to return to work.
2. If a non-probationary career employee separated under this Article is re-employed within 180 calendar days, a break in service does not occur. If a non-probationary career employee is receiving disability payments from a retirement system to which the University contributes and is re-employed within three years, a break in service does not occur.

**ARTICLE 18  
MILITARY LEAVE**

**A. GENERAL PROVISIONS**

An employee is entitled to Reserve Training Leave for Inactive Duty, Temporary Military Leave for Active Duty Training, Extended Military Leave, Emergency National Guard Leave, and Military Leave for Physical Examinations provided that the employee gives advance verbal or written notice of the leave except when such notice is precluded by military necessity, impossibility or unreasonableness. In any event, the University may require verification of an employee's military orders.

**B. ELIGIBILITY FOR PAY AND BENEFITS**

1. General Provisions

An employee granted temporary military leave for active-duty training or extended military leave is entitled to receive regular University pay for the first 30 calendar days of such leave in any one fiscal year, but not to exceed the actual period of service, provided:

- a. The employee has at least 12 months of continuous University service immediately prior to the granting of the leave (any prior full-time military service shall be included in calculating this University service requirement); and
- b. Such payment for temporary and extended military leave in any combination, in addition to any University payment for military leave for physical examinations, does not exceed the pay due for a period of 30 calendar days in any one fiscal year.

2. Part-Time Employee. An eligible part-time employee shall receive pay in proportion to the average percent of full-time worked during the three completed monthly pay periods immediately preceding the leave.

3. Ineligible Employee. An employee not eligible for military leave pay may have such absence charged to accrued vacation or accrued compensatory time off, or the military leave may be without pay.

4. Monthly/Weekly Drills. Paid leave is not granted for inactive duty such as regular weekly or monthly meetings or weekend drills.

5. Service Credit And Benefits. An employee on temporary military leave for active-duty training or extended military leave, who is not on pay status, shall receive length-of-service credit, provided that the employee returns to University service at the expiration of the leave in accordance with applicable State and Federal laws. Such employee shall accrue vacation and sick leave and receive holiday pay only in accordance with Article 41 - Vacation Leave, Article 36 - Sick Leave, and Article 10 - Holidays. If on pay status, provided that the employee returns to University service at the expiration of the leave in accordance with applicable State and Federal Laws, the employee shall receive regular benefits. Retirement benefits and service credit shall be continued in accordance with the provisions of the applicable retirement system regulations. Health benefits may be continued at the employee's request and expense for the time period outlined under the University's groups insurance regulations.

**C. TEMPORARY MILITARY LEAVE FOR ACTIVE-DUTY TRAINING**

Temporary military leave for active-duty training shall be granted to any employee who, as a member of a reserve component of the United States Armed Forces, is ordered to full-time active military duty for training for a period not to exceed 180 days, including time spent traveling to and from such duty.

#### **D. EXTENDED MILITARY LEAVE**

Extended military leave shall be granted to an employee who enlists or is ordered into active duty in the United States Armed Forces or a reserve component or who is ordered into active Federal military duty as a member of the National Guard or Naval Militia. Such leave shall be granted for active-duty service of any length or for active-duty training more than 180 days.

1. **Period Of Leave.** An employee shall be granted extended military leave for the initial period of enlistment, service, or tour of duty for a period not to exceed five years. In addition, leave shall be granted for a period up to six months from the date of release from duty if the employee requests such extension.
2. **Service Credit And Benefits.** An employee granted extended military leave shall receive a lump-sum payment for earned salary, accrued vacation, and accrued overtime or compensatory time off. Upon written request, an employee may elect to retain accrued vacation on the records for a period not to exceed 180 days. Vacation credits retained on the records in excess of 180 days shall be paid out at the pay rate in effect at the time of payment, taking into account any salary increases that may have occurred in the previous 180 day period.
3. Sick leave credit shall be retained on the records.
4. **Probationary Employee.** An employee who was serving a probationary period at the time extended military leave became effective shall be required to complete the probationary period upon reinstatement.
  - a. If the probationary employee served in active military service for a period of more than 30 days, s/he shall not be separated from employment by management action except for cause for six months from the date of reinstatement.
  - b. If the probationary employee served in active military service for a period more than 180 days, s/he shall not be separated from employment by management except for cause for one year from the date of reinstatement.

#### **E. EMERGENCY NATIONAL GUARD LEAVE**

Military Leave shall be granted to an employee who as a member of the National Guard is called to active duty during a state of emergency by proclamation of the Governor of the State of California. An employee who as a member of the National Guard is called to active federal military duty at the request of the President of the United States is not eligible for emergency National Guard leave, but shall be granted extended military leave as set forth in Section D.

1. **Eligibility For Pay.** An employee granted military leave for emergency National Guard duty is entitled to receive regular University pay for a period not to exceed 30 calendar days in any one fiscal year. An employee is eligible for pay regardless of the length of University service, and such pay is in addition to any University payment for temporary military leave for active-duty training, extended military leave, and military leave for physical examinations.
2. **Benefits.** An employee on military leave with pay for emergency National Guard duty shall receive all benefits related to employment which are granted when an employee is on pay status. If not on pay status, the employee shall receive length-of-service credit, provided the employee returns to University service immediately after the emergency service is over. Such employee shall accrue vacation and sick leave and receive holiday pay in accordance with Article 41 - Vacation Leave, Article 36 - Sick Leave, and Article 10 - Holidays.

**F. PHYSICAL EXAMINATION**

Military leave with pay shall be granted to an employee in accordance with Section B., regardless of length of service, when the employee is required to take a pre-induction or pre-enlistment physical examination to fulfill a commitment under a Selective Service or comparable law, or during a period of war or comparable national emergency.

1. Time off for other physical examinations in connection with military service may be charged to accrued sick leave, accrued vacation leave, or accrued compensatory time off, or shall be without pay.
2. The University may require verification of an employee's military orders to report for a physical examination.

**G. REINSTATEMENT**

Following release from military service, an employee shall have such right to return, and only such right, as may be required by State and Federal law in effect at the time the employee applies for reinstatement. Upon reinstatement, an employee shall receive salary range adjustments applicable to the employee's position during the military leave as provided by the Agreement.

**ARTICLE 19  
MOVING EXPENSES**

**A. POLICY**

Payment for moving expenses may be granted by the University when an employee moves from one University work location to another University work location at the University's request. No expenses shall be paid to an employee if the University determines that the new work location is within reasonable commuting distance of the previous location.

**B. EXPENSES TO BE PAID**

Expenses approved in advance by the University and supported by invoices and receipts may be paid for costs incurred for packing, insurance, transportation, storage in transit (not to exceed 30 calendar days), unpacking, and installation of the employee's household effects at a new location. Actual travel expenses for the employee and the employee's immediate family may be paid by the University, not to exceed air coach transportation cost and/or the University allowance for individuals for the cost of meals en route for the employee and the employee's immediate family.

**C. LAWRENCE BERKELEY NATIONAL LABORATORY**

Policies, procedures, definitions, qualifications, calculations and rates relative to moving expenses at the Lawrence Berkeley National Laboratory shall be in accordance with Laboratory policy for other staff employees at the Laboratory.

- D.** The terms of this Article are not subject to grievance and arbitration provisions of this Agreement.

**ARTICLE 20  
MULTIPLE APPOINTMENTS**

**A. GENERAL PROVISIONS**

Employees with multiple appointments will be covered by the provisions of this Agreement only for the time in which the employees are working in any appointment(s) which would place her/him in the unit, except that the time worked in per diem appointments is covered only by the provisions listed in Article 27, Positions.

**B. BENEFITS**

In the event an individual has multiple appointments, the employee shall be eligible to participate in the benefits provided in Article 40 – University Benefits, according to the UCRS Regulations.

**ARTICLE 21  
NO STRIKES**

- A. During the term of this Agreement or any written extension thereof, the University agrees that there shall be no lockouts by the University. UPTe, on behalf of its officers, agents, and members agrees that there shall be no strikes, stoppages or interruptions of work, or other concerted activities which interfere directly or indirectly with University operations during the life of this Agreement or any written extension thereof. UPTe, on behalf of its officers, agents, and members, agrees that it shall not in any way authorize, assist, encourage, participate in, sanction, ratify, condone, or lend support to any activities in violation of this Article.
- B. Any employee who violates this Article shall be subject to discipline up to and including termination of employment.
- C. UPTe shall immediately take whatever affirmative action is necessary to prevent and bring about an end to any concerted activity in violation of this Article. Such affirmative action shall include but not be limited to: sending written notice to the home address of all employees engaged in prohibited activity informing them that the concerted activity is in violation of this Article, that engaging in such activity may lead to disciplinary action, and stating that employees engaged in prohibited activity must cease such activity and immediately return to work.
- D. Nothing herein constitutes a waiver of the University's right to seek appropriate legal relief in the event of a violation of this Article.

**ARTICLE 22  
NONDISCRIMINATION IN EMPLOYMENT**

**A. GENERAL PROVISIONS**

Within the limits imposed by law or University regulations, the University shall not discriminate against employees on the basis of race, color, religion, marital status, national origin, ancestry, sex, sexual orientation, physical or mental disability, medical condition, (cancer-related or genetic characteristics covered veterans status as defined by the Vietnam Era Veterans Readjustment Act (VEVRA)), age, citizenship, or union activity or affiliation. For the purposes of this Article only, medical condition means any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured based on competent medical evidence.

General discrimination-related issues not related to any individual's specific complaint may be raised in the labor/management meetings defined in Article 45, Workplace Committees, Section A or B.

**B. GRIEVANCES**

- 1. For discrimination complaints to be eligible for processing under the grievance procedure:
  - a. The complaint must be eligible in accordance with Section B.2., 3., or 4., below, and
  - b. The employee or her/his representative must file a grievance at Step 1 within 30 calendar days of the date the employee knew or should have known of the alleged discrimination.
- 2. Allegations of a violation of this Article alone are subject to the Grievance Procedure of this Agreement through Step 2 only.

3. An alleged violation of this Article and a non-arbitrable Article shall be subject to the grievance procedure insofar as the other Article is grievable, although it shall not be subject to Arbitration.
4. Allegations of a violation of this Article, when made in connection with a provision of another Article that is grievable beyond Step 2, shall be eligible for appeal to the same degree that the contract provisions to which the grievance is connected is grievable and/or arbitrable.

**C. SEXUAL HARASSMENT COMPLAINT RESOLUTION PROCEDURE**

With regard to grievances alleging sexual harassment, an employee who has timely filed a grievance may elect to substitute the campus/hospital/Laboratory Sexual Harassment Complaint Resolution procedure for Step 1 of the Grievance Procedure. Use of the Sexual Harassment Complaint Resolution procedure shall toll the time limits for Step 1 of the Grievance Procedure only if a grievance has been timely filed, pursuant to Article 8, Grievance Procedure, Section F. At any time, an employee may elect to resume the regular grievance procedure in place of the alternate procedure by written notice to the University. The University's Step 1 Grievance response will be issued within 15 calendar days after such notice to return to Step 1 of the Grievance Procedure is received by the designated campus/hospital/Laboratory official.

**ARTICLE 23  
OUT-OF-CLASSIFICATION ASSIGNMENTS**

**A. TEMPORARY REASSIGNMENT TO POSITIONS WITH A HIGHER SALARY RANGE MAXIMUM**

1. When the University temporarily assigns an employee to perform fully the functions of a position in a higher classification for at least 15 working days or more:
  - a. The employee shall be reclassified to the higher level position or be provided an administrative stipend.
  - b. The employee will be paid at least 4% over his or her current pay rate or the minimum of the higher position's range, whichever is higher. If the employee is temporarily reclassified to a higher position, the salary of the new position shall not exceed the maximum salary of the higher level position.
  - c. Such pay will become effective on the sixteenth day of the assignment retroactive to the first day of the assignment.
2. The University shall determine the duration and end date of such assignment.
3. Such temporary assignment and resulting pay increase, if any, shall not result in the permanent reclassification of the employee.

**B. TEMPORARY REASSIGNMENT TO POSITIONS WITH A LOWER SALARY RANGE MAXIMUM**

1. The University may temporarily reassign employees to positions with a lower salary range maximum.
2. An employee who is temporarily assigned to perform the duties of a position in a lower classification shall continue to receive the employee's regular rate of pay. Such temporary assignment shall not be considered a layoff.

## **ARTICLE 24 PARKING**

### **A. GENERAL PROVISIONS**

1. The University shall provide to employees covered by this Agreement parking and parking-related services at each campus/hospital/Laboratory to the same extent and under the same conditions as normally provided for other University staff employees at the employee's location.
2. It is understood and agreed that parking spaces designated for employees may from time to time be eliminated or reassigned due to construction, special events, and/or operational needs of the University.

### **B. MEET AND DISCUSS PARKING RATE CHANGES**

1. At least forty-five (45) calendar days prior to a campus' or Laboratory's implementation of new or changed parking fees to be charged to employees of this unit, the University shall inform UPTE of its intent to establish or change parking charges.
2. UPTE shall have fifteen (15) calendar days from receipt of the University's notice to request that the University meet with UPTE to discuss the changes.
3. Upon receipt of a timely written request from UPTE, the campus/Laboratory shall schedule a meeting to discuss with UPTE the new or changed parking charges. Such meeting shall occur within fifteen (15) calendar days following UPTE's request to meet. Continuation of discussions beyond the implementation date specified in the notice to UPTE shall not preclude the University from implementing the new charges on the date specified in the notice to UPTE.

### **C. GRIEVANCES**

UPTE may grieve the implementation of the parking fee without forty-five (45) calendar days' notice, with the remedy being limited to the reimbursement to affected employees covered by this Agreement of the difference between the new fee and the old fee for the number of days the notice provided was less than forty-five (45) calendar days. Otherwise, the establishment and implementation of new or changed parking services or charges are at the sole, non-grievable, non-arbitrable discretion of the University.

### **D. PARKING ENFORCEMENT AT LBNL**

LBNL Parking Policy, RPM 1.04, including the referenced *Parking Enforcement System for LBNL Employees and Non-Employees Eligible for Parking Privileges* describes penalties for parking violations as "discipline" or "disciplinary action." For the purposes of this policy only, the term "discipline" or "disciplinary action" for parking violations means parking sanctions (e.g., suspension or revocation of parking privileges) and/or vehicle immobilization as described in the policy. Disciplinary or corrective action up to and including dismissal as specified in Article 6, Corrective Action, Discipline and Discharge, shall not be imposed for parking violations in and of themselves. This does not prevent the Laboratory from disciplining an employee whose violation of this policy rises to the level of misconduct under the terms of Article 6, Corrective Action, Discipline and Discharge.

Records of parking violations and any related parking sanctions that may be imposed shall not be included in the employee's personnel file. However, copies of disciplinary actions for violations of this policy that rise to the level of misconduct will be placed in the employee's personnel file as in the case of any other disciplinary action.



**ARTICLE 25  
PERFORMANCE EVALUATION**

**A. EVALUATION**

1. Performance Evaluation is a constructive process to acknowledge the performance of an employee. An employee's evaluation shall be sufficiently specific to inform and guide the employee in the performance of his/her duties. The evaluation of each employee shall be based on the individual employee's performance and not on financial considerations.
2. The University will, 60 calendar days prior to implementing a new performance tool, provide a copy of the proposed tool to UPTe. Following request by UPTe, the University will meet with UPTe to discuss the new tool.
3. Performance evaluation is not in and of itself a disciplinary procedure.
4. HX Unit employee who receives an overall "needs improvement" rating shall have been informed of any deficiencies, including information about how to correct said deficiencies prior to receiving such overall evaluation.
5. The performance of each employee will be evaluated at least annually, in accordance with a process established by the University. In the event a non-probationary career employee does not receive the written evaluation, the employee may take the following action:
  - a. Within 15 calendar days of the date the written evaluation was due but not received, the employee shall make a written request for the evaluation to the employee's immediate supervisor. When an employee makes such a request an evaluation shall be completed within 15 calendar days of the request, unless the parties mutually agree otherwise.
  - b. In the event a non-probationary career employee does not receive a written evaluation and fails to request that an evaluation be completed within the required period of time, the employee's overall evaluation shall be "meets expectations."

**B. EMPLOYEE RESPONSE TO AN EVALUATION**

After receiving a University performance evaluation, an employee may write comments pertaining to her/his evaluation or add relevant materials, which may supplement or enhance the evaluation. When the University receives such written comments or materials from the employee, they shall be attached to the performance evaluation and placed in the employee's personnel file in which performance evaluations are maintained.

**C. GRIEVABILITY**

1. A non-probationary career employee who receives a written performance evaluation with an overall rating of less than satisfactory may file a grievance pursuant to the provisions of Article 8 - Grievance Procedure of this Agreement. Such grievance concerning the contents of the performance evaluation rating the employee as less than satisfactory shall be eligible to be processed through Steps 1 and 2 of the Grievance Procedure but shall not be eligible for review at Step 3 of the Grievance Procedure. The remedy for such a grievance shall be limited to revision of the section(s) being grieved and revision of the rating(s) in question.
2. Disputes arising regarding the performance evaluation of employees, including but not limited to the form, timing, procedure, impact and effects, shall not be subject to Article 8 - Grievance Procedure or Article 3 - Arbitration Procedure of this Agreement, with the exception of Section C.1. above.

**ARTICLE 26  
PERSONNEL FILES**

**A. GENERAL PROVISIONS**

1. Location Of Personnel Files

Personnel files may be located in an employee's employing department and/or the campus/medical center/laboratory Human Resources Department.

2. Information In The Files

- a. An employee's personnel file(s) contain information pertaining, but not limited, to: employment, such as the application for employment, tests, and letters or statements of reference; pay and benefits; training; conduct; education, honors and awards; duties and job classification; performance; discipline, release, and dismissal actions; attendance; and other relevant or necessary information specified by the University.
- b. Copies of letters of disciplinary action, along with copies of proofs of service that accompany the letters, upon being provided to an employee, shall be placed in the employee's personnel file(s). The employee's written comments, if any, regarding such letters shall be placed in her/his personnel file(s). Such comments shall not require the University to change or alter the letters or the actions indicated by the letters.
- c. Letters of disciplinary action shall, upon written request of the employee, be removed from the employee's personnel file(s) if there have been no other disciplinary actions of the same or of a similar kind for a period not to exceed two years. Materials which would be removed upon an employee's request which are more than two years old will not be used or relied upon to take or support disciplinary action. The employee shall receive the written request and the document(s) back.
- d. Upon the employee's written request, counseling memoranda and/or written records of discussions will be removed from the employee's personnel file if there have been no other such memoranda relating to, or disciplinary action on, the same or similar issue(s) for a two-year period not to exceed two years. Counseling memoranda and/or written records of discussion, in and of themselves, are not discipline nor are they grievable/arbitrable.

**B. EMPLOYEE AND/OR REPRESENTATIVE REVIEW OF PERSONNEL FILE(S)**

An employee shall upon advanced notice have the opportunity to review her/his personnel file(s), as described in Section A., above, within a reasonable time in the presence of a representative of the University.

1. An individual of the employee's choice may accompany the employee when the employee is reviewing her/his personnel file(s).
2. Alternatively, an individual employee may authorize a designated representative to review the employee's personnel file(s) on the employee's behalf. Such written authorization shall be valid for a period of 30 calendar days from the date of the signature of the authorization or within a written time limit specified by the employee.
3. When the employee has chosen a member of the HX bargaining unit to assist in the review of the file(s), that person's release time shall be in accordance with the provisions of this Agreement.

4. An employee shall be granted a reasonable amount of time in without-loss-of-straight-time pay status to review his/her personnel file(s) within the operational needs of the department.

**C. PROTECTED INFORMATION**

Records protected by recognized legal privilege and records excepted from disclosure by law may be withheld from the employee and/or the employee's representative.

**D. GRIEVANCE-RELATED FILES**

Records involving the processing of an employee's grievance, such as the grievance form, step appeals/responses, and settlement documents, will be kept in a file separate from the employees' personnel file. It is not the intent of this section to exclude from the employee's personnel file final disciplinary action documents, including those that result from a settlement agreement.

**E. DUPLICATION COSTS**

Employees shall receive, without cost, a first copy of documents, or extracts thereof, that are located in her/his personnel file. However, employees in the HX bargaining unit may be charged the same fees as are customarily charged other staff employees for additional copies of documents in the employee's personnel file.

**ARTICLE 27  
POSITIONS**

**A. CAREER POSITIONS**

1. Career positions are positions established at a fixed or variable percentage of time at fifty percent (50%) or more of full-time, which are expected to continue for one (1) year or longer.
2. In addition, beginning on January 1, 2001 a career appointment may be established by conversion from a limited appointment pursuant to Section B.2. of this Article.

**B. LIMITED APPOINTMENTS**

1. A limited appointment is established at any percentage of time, fixed or variable, during which the appointee is expected to be on pay status for less than one thousand (1,000) hours in a rolling twelve (12)-month period.
2. In the event that a limited appointment employee attains 1, 000 hours of qualifying service within a rolling 12-month period, without a break in service of at least 120 consecutive calendar days, the incumbent's appointment shall convert to career.
  - a. Qualifying service includes all time on pay status in one or more limited appointments at the campus/laboratory/hospital. Pay status shall not include on-call or overtime hours.
  - b. Such career conversion shall be effective on the first day of the month following attainment of 1000 hours of qualifying service.
  - c. Any break in service of 120 days or longer shall result in a new 12-month period for purposes of calculating the 1000-hour requirement.
3. Employees in limited appointments may have their appointment terminated or have their time reduced at the sole discretion of the University and without recourse to the grievance and arbitration procedures of this Agreement. An employee who is appointed to a limited appointment is automatically terminated as of the last day of the

appointment unless there is an earlier separation or a formal extension of the appointment.

## **C. PARTIAL YEAR POSITIONS**

### **1. General Provisions**

Partial-year positions are career positions established with regularly scheduled periods during which the incumbents remain employees but are not at work. These scheduled periods during which employees are not at work are designated as furloughs and are without pay. Furlough periods are not to exceed a total of three (3) months in each calendar year. Partial year career positions may be established as nine-, ten- or eleven-month appointments.

- a. When calculating time in pay status during a calendar year the University shall include any period of time for which an employee receives pay for time worked, including compensatory time off, or for time on paid leave. Paid leave time includes sick leave, extended sick leave, vacations, holidays, or military leave with pay. The one-month's pay for extended military leave lump-sum payments for terminal vacation do not represent time on pay status.
- b. Whenever it appears that an employee will be unable to achieve nine (9) months on pay status in a calendar year, the University may assign the employee to perform additional work according to classification and skills in an attempt to achieve nine (9) months on pay status. Once an employee has reached her/his appointment rate, additional scheduling will occur in accordance with the needs of the University and the qualifications of the employees.

### **2. Distribution Of Salary Over The Year**

Employees with partial-year career appointments may choose either to receive paychecks during pay periods worked only, or to distribute their pay so that they will receive twelve, or the biweekly equivalent, paychecks throughout the year. Employees who occupy partial-year career positions and who elect the pay over twelve months option must occupy the partial-year career position at least nine months or the biweekly equivalent before receiving pay during the furlough period.

### **3. Benefits**

- a. An employee in a designated partial year career position shall be provided the University's contribution to the cost of University-sponsored life, medical, optical, dental, and disability while s/he is on furlough for a maximum of three months in a calendar year where the employee's earnings are insufficient to otherwise generate the University's contribution. For medical plans, which require an employee contribution, employees on furlough must remit to the University the amount of the employee's contributions for the plan to remain in force.
- b. Time on furlough is not qualifying time for service computation for seniority or for vacation leave, sick leave, or holiday pay when furloughed absences exceed 20 days in a month.

### **4. Reassignment**

The reassignment of an employee in a full-time career position to a partial-year position or to a part-time position at a fixed or variable percentage of time shall be considered a reduction in time and must be carried out in accordance with the provisions of Article 13, Layoff and Reduction in Time.

## **D. PER DIEM POSITIONS**

### **1. Definition**

- a. This Article sets forth the terms and conditions of Per Diem employment. Requirements for maintaining Per Diem Employee status are established by the University, and may vary at each location. Per Diem Employees are those employed in University title codes 5421, 8926, 8959, 9006, 9249, 9250, 9316, 9471, 9476, 9490, 9491, and 9500. Per Diem Employees are neither career nor limited appointment employees. Standards of the University's position descriptions must be met as follows:
- b. Per Diem Employee work assignments add to or substitute for career and casual employees on a pre-scheduled basis or as needed on a day-to-day basis, as determined by the University. Per Diem Employees may be scheduled or not scheduled, or called off from a pre-established schedule. Additionally, a Per Diem Employee's eligibility for scheduling may be discontinued at any time at the sole discretion of the University and without recourse to the grievance and arbitration procedures of this Agreement, except as set forth in Section D.3. of this Article.
- c. Per Diem Employees are not eligible for benefits under Article 40, University Benefits. Night rates for Per Diem employees may include shift differential. Per Diem Employees are not eligible for paid time off such as vacation, sick leave, holidays, leaves of absence, or educational leave. At the mutual agreement of the University and the Per Diem Employee, her/his Per Diem Employee status may be temporarily held in abeyance. The University will not unreasonably deny a Per Diem Employee's request that her/his status be held in abeyance for family care purposes.

### **2. Coverage**

Per Diem Employees are covered by the following Articles of this Agreement: Article 2 - Access, the related portion of Article 5 - Compensation, Article 7 - Dues Deduction, Article 9 - Health and Safety, Article 11 - Hours of Work section B.5.c., Article 12 - Job Posting, Article 16 - Management Rights, Article 21 - No Strikes, Article 22 - Nondiscrimination in Employment, Article 24 - Parking, Article 26 - Personnel Files, Article 27 - Positions, Article 30 - Reasonable Accommodation, Article 32 - Release Time for Bargaining, Article 34 - Severability, Article 42 - Waiver, Article 43 - Work Rules, Article 46 - Duration. Per Diem Employees may use the grievance and arbitration procedures of this Agreement only with respect to alleged violations of those Articles that cover them, except as set forth in Section D.3. of this Article.

### **3. Special Per Diem Rights**

Effective January 1, 2002, Per Diem employee who work 1,000 hours, exclusive of overtime and on-call hours, within the following twelve-month (12 month) period, and who provide the University with a commitment to work in the future at least 50% time, will be eligible for coverage by Article 6 – Corrective Action, Discipline and Discharge and the related portions of Article 3 – Arbitration Procedure and Article 8 – Grievance Procedure.

- a. Failure to comply with the minimum scheduling requirements may result in release from employment at any time at the sole discretion of the University and without access to Article 8 – Grievance Procedure.
- b. In the event a Per Diem employee rescinds her/his fifty percent (50%) work commitment, or fails to work 50% time or 1000 hours as scheduled within a twelve month period, s/he waives her/his

right to Articles 3 – Arbitration Procedure, 6 – Corrective Action, Discipline and Discharge, and 8 – Grievance Procedure.

4. Overtime

Overtime will be paid at the time and one-half (1-½X) overtime rate in accordance with campus practices.

5. Reporting

a. Requirements

Where required, the Per Diem Employee shall call in to verify the availability of work prior to reporting for work. Where the Per Diem Employee is not required to call in to verify the availability of work, the hospital/campus/laboratory shall notify the Per Diem Employee of the unavailability of work in advance of her/his scheduled report time by telephoning the Per Diem Employee at the Per Diem Employee's last known telephone number. It shall be the responsibility of the Per Diem Employee to inform the University of any change of telephone number.

b. Reporting Pay/Work

A Per Diem Employee who reports for work as scheduled without receiving prior notice that her/his assignment is not available, shall perform any work to which s/he may be alternately assigned by the University for the duration of the assignment. If no alternate work is available, the Per Diem Employee shall be paid two hours pay in lieu of work. In the event that the University has made reasonable attempts to notify the Per Diem Employee of the unavailability of work, or where the Per Diem Employee has not called in to verify the availability of work when required to do so, work or pay need not be provided.

6. Premium Pay For Work On Specified Holidays

A Per Diem Employee who works on Christmas Day shall be paid at the rate of time and one-half (1-½X) the regular rate of pay for the hours actually worked.

7. Worker's Compensation

A Per Diem Employee who is injured on the job may apply for Workers' Compensation.

8. Professional Development

a. Per Diems are encouraged to pursue professional development and education in relation to their career in health care.

b. Per diems shall be reimbursed for the costs of educational programs that are required and approved by the university. Time spent in such educational programs shall be considered time worked.

c. A per diem shall pay the same fees as other health care professionals at his / her campus / laboratory for continuing education in health care professional courses sponsored by the University/hospital departments at his/her location.

9. Service Credit On Hire Into Career Status Position

Per diem HX Unit employees who have worked at least 60 shifts in the six months immediately prior to being hired into a career position in the same area will have three months credit applied against the continuous service requirement for completion of the probationary period. Further evaluations conducted during per diem status, or other information

obtained by University management, may serve in lieu of the three month probationary period evaluation.

**E. REHIRED RETIREES**

Rehired Retirees working in positions covered by this unit will be eligible to elect to waive future retirement accruals to the same extent that other rehired retirees in staff positions are eligible.

**F. LAWRENCE BERKELEY NATIONAL LABORATORY**

The definitions of temporary and indeterminate positions in effect at PERB's certification of UPTE-CWA Local 9119, on September 15, 1999, shall remain in effect.

**ARTICLE 28  
PROBATIONARY PERIOD**

**A. GENERAL CONDITIONS**

1. Employees in career appointments in the unit shall serve a probationary period during which time their work performance and general suitability for University employment will be evaluated. The probationary period is completed following six (6) months of continuous service at one-half (½) time or more without a break in service. Time on leave with or without pay is not qualifying service for the completion of the probationary period.
2. Employees who are rehired following a break in service of one year or less shall not be required to serve a new probationary period, provided:
  - a. Rehire occurs in the same class and specialty within the same department, and
  - b. The rehired employee had regular status in that class at the time of termination.

Otherwise, rehired employees serve a probationary period.

**B. CREDIT FOR TIME SERVED IN LIMITED APPOINTMENTS**

1. An employee whose appointment is converted from a limited appointment to a career appointment under the provisions of Article 27 §B.2., who has worked in the same appointment into which s/he is directly converted to career status, will have such time in that appointment applied against the probationary period. For the purposes of this provision, "same appointment" means an appointment in the same department/unit with the same duties as the appointment to which the individual was assigned prior to conversion and reports to the same supervisor as s/he did in a limited appointment.
2. A non-career employee in a limited appointment who has at least six (6) months of continuous service at 50% time or more in a non-career appointment and who is appointed or is converted in accordance with Article 27 – Positions/Appointments, §B.2. to a career position with substantially similar job duties shall have three (3) months service credit toward completion of her/his probationary period in the new career position.

**C. EVALUATION DURING PROBATIONARY PERIOD**

The University shall conduct one written performance evaluation prior to the completion of a full probationary period.

**D. EXTENSION OF THE PROBATIONARY PERIOD**

Under appropriate circumstances, e.g., change of supervision or transfer to a different job during the probationary period, the probationary period may be

extended at the discretion of the department head. Such an extension shall be for a specific period of time, but not for more than three months.

**E. RELEASE DURING PROBATIONARY PERIOD**

Prior to the completion of the probationary period, an employee may be released at the sole discretion of the University and without recourse to the grievance and arbitration procedures of this Agreement.

**ARTICLE 29  
PROFESSIONAL DEVELOPMENT AND EDUCATIONAL LEAVE**

**A. GENERAL CONDITIONS**

1. Employees are encouraged to pursue professional development and education in relation to their career in health care.
2. Employees shall be reimbursed for the costs of educational programs required and approved by the University. Time spent in such educational programs shall be considered time worked.
3. Employees attending University courses or seminars shall be eligible for fee reductions applicable to other employees at their hospital/campus/Laboratory. Employees attending University courses or seminars shall not be eligible for the services or facilities or counseling centers, gymnasias, or student health services incidental to such reduced-fee registration.
4. Nothing in this Article shall prevent the University from granting additional professional development and/or educational opportunities.

**B. RELEASE TIME AND SCHEDULING**

1. An employee who has completed her/his probationary period, who wishes to participate in an professional development and educational leave program and who meets the qualifications listed below, shall request advance approval in accordance with departmental procedures. Such requests shall only be denied based on operational considerations.
2. Professional Development and Educational Leave:
  - a. May not be accumulated.
  - b. Must be scheduled according to staffing requirements.
  - c. When used for Continuing Education Units, must be used to take available UC-sponsored courses.
  - d. Must be documented with proof of participation.
3. 40 hours paid professional development and educational leave relating to the employee's health care career will be provided to full-time employees per contract year.
  - a. A contract year is normally defined as July 1 – June 30. If a contract begins after July 1, a proportionate number of professional development and educational leave hours will be provided based on the actual duration of the contract.
  - b. In addition, a part-time career employee's yearly entitlement shall be prorated based on her/his appointment rate.
  - c. Up to 12 hours of the 40 hour maximum of paid leave may be utilized for appropriate home study/ internet courses. Time used under this section shall not be accrued or paid as premium overtime.



- d. Career employees and Special Per Diem employees (as defined in Article 27 – Positions, section D.3.) at UC Berkeley, UC Riverside, UC Santa Cruz and UC Santa Barbara Student Health Centers may use up to sixteen (16) hours of the 40 hour maximum of paid leave during non-scheduled time. Part-time employees at these locations may use prorated time pursuant to section to B.3.b. above. Time used under this section shall not be accrued or paid as premium overtime.
- 4. Employees who are scheduled to take the examination which would grant a state and/or nationally recognized certification, and who request the examination day off in accordance with the unit's scheduling procedures, shall be assigned paid professional development and educational leave for the day on which the examination is taken.
  - 5. An employee, assigned to the evening or night shift, who is scheduled for a continuing education course or a certification examination, shall be scheduled off from the evening or night shift immediately preceding or following the course or examination when:
    - a. The unit scheduling policies have been followed; and
    - b. The course is eight hours duration outside scheduled work time; or
    - c. The examination is conducted by a state or nationally recognized professional organization.

**C. EQUIPMENT TRAINING**

In the event that the University introduces new equipment at any teaching hospital/laboratory/campus which materially affects work performed by an HX Unit employee subject to this Agreement, the University shall provide adequate training on new equipment and/or methods of practice. Such training shall not be deducted from the 40 hour annual maximum in Provision B.3.

**ARTICLE 30  
REASONABLE ACCOMMODATION**

**A. GENERAL PROVISIONS**

- 1. The University provides reasonable accommodation to otherwise qualified employees who become disabled and need assistance to perform the essential functions of their positions.
- 2. After receipt of medical documentation from a qualified employee with a disability, the University will determine what assistance, if any, will be offered to the employee. If appropriate, this assistance may consist of information about vocational rehabilitation services. The findings in the medical documentation provided by the employee may be subject to confirmation by a University-appointed physician. The University will pay the cost of a University-appointed physician.

**B. SPECIAL SELECTION FOR OTHER POSITIONS**

A non-probationary career employee who becomes disabled and who has received vocational rehabilitation services may be selected for a position without the requirement that the position be publicized.

**C. TRIAL EMPLOYMENT**

When recommended by a vocational rehabilitation counselor and approved by the appropriate University official, a non-probationary career employee who becomes a qualified employee with a disability may be offered temporary trial employment to evaluate the employee's interests and abilities. The length of this trial employment shall not exceed one year, and shall be determined by the employing department/division head in consultation with the counselor. Positions

used for trial employment shall not be designated as career positions, except that an employee shall maintain benefits to the extent permitted by benefit plan rules.

### **ARTICLE 31 RECLASSIFICATION REVIEW**

- A.** An employee may request a review of the classification of their position. The review shall be based on the employee's job description, as approved by their supervisor. Requests for reclassification shall be processed by the University office responsible for reclassification review.
- B.** If the employee makes the request for review of a classification and the supervisor fails to respond within 30 calendar days, the employee may forward the request to the designated University office responsible for classification review.
- C.** The salary adjustment, resulting from a reclassification, if any, shall be retroactive to the first day of the month following the date on which the request to the designated University office was received.
- D.** The University's decision to reclassify or not to reclassify is not subject to either the grievance or arbitration procedures.
- E.** An employee may request a review of a decision denying a reclassification. The request for a review shall be made in writing to the Human Resources Office within 30 calendar days of the date on which the reclassification decision was issued. The request shall state the basis upon which the employee is requesting a review. The result of the review shall be issued in writing by a representative of the Human Resources Office. The representative who issues the second decision may not be the same individual who performed the initial review.

### **ARTICLE 32 RELEASE TIME FOR BARGAINING**

- A.** UPTE shall designate as a bargaining team member not more than one active status University HX-Unit employee per medical center, one from UCSF and one from a campus student health center, for a total of six bargaining team members from the HX Unit. UPTE shall provide in writing the names of the designated permanent members of its bargaining team to the Office of Labor Relations at least 30 calendar days prior to the first scheduled bargaining session. In the event any designated member is to be permanently replaced, the name of the permanent replacement shall be communicated in writing to the Office of Labor Relations. The Office of Labor Relations shall acknowledge in writing the newly designated permanent replacement, and inform the appropriate work location. Such notification of a permanent replacement shall be made to the Office of Labor Relations two workweeks prior to the first scheduled bargaining session to be attended by the replacement employee. Designated team members who are members of the System-wide Unit may be released from their work assignments without loss of straight-time pay to attend scheduled bargaining sessions. Alternates or substitutes for any of the designated team members may be permitted when UPTE has provided the University with the name and work location of the replacement at least two weeks in advance of the date of the change, unless the parties agree to a shorter notice period.
- B.** No more than a total of six HX-Unit employees shall be in without-loss-of-straight-time pay and benefits status for attendance at scheduled bargaining sessions, including reasonable travel time to attend bargaining sessions. Without-loss-of-straight-time-pay status shall be provided only for bargaining sessions, and only for the days which the member would have been scheduled to work had the member not been released from his/her work assignments to attend scheduled bargaining sessions. The hours for which any of the designated union bargaining team members are in without-loss-of-straight-time-pay status shall not exceed the bargaining team member's actual scheduled work hours for any one day of a scheduled bargaining session and shall not exceed 40 hours per week. Time in without-loss-of-straight-time status for the purpose of bargaining shall not count in the calculation of overtime, and will not result in any double payment for

the hours in such status. Deviation from this paragraph may be made only by mutual agreement of the parties on a case-by-case basis.

- C.** Bargaining sessions are defined as the pre-scheduled face-to-face meetings, and related caucuses during meeting days, for the purpose of negotiating terms and conditions of an Agreement. If no meeting actually takes place during the scheduled meeting day as the result of the University's unavailability to appear at the bargaining table, or the University agrees that a full-day union bargaining team caucus is necessary to the bargaining process, the University may designate a day without a face-to-face meeting as a "bargaining session".
- D.** An employee designated as an HX-Unit bargaining team member shall provide his/her supervisor with written notice of their intent to attend scheduled bargaining sessions as soon as practicable following the scheduling of bargaining sessions. A bargaining team representative may be denied release time for bargaining, either in paid or unpaid status, if his/her supervisor is not provided at least 14 calendar days prior notice of his/her need for release time, unless the parties agree to a shorter notice period.
- E.** UPTE shall provide an attendance roster at the end of each bargaining session.
- F.** Reasonable travel time means actual travel, via the most expeditious method of transportation available, to and from scheduled bargaining sessions for the designated employees.
- G.** Attendance by a bargaining team member at scheduled bargaining sessions shall constitute fulfillment of the employee's work obligation for that day.
- H.** The University shall make a good faith effort to modify a bargaining team member's work schedule in order to accommodate his/her participation in bargaining sessions.

### **ARTICLE 33 RESIGNATION/JOB ABANDONMENT**

#### **A. RESIGNATION**

1. Employees who voluntarily separate from employment with the University, other than retirement, are considered to have resigned their employment with the University.
2. Upon the employee's submission of a written notice of resignation there shall be no withdrawal or rescinding of the resignation except by the written mutual agreement of the University and the employee.
3. In the event an employee provides an oral notice of resignation, s/he may rescind such notice within two scheduled work days following the oral notice. If such oral notice is not rescinded within the two (2) work-day limit, there shall be no withdrawal or rescission of her/his resignation except by the written mutual agreement of the University and the employee.
4. With the exception of retirement, the final paycheck (including earnings to date, overtime, compensatory time and vacation hours) shall be paid to the employee in a timely manner normally within 72 hours and in conformance with appropriate sections of the Labor Code. Retirement compensation shall be provided pursuant to retirement plan regulations.

#### **B. JOB ABANDONMENT**

Failure to report to work as scheduled for five (5) consecutive work days may be treated by the University as an employee's job abandonment resulting in her/his resignation:

1. In the case of job abandonment, the University shall provide the employee with written notification of its intent to separate her/him. This notification shall include the reasons for the separation, the employee's

right to respond to the University within fourteen (14) calendar days, and a Proof of Service. The notification shall be sent to the employee's last known mailing address.

2. The employee shall have fourteen (14) calendar days from the mailing of such notice to respond to the University prior to her/his separation. The response may, at the option of the employee, be in writing or may be a meeting with a designated University official. The official must have the authority to effectively recommend reinstatement of the employee.
3. Following the employee's timely response, or if no response was provided within fourteen (14) calendar days, the decision of the designated University official is not subject to the grievance and/or arbitration provisions of this Agreement.

#### **ARTICLE 34 SEVERABILITY**

If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect; but the remainder of this Agreement shall continue in full force and effect. The parties shall meet and confer in good faith with respect to any provision found to be in contravention of the law in order to agree on a substitute provision.

#### **ARTICLE 35 SHIFT DIFFERENTIAL**

##### **A. GENERAL PROVISIONS**

Eligible employees assigned to an evening or night shift shall be paid a shift differential for all hours including overtime which are worked, in accordance with the following provisions. Shift differential rates by location are listed in Appendix A. Work that is scheduled during the evening or night hours on the basis of convenience to the employee shall not be considered an assigned evening or night shift for the purpose of receiving shift differential.

##### **B. EVENING AND NIGHT SHIFTS**

An evening or night shift differential shall be paid for all hours of a shift when four hours or more of a shift are worked after 5:00 p.m. and before 8:00 a.m.

##### **C. DAY SHIFT EMPLOYEE ELIGIBILITY FOR SHIFT DIFFERENTIALS**

An employee regularly assigned to a day shift of eight hours or longer shall be paid a shift differential for overtime hours when:

1. The overtime hours are worked after 5:00 p.m. and before 8:00 a.m.,
2. The total overtime hours in one 24 hour day are equal to at least one-half (1/2) of the number of regular hours in the employee's day shift, and
3. The overtime is not compensated at a premium rate.

##### **D. TEMPORARY ASSIGNMENT TO SHIFT WITHOUT A DIFFERENTIAL**

When an employee who usually works on an evening or night shift is temporarily assigned to a day shift for a period of four working days or less, the employee shall continue to receive any shift differential. A temporary change of four working days or less in shift assignment initiated by the employee is not covered by this provision.

##### **E. SHIFT DIFFERENTIAL WHEN ON PAID LEAVE**

The shift differential shall be included in payments for all types of paid leave, provided that the employee would have been expected to work that shift or shifts if the employee were not on paid leave.

**F. SHIFT ASSIGNMENTS TO TITLES WITHOUT ESTABLISHED SHIFT DIFFERENTIAL RATES**

Prior to assigning a shift differential rate to a classification that does not have an established rate, the University and UPTe must negotiate the shift differential rate to be assigned to that classification.

**G. LAWRENCE BERKELEY NATIONAL LABORATORY**

Policies, procedures, definitions, qualifications, covered hours and rates in effect at PERB's certification of UPTe-CWA Local 9119, on September 15, 1997, shall remain in effect for employees at the Lawrence Berkeley National Laboratory and shall supersede the provisions of this article where in conflict.

**ARTICLE 36  
SICK LEAVE**

**A. ACCUMULATION OF SICK LEAVE CREDIT**

1. After a campus implements the Factor Accrual System, an eligible employee shall earn sick leave credit at the rate of .046154 hours per hour on pay status, including paid holiday hours but excluding all paid overtime hours.
2. For campuses retaining the Table Accrual System, an eligible employee shall earn sick leave credit at the rate of eight hours per month for full-time employment. Sick leave credit is earned proportionately, as set forth in the Sick Leave Credit Table below, for hours on pay status over one-half (1/2) of the full-time working hours of the month but less than full-time.
3. Until a campus implements the Factor Accrual System, current accrual practices will remain in place.

**SICK LEAVE CREDIT TABLE  
Number of Hours on Pay Status**

160-Hour* Month Earned	168-Hour* Month	176-Hour* Month	184-Hour* Month	Percent of time on Pay Status	Hours of Sick Leave
0 - 79	0 - 83	0 - 87	0 - 91	0 - 49	0
80 - 89	84 - 94	88 - 98	92 - 103	50 - 56	4
90 - 109	95 - 115	99 - 120	104 - 126	57 - 68	5
110 - 129	116 - 136	121 - 142	127 - 149	69 - 80	6
130 - 149	137 - 157	143 - 164	150 - 172	81 - 93	7
150 - 160	158 - 168	165 - 176	173 - 184	94 - 100	8

\* Hours on pay status, including paid holiday hours, but excluding all paid overtime hours.

4. An employee must be on pay status for at least one-half (1/2) of the working hours of a month or quadri-weekly cycle to earn sick leave credit for that month or quadri-weekly cycle. Time on pay status in excess of a full-time work schedule does not earn sick leave credit. Sick leave is earned during leave with pay. For the purposes of this Agreement, a quadri-weekly cycle is defined as two bi-weekly pay periods designated by the University to be considered as one unit for the purpose of leave accrual.
5. For employees on either system, earned sick leave for each month or quadri-weekly cycle is credited on the first day of the following month or

quadri-weekly cycle, except that proportionate sick leave credit for an eligible employee who is separating from employment shall be credited at the completion of the last day on pay status.

6. The number of sick leave hours that may be accumulated is unlimited.

## **B. ELIGIBILITY AND USE OF ACCUMULATED SICK LEAVE**

### 1. General Provisions

- a. Requests for the use of sick leave shall be made in accordance with campus or departmental procedures.
- b. Sick leave is to be used for medical appointments with advance approval, personal illness or personal disability; and for the death or serious illness of others as provided in Section B.3. and Section B.4., below. In the case of medical appointments, a request for sick leave shall not be unreasonable denied.
- c. Sick leave shall not be used prior to the time it is credited. Sick leave shall not be used in excess of the employee's normally scheduled hours or work for the day or days for which the sick leave is claimed. Sick leave shall not be used beyond a predetermined date of separation, including retirement or layoff, or beyond a predetermined date beginning a leave of absence without pay.
- d. Exempt Employees – Except as provided in Article 14, Leaves of Absence, records of sick leave used shall be recorded in one day increments only or in increments of not less than that portion of a day during which an employee on less than full-time pay status is normally scheduled to work. When an exempt employee has exhausted all accrued sick leave, salary shall not be reduced for absences of less than one full day or less than that portion of a day during which an employee on less than full-time pay status is normally scheduled to work.
- e. Non-Exempt Employees – Records of accrued sick leave usage shall be maintained to the nearest quarter (1/4) hour.

### 2. Pregnancy

A pregnant employee on approved leave without pay on the date certified by her doctor as the date on which she is no longer able to work or the date of delivery, whichever is earlier, can use sick leave beginning with that day and continuing through the period that she is physically unable to perform the normal duties of her job.

### 3. Care Of Others

Up to 30 days of accumulated sick leave per year may be used when the employee is required to be in attendance or to provide care of either:

- a. The serious illness of the employee's parent, spouse, child(ren), brother, sister, grandparent, grandchildren, father-in-law, mother-in-law, son-in-law, daughter-in-law, or step-relatives; or any other person for whom the employee has a personal obligation who is residing in the employee's household; or
- b. The employee's spouse, parent(s) or child(ren), suffering from a "serious health condition" as defined in Article 14, Leaves of Absence, Section B.1.d.
- c. Sick leave granted under this section may be used to offset unpaid Family Care and Medical Leave granted pursuant to Article 14, Leaves of Absence.

4. Bereavement

Sick leave for bereavement purposes may be used as follows:

Up to five days of accumulated sick leave per year may be used when attendance is required due to the death of the employee's parent, spouse, children, brother, sister, grandparent, grandchildren, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, or step-relatives; or any other person for whom the employee has a personal obligation who is residing in the employee's household.

5. Illness While On Vacation

If, while on vacation, an employee becomes ill and is under the care of a physician and submits a physician's statement, the employee may use accumulated sick leave for that personal illness. Sick leave may not be used for illness of a family member during the employees' vacation.

**C. SICK LEAVE PAY**

Sick leave is paid at the employee's straight-time rate of pay including any shift differential, provided that the employee would have been expected to work that shift or shifts if not on sick leave.

**D. SICK LEAVE NOTIFICATION AND VERIFICATION**

1. No sick leave pay shall be payable to an employee unless the employee's immediate supervisor or designee is notified of the illness/disability and the probable duration thereof as soon as possible, but in no event later than the beginning of the employee's work day except when the University determines that the employee's failure to notify is due to extreme circumstances beyond the control of the employee. No time for which the employee has requested and/or received sick leave authorization may be charged to accumulated/anticipated compensatory time, leave with pay, vacation, or holiday time, except as provided in Article 14, Leaves of Absence.
2. Any employee who anticipates a series of three or more medical appointments which will require a repeated use of sick leave, or who knows in advance the date and/or time of scheduled appointments, shall inform his/her immediate supervisor of the anticipated or known schedule of treatment.
3. The University may require reasonable documentation of an employee's sick leave absence when an absence exceeds three consecutive scheduled days of work, or for shorter periods when:
  - a. Notice has been provided to the employee prior to his/her return to work, that documentation will be required, or
  - b. The employee has been given advance written notice that documentation will be required.
4. Employees who have unscheduled absences due to illness on a scheduled work day preceding or following a holiday or vacation may be required to bring a medical verification of illness to the employee's supervisor on the employee's return to work in order for the absence to be authorized.
5. When the University requires medical documentation, it shall be from a health practitioner licensed by the state in which he/she practices to diagnose and certify illness or disability or from an authorized representative of a recognized treatment program.

6. The University may have an employee who is claiming disability examined by a physician or physicians of its choosing, in accordance with Article 14, Leaves of Absence. The University shall pay the reasonable costs of any such medical examination and may send the employee to a physician of its choosing.
7. An employee may be denied the ability to use his/her accrued sick leave when the employee is absent due to illness when the University has determined that his/her repeated use of sick leave is abusive, and has given to the employee prior written notice that accrued sick leave use may be denied on future instances of illness.

#### **E. TRANSFER AND REINSTATEMENT OF SICK LEAVE**

1. Transfer/Promotion/Demotion To Positions Covered By This Agreement
  - a. An employee transferred, promoted, or demoted without a break in service to a position that does accumulate sick leave shall have any accumulated sick leave transferred.
  - b. An employee transferred, promoted, or demoted to a position that does not accumulate sick leave shall have his/her accumulated sick leave held in abeyance. If the employee subsequently moves without a break in service to a position that does accumulate sick leave, the previously accumulated sick leave shall be restored.
  - c. An employee who has been laid off and is recalled or preferentially rehired within the employee's period of recall or preferential rehire eligibility shall have all sick leave accumulated from prior service reinstated.
2. Reemployment In Positions Covered By This Agreement
  - a. An employee re-employed from University service or State of California service into the bargaining unit after a break in service of less than 15 calendar days shall have all sick leave accumulated from prior service reinstated if the new position is one which accumulates sick leave.
  - b. An employee re-employed in this bargaining unit after a break in service of more than 15 calendar days but less than six months shall have sick leave accumulated from prior service up to a maximum of 80 hours reinstated. For purposes of this Section E.2. only, "sick leave accumulated from prior service" includes sick leave accumulated in State of California service.
3. Transfer/Promotion/Demotion To Positions Not Covered By This Agreement
  - a. An employee who is transferred, promoted, or demoted into a position not covered by this Agreement shall have the accumulation, use, and transfer of sick leave governed by the policies and/or contract covering employees in that unit or personnel program.
  - b. This Article shall apply to employees with split/multiple appointments in accordance with the provisions of Article 20, Multiple Appointments.

#### **F. CONVERSION OF SICK LEAVE ON RETIREMENT**

Upon retirement, members of the University of California Retirement System shall have their accumulated sick leave converted to retirement service credit for each day of unused accumulated sick leave.



**G. CATASTROPHIC LEAVE**

When the University implements a catastrophic leave program at a campus/hospital/laboratory, or a department at any of these locations, the provisions of the program shall apply equally to eligible employees covered by this Agreement.

**ARTICLE 37  
SUBCONTRACTING**

**A. GENERAL PROVISIONS**

1. The University retains the right to subcontract all or any portion of operations. When the University decides to subcontract, and such subcontract will result in the layoff of employees in the bargaining unit, the University will provide UPTE with a copy of the Request for Proposals (RFP) seven (7) calendar days after it is issued. In the event no RFP is issued and the subcontract will result in bargaining unit employee layoffs, the University will give at least sixty (60) calendar days notice prior to the commencement of work by the contractor.
2. Prior to the commencement of the work that has been subcontracted and following receipt of a timely request from UPTE, the University shall meet with UPTE to discuss the effects of subcontracting upon bargaining unit employees who may be laid off. Failure to conclude such discussions, if any, prior to the date on which the subcontracted work begins, shall not preclude the University from implementing the subcontracting on the date agreed upon by the University and the subcontractor or the layoff of employees pursuant to Article 13 - Layoff and Reduction in Time.

**B. DISPLACEMENT OF EMPLOYEES**

1. Except as provided below, the University of California will not contract out services that result in the layoff of non-probationary career bargaining unit employees.
2. Examples of instances in which a contract for such services may be appropriate include:
  - a. The need to obtain special services and equipment that are not available internally;
  - b. The need to obtain special expertise or efficiencies that are better provided through an outside contractor than by the University; and
  - c. Financial necessity.
3. Where financial necessity is the reason for the exception, before contracting for work which is fully or partially supported from state funds, including those at the teaching hospitals, the University shall first seek funding from the Legislature to address the financial necessity.
4. When the University has determined to contract for services it will provide UPTE with a copy of any RFP within 7 calendar days after it is issued pursuant to A.2., above. Such notice shall demonstrate the appropriateness for the contract, in accordance with section B., above.
  - a. If UPTE asks to meet with the University about the proposed contract for services, such a meeting will occur as soon as practicable following the University's receipt of the request. The meeting will not delay the commencement of the contract.
  - b. If UPTE believes that the University failed to comply with the provisions of Section B., above, it can file a formal complaint with the Office of the President, Office of Labor Relations. The office of the President shall make the final determination as to whether the

contract meets the conditions in Section B. The Office of the President decision is not grievable or arbitrable.

**C. EFFECT OF CONTRACT ON EMPLOYEES**

To minimize the effects of layoff, when a non-probationary career bargaining unit employee is notified of layoff because the University entered into a contract for services that the employee performed, the University will make available another bargaining unit position for which the employee is qualified. The position will be at the same campus/hospital/Laboratory from which the employee was laid of. Where the provisions in this article are inconsistent with the provisions of Article 13 - Layoff and Reduction in Time, the provisions of this Article and Section shall control.

1. The available position shall be offered at the same duration, percent time, and appointment type held by the employee when displaced.
2. The available position shall be offered at the same base rate of pay earned by he employee when displaced.
3. The right to be offered a position pursuant to this section shall begin on the date an employee is notified of layoff (displacement).
4. The right of the displaced non-probationary career employee to be offered a position pursuant to his section shall terminate upon acceptance or refusal of the offered position at the same base rate of pay.
5. A displaced non-probationary career employee who refuses an offered position at the same base rate of pay shall be placed in layoff status.

**D. LEGISLATION/SUPPLEMENTAL BUDGET LANGUAGE**

The language of this Article will be effective only when the Supplemental Report to the 2001 Budget for the State of California or any comparable successor act is not in effect. To the extent this Article is in conflict with legislation regarding subcontracting at the University, the legislation shall control.

- E.** Nothing in this article shall be interpreted as prohibiting action, which must be taken to establish or maintain eligibility for any federal program, contract or grant – including the contract requirements contained in the agreement between the University and the Department of Energy – where ineligibility would result in a loss of federal funds to the University of California.

**ARTICLE 38  
TRAVEL REIMBURSEMENT**

**A. GENERAL PROVISIONS**

Employees are eligible to receive travel reimbursement in accordance with applicable University or Laboratory policies and/or procedures.

**B. REIMBURSEMENTS**

1. The policies, procedures, definitions, qualifications, calculations, covered hours and rates relative to travel reimbursement(s) shall be applied, changed, or implemented for employees covered by this Agreement in the same manner as for other staff employees in the University, except as provided in Section C., below.
2. The University may determine, on a department-by-department basis and consistent with the Business and Finance Bulletin, the requirements for reporting travel expenses.
3. Reimbursement rates reflect the maximum daily reimbursement provided for specific subsistence expenses, including meals. Only actual reasonable expenses may be reimbursed, including but not limited to mileage, transportation, toll fees, and parking fees.

4. When subsistence expense(s) are paid directly by the University, the employee's per diem reimbursement eligibility will be reduced accordingly.
5. University-approved out-of-state lodging expenses will be reimbursed based on the expenses actually incurred as supported by receipts, provided the University gave prior approval for or requires actual-expense reimbursements.

**C. LAWRENCE BERKELEY NATIONAL LABORATORY**

Policies, procedures, definitions, qualifications, calculations, covered hours and rates relative to per diem rates at the Laboratory shall be applied, changed, or implemented for employees covered by this Agreement in the same manner as for other staff employees at the Laboratory.

**ARTICLE 39  
UNIFORMS**

**A. GENERAL PROVISIONS**

Uniforms are attire required by the University to be worn in the performance of assigned duties.

**B. PURCHASING AND REIMBURSEMENT**

1. The University shall have the sole discretion to determine if a uniform shall be worn, who shall wear a uniform and the conditions under which it must be worn.
2. Where the University currently provides either uniforms or reimbursement for uniforms and, for as long as the University continues its requirement that the uniform be worn, it will provide either the uniform or the reimbursement for the uniform at the current rate.

**C. LAUNDERING**

Where laundering of uniforms is currently provided by the University, such laundering shall continue while the requirement for uniforms continues.

**ARTICLE 40  
UNIVERSITY BENEFITS**

**A. GENERAL CONDITIONS**

1. Eligible employees may participate in a number of benefit programs generally available to other eligible employees of the University. The University may, at its option during the term of this Agreement, alter its health and welfare programs and/or retirement system plans. Such alterations include, but are not limited to altering eligibility criteria, establishing new coverage, altering or deleting current coverage, altering employee and University rates of contribution, or changing the carrier for established benefits plans or programs. In the event the University makes such alterations, the changes will apply to employees eligible for benefits within the unit in the same manner as they apply to other eligible staff employees at the same campus/hospital/laboratory. The sole exceptions to the above shall be 1) any alterations proposed by the University which affect only bargaining unit employees, and 2) any alterations proposed by the University which reduce retirement benefits of bargaining unit employees. In such cases, the University agrees to meet and confer with respect to the proposed change.
2. For the life of this Agreement, the University's maximum monthly rates of contribution for bargaining unit employees who are eligible for and elect to

enroll in a health plan shall be the same as the contribution rates for such plans for other staff employees.

3. Costs that exceed current University contributions, and employee costs for plans to which the University does not contribute, are to be paid by unit employees, normally through payroll deduction.

## **B. EFFECT OF ABSENCES FROM WORK ON BENEFITS**

1. Temporary Layoff/Temporary Reduction In Time/Furlough

Health plan contributions by the University will be provided for unit employees, in accordance with Section C, below, when the employee is affected by the following conditions lasting up to 4 months: a temporary layoff; a temporary reduction in time below the hours required to be eligible for health benefits; or a furlough. For health plans to remain in force, employees on temporary layoff or furlough must comply with the terms of the applicable plan documents, rules and/or regulations.

2. Military Leave

An eligible employee on military leave with pay for emergency National Guard duty or Military Reserve Training Leave shall receive those benefits related to employment that are granted in the University's Military Leave policy and its related documents.

3. Leaves Of Absence Without Pay

- a. Approved leave without pay shall not be considered a break in service and, except as provided in Section 3.c., below, shall not determine eligibility for benefits except that the regulations of the retirement systems determine the effects of such leave without pay on retirement benefits.
- b. Except as provided in Section 3.c., below, an eligible employee on approved leave without pay may, in accordance with the benefit plan documents, rules and regulations, elect to continue University-sponsored benefit plans for the period of time specified in the benefit plan documents, rules and regulations.
- c. An employee on an approved federal Family Medical Leave Act (FMLA) leave shall be entitled, if eligible, to continue participation in health plan coverage (medical, dental, and vision) as if on pay status for a period of up to twelve (12) workweeks in any 12-month period. However, an employee who exhausts her entitlement to health plan coverage while on an approved Pregnancy Disability Leave that runs concurrently with federal Family and Medical Leave, shall not be entitled to an additional 12 workweeks of health plan coverage under the California Family Rights Act. Other group insurance coverage and retirement benefits shall be continued in accordance with the provisions of the applicable group insurance and retirement system regulations.

## **C. ENUMERATION OF UNIVERSITY BENEFITS**

For informational purposes only, a brief outline of benefit programs in effect on the date the Agreement is signed is found in Appendix B. UPTE understands and agrees that the descriptions contained in Appendix B do not completely describe the coverage or eligibility requirements for each plan, the details of which have been independently communicated to UPTE.

Specific eligibility and benefits under each of the various plans are governed entirely by the terms of the applicable Plan Documents, custodial agreements, University of California Group Insurance Regulations, group insurance contracts, and state and federal laws. Employees in an ineligible classification are excluded from coverage, regardless of appointment percent and average regular paid time. For details on specific eligibility for each program, see the applicable documents, agreements, regulations, or contracts.

**D. JOINT BENEFITS COMMITTEE**

The University and UPTE will establish a Joint Benefits Committee that will meet at least four times annually to discuss employee benefits. The Joint Benefits Committee will review benefits plans prior to their finalization with benefits providers.

1. The University will provide information on specifications, cost, usage, surveys and evaluations of benefits plans.
2. UPTE will provide responses, identify problems and issues and share any union evaluations or surveys of benefits plans.
3. The University will grant release time for up to four career employees, not more than one per campus/lab/hospital to participate in this committee. Release time is without loss of straight time pay and will allow for reasonable travel time.

**E. REDUCED FEE ENROLLMENTS**

If the University determines to provide reduced fee enrollments to qualified retired annuitants, it will apply to retired members of the HX bargaining unit to the same extent as for any staff employees.

**ARTICLE 41  
VACATION**

**A. VACATION CREDIT**

1. An employee is eligible to accumulate vacation credit if appointed at 50% or more of full-time for a period of six months or more.
2. Until a campus implements the following Factor Accrual System, current accrual practices will remain in place.
3. After a campus implements the following Factor Accrual System, an eligible employee shall earn vacation credit each month or quadri-weekly cycle based on the number of hours on pay status for that month or quadri-weekly cycle at the following rates:

Years of Qualifying Service	Per Hour on Pay Status*	Approximate Yearly Earning**	Maximum Accumulated Balance
Less than 10	.057692	15 days	240 hours
10 but less than 15	.069231	18 days	288 hours
15 but less than 20	.080769	21 days	336 hours
20 or more	.092308	24 days	384 hours

Former A& PS Vacation Schedule

Years of Qualifying Service	Per Hour on Pay Status	Approximate Yearly Earning
Less than 5	.057692	15 days
5 but less than 10	.069231	18 days
10 but less than 15	.080769	21 days
15 or more	.092308	24 days

\* Hours on pay status, including paid holiday hours, but excluding all paid overtime hours.

\*\* Full-time rate.

4. For campuses retaining the Table Accrual System, and for the Lawrence Berkeley National Laboratory, an eligible employee shall earn vacation credit each month based on the number of hours on pay status for that month at the following rates:
  - a. Ten hours per month for a full-time employee with less than ten years of qualifying service;
  - b. 12 hours per month for a full-time employee with at least ten but less than 15 years of qualifying service;
  - c. 14 hours per month for a full-time employee with at least 15 but less than 20 years of qualifying service; and
  - d. 16 hours per month for a full-time employee with 20 years or more of qualifying service.
5. A month of service at one-half ( $\frac{1}{2}$ ) time or more is a month of qualifying service.
6. Employees in titles formally covered by the Administrative & Professional Staff Program (A&PS) as of June 30, 1996 (these titles are marked in Appendix A with an asterisk), shall continue to accrue vacation under the A&PS schedule until whichever event occurs first: a break in service of four or more months, or transfer out of the unit. Upon return to University service after a break in service of four or more months, or to the unit from a position outside the unit, such an employee shall earn vacation in accordance with Section A.3. or 4, above.
7. An employee is eligible to earn vacation credit from her/his date of hire, prorated in accordance with the above, if appointed at 50% or more of full-time for a period of six months or more. An employee who is not eligible to earn vacation because of a part-time or short term appointment becomes eligible to earn vacation after six continuous months or quadri-weekly cycles on pay status at 50% time or more. Time on pay status in excess of a full-time work schedule does not earn vacation credit.
8. Earned vacation for each month or quadri-weekly cycle is credited on the first day of the following month or quadri-weekly cycle, except that proportionate vacation credit for an eligible Employee who is separating from employment shall be credited at the completion of the last day on pay status. A full-time employee on the Factor Accrual System may earn vacation credit to a maximum stated in Section A.3., above. A full-time employee on the Table Accrual System may earn vacation credit to a maximum of two times (2X) the employee's annual accumulation rate. A part-time employee may earn vacation credit to the same maximum number of hours as a full-time employee with comparable years of service.

## **B. VACATION SCHEDULING**

1. An employee may request vacation. When vacation schedules are established, they shall be established in accordance with normal scheduling practices and in accordance with the needs of the University. Criteria used in establishing vacation schedules include, but are not limited to: the employee's skills and skill level, previous usage of the same time period by an employee in the previous year, the employee's preference for vacation dates, staffing levels, and/or the employee's length of service in a manner determined by the employing unit.
2. An approved vacation request shall not be unreasonably canceled.
3. The University will endeavor to respond to an employee's additional vacation request(s) within 15 calendar days of her/his request for use of vacation.

**C. VACATION LEAVE RECORDS**

1. Exempt Employees

Except as provided in Article 14, Leaves of Absence, records of vacation used shall be recorded in one day increments only, or in increments of not less than that portion of a day during which an employee on less than full-time pay status is normally scheduled to work. When an exempt employee has exhausted all accrued vacation, salary shall not be reduced for absences of less than one full day, or less than that portion of a day during which an employee on less than full-time pay status is normally scheduled to work.

2. Non-Exempt Employees

Records of vacation used shall be maintained to the nearest quarter ( $\frac{1}{4}$ ) hour.

**D. VACATION CREDIT USE**

Vacation credit is accumulated from the date of hire. An employee may use vacation following completion of the probation period, but no vacation shall be used prior to the time it is credited.

**E. VACATION MAXIMUMS**

1. Prior to the date on which an employee's vacation credit will reach the maximum allowable accumulation, the University shall provide her/him with at least 90 days notification.
2. The employee shall request dates for use of the vacation at least 60 days prior to the maximum accumulation. Upon request, an employee shall be granted vacation before the employee's accumulated credit reaches the maximum. If a vacation cannot be authorized due to operational considerations, the employee shall have an additional three months in which to take vacation to bring her/his accrual below the maximum. During the extension, vacation shall continue to accrue.

**F. VACATION PAY**

1. Pay for accumulated vacation shall be at the employee's straight-time rate including any shift differential for employees permanently assigned to off-shift.
2. An employee who separates from employment or who is granted extended military leave shall be paid for any accumulated vacation through the employee's last day of work, except that an employee who is retiring may use accumulated vacation up to the effective date of retirement.

**G. TRANSFER OF VACATION CREDIT**

An employee who is transferred, promoted, or demoted to another position at a University medical center or campus in which vacation credit can be accumulated shall have any accumulated vacation credit transferred. An employee who is transferred, promoted, or demoted to a position at a University medical center or campus in which vacation credit does not accumulate shall be paid for any accumulated vacation at the time of transfer. An employee who is transferred, promoted, or demoted to or from a Lawrence Berkeley Laboratory position shall be paid for any accumulated vacation at the time of transfer.

**H. DONATIONS FOR CATASTROPHIC LEAVE**

Any HX Unit employee may participate in an campus/hospital/laboratory's Catastrophic Illness/Injury Leave program, if any, in accordance with the provisions of that location's program.

**ARTICLE 42  
WAIVER**

- A.** The University and UPTE acknowledge that:
1. During the negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining;
  2. This Agreement constitutes the entire contract arrived at by the parties after the exercise of that right and opportunity;
  3. This Agreement supersedes and replaces the specific rights and/or procedures set forth under the various personnel programs and policies, which previously applied to Health Care Professional Unit employees.
- B.** As a result of the acknowledgments in Section A., above, the University and UPTE agree that, for the term of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered within this Agreement, or with respect to any subject or matter not specifically referred to or covered by this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.
- C.** Notwithstanding Section B. above, the articles in this contract may be reopened for negotiation at any time by mutual agreement of the parties.

**ARTICLE 43  
WORK RULES**

The University shall have the right to promulgate and to change any work rules provided:

Any such change shall not be in violation of this Agreement; and Notice of any such change shall be the greater of 30 calendar days or any notification time specified under any other Article governing the employees affected by said change.

**ARTICLE 44  
WORK-INCURRED INJURY OR ILLNESS**

**A. GENERAL PROVISIONS**

An employee unable to perform the normal duties of her/his job due to a work-incurred illness or injury compensable under the California Workers' Compensation Act are eligible to use sick leave and vacation as provided herein. When sick leave is exhausted and when employees are still unable to work because of such illness or injury, employees may use extended sick leave or leave without pay as provided below. An approved leave of absence for work-incurred illnesses or injuries shall not be considered a break in service.

**B. RETURN FROM WORK-INCURRED INJURY OR ILLNESS LEAVE**

When possible, an employee granted a Work-Incurred Injury or Illness Leave must provide the University with 30 days notice of his/her ability to return to work. Upon receipt of the release to return to work, the University shall either reinstate the employee to the same or a similar position in the same department or will determine what accommodation, if any, will be reasonably provided upon expiration of the leave. If the position held has been abolished during the leave, the employee shall be afforded the same considerations which would have been afforded had that employee been on pay status when the position was abolished.

**C. USE OF SICK LEAVE AND VACATION**

1. An employee who accumulates sick leave and vacation shall be permitted to use accumulated sick leave and vacation to supplement temporary



disability payments received under the California Workers' Compensation Act.

2. Sick leave and vacation payments shall be the difference between the amount payable to the employee under the Workers' Compensation Act and the Employee's regular salary.
3. The additional payment made to an employee to provide the employee with full salary prior to receipt of disability payments shall be deemed an advance temporary disability payment within the Workers' Compensation Act. An employee who receives an advance temporary disability payment shall reimburse the University for such payment. The reimbursement is used to restore the proportionate sick leave and vacation credit as appropriate.

#### **D. EXTENDED SICK LEAVE**

1. An employee who is receiving temporary disability payments on account of a work-related injury or illness and who has exhausted all accumulated sick leave shall receive extended sick leave payments from the University in an amount equal to the difference between payments from Workers' Compensation and 80% of basic salary plus any shift differential which the employee would have received. If such employee returns to part-time University duties, the earnings plus any temporary disability payments, if less than 80% of basic salary plus shift differential, shall be supplemented to 80% by extended sick leave payments, provided the employee continues to be medically authorized for Workers' Compensation temporary disability. Total extended sick leave payments shall not exceed 26 weeks for any one injury or illness.
2. An eligible employee who does not have sufficient accumulated sick leave to cover the three calendar days' waiting period for receiving Workers' Compensation payments shall receive extended sick leave payment to cover any part of the waiting period not covered by sick leave. Payment shall be made only after determination that the injury or illness is compensable under Workers' Compensation.
3. An employee who elects not to use all sick leave is not eligible for extended sick leave benefits.

#### **E. EFFECT ON OTHER CONTRACT PROVISIONS**

1. An employee who is receiving temporary disability payments and supplemental sick leave or vacation as provided in Section C., above, is considered on regular pay status for all purposes except completion of the probationary period. Sick leave and vacation accumulated during this period may be used as soon as they are accumulated.
2. An employee who is receiving temporary disability payments and extended sick leave benefits as provided in Section D., above, is considered to be on regular pay status for all purposes except completion of the probationary period. However, sick leave and vacation accumulated during this period is credited to the employee only upon return to work. If an employee separates from University employment without returning to work, the employee shall be paid for vacation for the period the employee received extended sick leave payment.
3. An employee on leave without pay and receiving temporary disability payments accumulates sick leave and vacation on the same basis as if regularly employed, but such accumulation is credited to the Employee only upon return to work. If the employee separates from University employment without returning to work, no payment shall be made for such vacation credit.
4. An employee shall not use vacation, sick leave, or extended sick leave to supplement Workers' Compensation payments beyond a predetermined date of separation or leave without pay. Any vacation credit remaining on the date of separation shall be paid on a lump-sum basis.

**F. LIGHT DUTY PROGRAM**

Subject to operational considerations and budgetary constraints, the University will endeavor, on a case-by-case- basis, to modify duties consistent with documented medical restrictions, for employees who have experienced work related injuries. This section shall not be construed as a guarantee of a specific form of accommodation nor shall accommodation in one case establish a precedent for similar or dissimilar circumstances.

**ARTICLE 45  
WORKPLACE COMMITTEES**

**A. LOCAL LABOR-MANAGEMENT MEETINGS**

1. The University and UPTE agree to meet, following UPTE's written request, up to four times per year unless the parties mutually agree otherwise. Each party shall designate a chair, who shall have responsibility to make arrangements for scheduling the labor-management meeting and for drawing up the agenda. Non-employee UPTE representative(s) may attend the meetings.
2. One bargaining unit employee may be released in a without-loss-of-straight-time pay status to attend scheduled meetings, provided UPTE has given the University at least 14 calendar days' notice of his/her selection. The parties may agree to allow additional unit employees to attend the meetings and may, by mutual agreement, agree to place those attendees in a without-loss-of-straight-time status while in attendance at the meeting(s).
3. At least seven calendar days prior to the scheduled date of the meeting, UPTE shall submit the items to be included and discussed. At the meeting, the University need not respond to inquiries about items not submitted seven days in advance. Appropriate agenda items for such meetings include:
  - a. Administration of the Agreement;
  - b. General information of interest to the parties;
  - c. Health and safety matters regarding bargaining unit employees;
  - d. General nondiscrimination-related issues, not pertaining to the facts of an individual employee's complaint(s);
  - e. Information regarding personnel transactions and vacancies;
  - f. Giving representatives an opportunity to express their views, or to make suggestions on subjects of interest to employees of the bargaining unit;
  - g. Subcontracting issues; and
  - h. Additional items mutually agreed-to by the parties for placement on the agenda.

**B. UNIVERSITY-WIDE LABOR-MANAGEMENT MEETINGS**

1. One General Meeting And One Benefits Meeting
  - a. General Meeting

The University (Office of the President, Office Labor Relations) and UPTE agree to meet, following UPTE's written request, once per year to discuss items such as the administration of this Agreement.

b. Benefits Meeting

The University and UPTE agree to meet once per year, following UPTE's written request, to discuss the benefit plans, coverage, benefit schedules, carriers, providers, premium rates, eligibility criteria and the amounts, if any, of University and/or employee contributions. The agenda of the meeting(s) shall be determined by mutual agreement of the parties at least 10 workdays prior to the scheduled meeting date. At that same time, UPTE must identify the names of employees for whom it is requesting paid release time, in accordance with Section C.2., below.

2. Release Time

- a. UPTE may request release time for up to a total of six bargaining unit employees but not more than one employee from each campus/Laboratory. Designated representatives may be released from work in a without-loss-of-straight-time status to attend the scheduled meeting(s), provided UPTE has given the University at least 14 calendar days notice of his/her selection. The parties may mutually agree to allow additional unit employees to attend the meetings and may, by mutual agreement, agree to place those attendees in a without-loss-of-straight-time status while in attendance at the meeting(s).
- b. Release time provided shall be in accordance with the provisions of Sections A.2. and B.2.c. of this Article.
- c. Without-loss-of-pay-status release time will be provided for the duration of the meeting, and for reasonable travel time to and from the meeting. Up to a total of eight hours in one day release time may be provided for attendance at a university-wide labor/management meeting. Any travel and subsistence incurred by the employee(s) attending the meeting(s) shall be the responsibility of the employee(s) or UPTE.

**C. LOCAL PROFESSIONAL PRACTICE COMMITTEES**

1. General Provisions

- a. A Practice Committee of bargaining unit employees may be established at each major medical center. Additionally, a Practice Committee of bargaining unit employees may be established in each Student Health Center on campuses not having a major medical center.
- b. The purpose of the Committee is to consider and constructively recommend to the appropriate administration ways and means to improve health care professional practice and/or patient care. Under no circumstances shall the committee address issues of contract interpretation or application, nor shall the committee's purpose be to address issues related to collective bargaining or the modification of contract terms.
- c. When feasible, the University shall provide information requested by the Practice Committee within 30 calendar days of receipt of the request. Up to once per quarter the University's designee shall meet with the Practice Committee at one of its scheduled meetings. Whenever the Committee makes a written recommendation to the designee, he/she shall ensure that the recommendation is coordinated with the appropriate administrator. The designee will respond to the Committee within 30 calendar days of receipt of the recommendation unless the committee members and the University mutually agree that the time may be extended. The response may take the form of a personal discussion with committee members, or it may be in writing.

2. Release Time

- a. Paid release time will be provided for one member for every 100 bargaining unit employees or major fraction thereof at the facility, provided that not more than one member shall come from a particular patient care unit or equivalent. Paid release time shall not exceed two hours per member in any one quarter.
- b. Nothing shall preclude the designee from authorizing additional release time upon request by the Practice Committee.
- c. The appropriate Office of Labor Relations will coordinate release time for Practice Committee members.

**Article 46  
DURATION**

**A. DURATION**

The terms and conditions of this Agreement shall remain in full force and effect commencing at 12:01 a.m. on July 1, 2003 and shall terminate at 12:00 a.m. on June 30, 2006 unless the University and UPTE mutually and in writing agree to extend any or all of the terms and conditions of this agreement.

**B. NEGOTIATION OF A SUCCESSOR AGREEMENT**

1. UPTE shall, no later than January 31, 2006, serve upon the UCOP Human Resources & Benefits-- Labor Relations, written notice of its intent to negotiate a successor Agreement. Included in such notice shall be UPTE's written initial proposals regarding a successor agreement.
2. The University shall, no later than February 28, 2006, and following receipt of UPTE's timely notice of its intent to negotiate a successor Agreement, present its written initial proposals regarding a successor Agreement to UPTE. Negotiations shall commence on or about March 15, 2006 unless otherwise mutually agreed to by the parties.