

## **Campus Procedures and Frequently Asked Questions: Damage Payment for Services Performed before Loyalty Oath is Performed**

### **Who has to Sign the State Oath of Allegiance form?**

- Only University employees, including staff, faculty and other academics, are required to sign the Oath.

### **Who does not have to sign the State Oath?**

- Contingent workers, visitors, volunteers, independent contractors, outside temporary agency employees, and other non-University employees;
- ANR volunteers (4-H, Master Gardener, etc); and
- Permanent Resident (green card) and Non-Resident Aliens are not required to sign the Oath.

### **When does Oath have to be signed?**

- Oath should be signed by staff employees at the date of hire, but no later than the time at which the employee begins providing compensable service.
- Campuses should make a reasonable effort to obtain a signature on the oath immediately and make a good faith effort to comply with the California Government Code sections regarding the Oath. Locations should address how to accomplish this in their local procedures.
- Faculty should also sign upon being hired or begin providing services.
- HR/Payroll guidelines at each campus provide instructions for signing.
- Oath instructions state that new form must be signed at re-employment if the original form on file is more than one year old. For example, if rehire is within one year, the original form should still be acceptable.
- Separate “sign” dates can apply for Oath and Patent.

### **What are the consequences for not signing the Oath?**

- If employee refuses to sign the Oath, the issue should be forwarded to either the Chief Human Resource Officer or the Academic Personnel Director at the campus level for further discussion and evaluation.
- The campus will still need to pay them for the services performed during the time period that the Oath was not signed.

### **What are the methods of obtaining and the record of signature?**

- UC Path intends to have all new hires electronically sign on-boarding documents, including the Oath.
- Although an in-person signature is preferable, if the individual is unable to sign in the presence of a University employee, a remote signature may be faxed or mailed along with similar on-boarding new hire documents.
- Remote signatures should be in the presence of a notary, personal attorney, or an employee of another university, and the signature should be witnessed.

**What is the tax treatment of damage payments associated with failure to sign the Oath at date of hire?**

- The damage payment should be treated as wage income subject to withholding for federal and state income and FICA taxes.

**How does payroll department process a damage payment?**

- The damage payment should be coded with earnings code DMG.
- Because the services performed during the time the Oath remained unsigned are not considered “covered employment,” the employee does not meet the definition of an “eligible employee.” Thus, the damage payment is not subject to UCRP contribution or deduction and any contributions made by the employee to UCRP should be returned.
- If the Employee does not sign the oath, Vacation, or other legally required accrued benefits must be included in the damage payment. However, sick pay is not included.

**Is the damage payment in addition to any wages the employee may have been paid prior to the time when the Oath was signed?**

- The “damage” payment is not intended to be in addition to any wages that may have been paid. Rather it is meant to provide payment for services rendered during the time period that the employee was working and the University failed to present the Oath to the employee for signature.
- If it was not discovered until later that the University had failed to provide the Oath to the employee for signature and had paid “regular” wages, those wages have to be backed out and recoded as a damage payment with the appropriate attributes noted above.

**How are pay and accruals handled in the following scenarios?**

Scenario A: Employee has been working for two months and it is discovered in the third month from date of hire that the campus had not presented the Oath for signature. If the Employee signs the Oath, pay and accruals should be handled as follows:

- For Pay periods paid prior to the Oath being signed, Pay previously coded as “regular wages” should be reversed and recoded as a damage payment (i.e. RX REG, LX DMG).. Any UCRP contributions deducted from the employee’s pay should be returned, and the retirement service credit for this time period reversed.  
As the employee is not terminating, no accruals will be paid out.

If the employee chose not to sign the Oath, pay and accruals should be handled as follows:

- For Pay periods paid prior to the Oath being signed, Pay previously coded as “regular wages” should be reversed and recoded as a damage payment. Any UCRP contributions deducted from the employee’s pay should be returned, and the retirement service credit for this time period reversed.
- For current pay period, payment should be made with DMG DOS code.
- Vacation and other benefits (but not sick pay) should be paid out. Because sick pay is not included, the accrual for sick leave should be reversed.

Scenario B: Employee has been working for two weeks and it is then discovered that the hiring campus/department failed to present the Oath for signature but had the opportunity to obtain a signature on the Oath form.

- Most likely the employee had not been paid yet so there may not be any “regular” wages to back out or UCRP contributions to be returned.

**How are Academic Year Faculty handled under the following scenarios?**

1. “AY” Faculty has an appointment date of July 1, 2014. The appointment letter was not available until July 8<sup>th</sup>, and the Oath was not signed until July 16, 2014. He/she is not scheduled to begin teaching until September 2, 2014. The first paycheck is scheduled for August 1, 2014.

The Oath should be signed as soon as possible. However, if the Oath was signed on July 16<sup>th</sup>, and services did not begin until September 2<sup>nd</sup> and the first paycheck received on August 1<sup>st</sup>, a damage payment is not required.

2. Same scenario as above, but the faculty began providing services as of July 1<sup>st</sup>.

Campus should make a good faith effort to obtain a signature on the Oath as soon as possible. The facts and circumstances of each case should be reviewed to determine whether a signature was obtainable before services were performed and whether or not a damage payment is appropriate for the period covering July 1- July 15<sup>th</sup>.

3. How are interim offers handled (i.e., the period where a tentative offer letter was issued but the academic is going through the peer review process before a formal offer letter is issued)?

If the academic has not provided services nor been paid, a damage payment is not owed. The Oath should be signed as soon as possible after a formal offer letter has been provided but before services and/or payment have been made.