



May 12, 2006

TO: Robert Turnage, Vice Chancellor for Fiscal Policy

FROM: Steven Bruckman, Executive Vice Chancellor and General Counsel

SUBJECT: Charging Part-Time Faculty for Health Benefits
Legal Opinion O 06-05

ISSUES:

You have asked the following questions with respect to health benefits for part-time faculty:

1. May a community college district require its part-time faculty to pay for the portion of health benefit premiums not reimbursed by the state pursuant to Education Code section 87867?
2. If so, can part-time faculty members be required to pay more than one-half of the total cost if the state allocation covers less than half of the cost for health benefits?

CONCLUSION:

A district may require its part-time faculty to pay for the portion of health benefits not reimbursed by the state pursuant to Education Code section 87867, provided that the exclusive representative of part-time faculty agrees to such an arrangement through collective bargaining. The collective bargaining agreement between a district and the exclusive representative could require part-time faculty members to pay more than half of the premiums for health benefits if the funding provided by the state covers less than half of the cost.

ANALYSIS:

Education Code section 87867 is part of article 9 of chapter 3 of part 51 of division 7 of title 3 of the Education Code which was added in 1996 by Assembly Bill 3099 (Stats. 1996, ch. 943). It provides, in pertinent part:

"By June 15 of each year, the Chancellor of the California Community Colleges shall apportion to each community college district that establishes a program pursuant to this article an amount that equals up to one-half of the total cost of the individual enrollment premiums required to be paid for the health insurance coverage of participating part-time

faculty and their dependents in the district. The chancellor shall distribute funds that have been appropriated specifically for this purpose proportionally based on each district's total costs for premiums for those districts that submit verification of the costs of premiums for eligible employees for a fiscal year, but in no event shall the allocation to any district exceed one-half of the cost of the verified premiums."

A community college district is not required to offer health benefits to its part-time faculty, but if it does, section 87867 directs the Chancellor to use available state funds to reimburse the district for up to one-half of the cost the district incurs for health benefits. Your first question is whether a district can require its part-time faculty to reimburse the district for the portion of the health benefit premium not covered by the state. We conclude that it may.

Education Code section 87866 provides as follows:

"The governing board of each community college district that establishes a program pursuant to this article shall do both of the following:

- (a) Negotiate with the exclusive representative as to the payment of the portion of the health insurance premium that is not funded by the state.
- (b) By June 1 of each year, send verification to the Chancellor of the California Community Colleges as to the number of participants in the program."

The fact that the Legislature specifically directed districts to negotiate over the payment of the portion of the health benefits cost not covered by the state clearly means that the law could not have been intended to preclude districts from passing on any portion of the health benefits premium to part-time faculty members. Once a district and the exclusive representative enter into negotiations, it is then up to the parties to determine what amount, if any, part-time employees will pay toward the cost of their health care benefit. We can discern no legal basis for concluding that part-time faculty could not agree to reimburse the district for the entire portion of the health benefits premium not reimbursed by the state.

This view is reinforced by a review of the legislative history of AB 3099. An analysis prepared for the Senate Committee on Education dated June 26, 1996, stated that the bill,

"Authorizes CCC district governing boards to offer health benefits to part-time faculty. . . . [¶] . . . Requires the CCC Chancellor's Office to apportion to districts opting to participate in the FHIP one-half of the total premium costs (presumably, the other half of the costs would be paid by either local districts or the participating faculty member)." (*Id.*, at pp. 1-2.)

The Senate Rules Committee, Office of Senate Floor Analyses third reading report on AB 3099, dated August 28, 1996, also notes that, "presumably, the other half of the costs would be paid by either local districts or the participating faculty member." Thus, the

Legislature passed AB 3099 even though it was understood that the language of the bill could result in part-time faculty having to pay the entire cost of health benefit premiums not covered by the state.

Accordingly, we hold that a district may require part-time faculty to pay for the portion of health benefit premiums not covered by the state pursuant to Education Code section 87867 so long as the exclusive representative of part-time faculty agrees to this arrangement through the collective bargaining process.

Your second question is whether part-time faculty members could be required to reimburse a district for more than half of the cost of health benefits premiums in the event that the state funding covers less than half of the cost.

Section 87867 provides that the state will provide "up to" half of the cost of health benefits for part-time faculty, but the Legislature clearly recognized the possibility that state funding might fall below the level necessary to fully cover half of the costs at all districts. The statute specifically provides that:

"The chancellor shall distribute funds that have been appropriated specifically for this purpose proportionally based on each district's total costs for premiums for those districts that submit verification of the costs of premiums for eligible employees for a fiscal year, but in no event shall the allocation to any district exceed one-half of the cost of the verified premiums."

Indeed, it is our understanding that in recent years the state has consistently allocated far less than would be required to fully fund half of the costs incurred by all participating districts.

As noted above, section 87866 provides that each district is to negotiate with the exclusive representative of part-time faculty regarding "payment of **the portion** of the health insurance premium that is not funded by the state." (Emphasis added.) Thus, in section 87867 the Legislature mentions the state paying "up to one-half" of the costs and in section 87866 it says that the parties are to negotiate concerning "the portion" not covered by the state. The rules of statutory construction compel us to conclude that the difference in terminology between these two statutes is deliberate. The Legislature could easily have written section 87866 to require that districts negotiate with the exclusive representative regarding "the half of the cost of health benefits premiums not paid by the state," but they did not do that. Instead, they referred to "the portion" not paid by the state. The only logical explanation of this wording is that it refers to whatever portion, no matter how large, left unpaid by the state.

As a result, we conclude that a district and the exclusive representative of part-time faculty could negotiate an agreement under which part-time faculty would be required to pay more than half of the costs of health benefits premiums if the state pays less than half.

We acknowledge that the legislative analyses cited above mention "the other half of the costs" being paid by the district or the employees. However, we can rely on indications of legislative intent only where a statute is ambiguous. "If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919, citing *County of Santa Clara v. Perry* (1998) 18 Cal.4th 435, 442 .) Here, the plain meaning of the statute seems clear—that a district and the exclusive representative of its part-time faculty are to negotiate over "the portion" of the cost of health benefits not covered by the state and that the exclusive representative could agree that part-time faculty would pay the entire portion not paid by the state, even if that portion may be in excess of half of the total cost.

SB:RB:sj

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