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LEGAL UPDATE

February 26, 2010

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To: Presidents/Superintendents, Member Community College Districts

From: Virginia A. Riegel, Senior Associate General Counsel

**Subject: Problematic Amendment to Clinical Nursing Faculty Code Section
Memo No. 07 -2010(CC)**

Education Code section 87482 authorizes the hiring of temporary faculty as leave replacements or to address an increase in enrollment. The section applies only in limited circumstances and has significant conditions, so it must be reviewed carefully prior to use.

For several years, subdivision (c) of section 87482 has provided districts with enhanced flexibility to employ temporary clinical nursing faculty for four semesters (or six quarters) within any period of three consecutive academic years. Other temporary faculty hired under section 87482 can be employed for only two semesters (or three quarters) within any period of three consecutive academic years.

Questions arose as to whether the enhanced ability to employ clinical nursing faculty under subdivision (c) applied to both full-time and part-time clinical nursing faculty. Effective January 1, 2008, section 87482(c)(1) was amended to specifically authorize districts to hire clinical nursing faculty as part-time temporary faculty above the 60% level. Temporary faculty employment for not more than 60% of a full-time assignment was already authorized by section 87482.5 (i.e., the "60% law"). Section 87482(c)(1), as amended, provided in pertinent part:

"Notwithstanding subdivision (b), a person serving as full-time clinical nursing faculty or as part-time clinical nursing faculty teaching 60 percent or more of the hours per week considered a full-time assignment for regular employees may be employed by any one district under this section for up to four semesters or six quarters within any period of three consecutive academic years between July 1, 2007, and June 30, 2014, inclusive."

In 2009, the part-time temporary load limit of 60% under section 87482.5 was increased to 67% for those districts that did not have a conflicting collective bargaining agreement. (Reminder: if the 67% limit conflicts with collective bargaining agreements in effect on or before January 1, 2009, the bargaining agreement controls until it expires or the conflicting provision is removed.)

In an apparent effort to align the clinical nursing faculty provision with the higher 67% limitation of section 87482.5, section 87482(c)(1) was amended, effective January 1, 2010. The recent amendment follows:

“Notwithstanding subdivision (b), a person serving as full-time clinical nursing faculty *or as part-time clinical nursing faculty teaching the hours per week described in Section 87482.5* may be employed by any one district under this section for up to four semesters or six quarters within any period of three consecutive academic years between July 1, 2007, and June 30, 2014, inclusive.”

While the previous version of section 87482(c)(1) specifically authorized the expanded period of employment for part-time clinical nursing faculty employed at 60 percent or more, the recent amendment failed to include similar language. The new language only authorizes part-time clinical nursing faculty employment for the hours that are described in section 87482.5 – i.e., hours that are NOT more than 67 percent of the hours per week considered a full-time assignment for regular employees having comparable duties. Accordingly, the new language authorizes no more than what is already allowed under section 87482.5.

We discussed this issue with Steve Bruckman, Executive Vice Chancellor of Operations and General Counsel for the State Chancellor’s Office. General Counsel Bruckman agrees that the recent amendment is problematic. He has already asked the Government Relations unit in the Chancellor’s Office to explore the option of a legislative remedy.

If all the conditions of section 87482 are met, full-time temporary clinical nursing faculty can be hired under subdivision (c) for as many as four semesters or six quarters in any period of three consecutive academic years. However, because of the recent amendment, districts that hire part-time temporary clinical nursing faculty pursuant to section 87482(c) at levels below full-time and above the 67% level may risk a challenge that the authority for part-time temporary classification under that subdivision has been eliminated.

Please contact any of our attorneys if you have any questions about the above.