

Adopted: May 29, 2009

## **PARAMETERS AND GUIDELINES**

Government Code Sections 3502.5 and 3508.5

Statutes 2000, Chapter 901 (SB 739)

California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070

Register 2001, Number 49

*Local Government Employee Relations*  
01-TC-30

### **I. SUMMARY OF THE MANDATE**

The test claim statute amended the Meyers-Milias-Brown Act (hereinafter the “MMBA”) regarding employer-employee relations between local public agencies and their employees. The test claim statute and its attendant regulations created an additional method for creating an agency shop arrangement, and expanded the jurisdiction of the Public Employment Relations Board (hereinafter “PERB”) to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA.

On December 4, 2006, the Commission on State Mandates found that the test claim statute and regulations impose a partially reimbursable state-mandated program on local agencies for the following activities:

1. Deduct from an employees’ wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b)).
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code, § 3502.5, subd. (c)).
3. Follow PERB procedures in responding to charges and appeals filed with PERB, by an entity other than the local public agency employer, concerning an unfair labor practice, a unit determination, representation by an employee organization, recognition of an employee organization, or election. Mandated activities are:
  - a. procedures for filing documents or extensions for filing documents with PERB (Cal.Code Reg., tit. 8, §§ 32132, 32135 (Register 2001, No. 49));
  - b. proof of service (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));
  - c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));

- d. conducting depositions (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));
- e. participate in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050 and 60070 (Register 2001, No. 49)); and
- f. filing and responding to written motions in the course of the hearing. (Cal. Code Regs. tit. 8, § 32190. (Register 2001, No. 49.)

## **II. ELIGIBLE CLAIMANTS**

Any county, city, or city and county, special district or other local agency subject to the jurisdiction of PERB that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. However, the City of Los Angeles and the County of Los Angeles are not eligible claimants because they are specifically excluded from PERB jurisdiction pursuant to Government Code section 3507.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed by the test claimants, the County of Sacramento and the City of Sacramento, on August 1, 2002. Therefore, the period of reimbursement begins on July 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

## **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices and receipts.

Evidence corroborating the source documents may include, but is not limited to, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil

Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are eligible for reimbursement:

**A. One Time Activities**

1. Establish procedures and documentation for deduction from employees' wages the payment of dues, or service fees, including transmittal of such payments, and handling proof of in lieu fee payments made to charitable organizations as required by the agency shop agreement pursuant to Government Code sections 3502.5, subdivisions (b) and (c).
2. Develop and provide training for employees charged with responsibility for responding to PERB administrative actions, including attorneys, supervisory and management personnel. (One time per employee).
3. Establish procedures and systems for handling PERB matters, including calendaring, docketing and file management systems.

**B. On-Going Activities**

1. Deduct from employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code, §, 3508.5, subd. (b).)
2. On a monthly basis, receive from the employee proof of in lieu fee payments made to charitable organizations pursuant to an agency shop arrangement that was established by signed petition and election in Government Code section 3502.5, subdivision (b). (Gov. Code, § 3502.5, subd. (c).)
3. When a person or entity other than the public entity files with the PERB an unfair practice charge, unit determination, representation by an employee organization, , recognition of an employee organization, or an election request, or the public agency employer is ordered by PERB to join in a matter, the following activities are reimbursable:
  - a. filing documents or requests for extension of time to file documents with PERB (Cal. Code Regs., tit.8, §§ 32132, 32135);
  - b. proof of service, including mailing and service costs (Cal. Code Regs., tit. 8, § 32140);

- c. preparation for and participation in informal conferences as required by any PERB Board agents and PERB Administrative Law Judges to clarify issues and explore the possibility of a voluntary settlement including, but not limited to, preparation of briefs, documentation and evidence, exhibits, witnesses and expert witnesses (Cal. Code Regs., tit.8, §§ 32170, subd. (e) and 32650);
- d. responding to subpoenas and investigative subpoenas, including the time spent obtaining the information or documentation requested in the subpoena, and copying and service charges (Cal. Code Regs., tit. 8, §§ 32149, 32150);
- e. the conduct of depositions, including service of subpoenas, deposition reporter and transcription fees, expert witness fees, preparation for the deposition and the time of any governmental employee or attorney incurred in the conduct of the deposition (Cal. Code Regs., tit. 8, § 32160);
- f. preparation for and participation in any hearing as required by any PERB Board agent, PERB Administrative Law Judge, the five-member PERB, or the General Counsel, including preparation of answer to complaint or answer to amendment, witnesses, evidence, exhibits, expert witnesses, statements<sup>1,2</sup>, stipulated facts<sup>3</sup> and informational briefs, oral argument, response to exceptions, response to administrative appeal or compliance matter.

Effective July 1, 2001 through May 10, 2006: California Code of Regulations, title 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, and 60070. (Register 2001, No. 49.)

Effective May 11, 2006: California Code of Regulations, title 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980. (Register 2001, No. 49.)

Effective May 11, 2006, responses to petitions for board review pursuant to former sections 60010, 60030, 60050, and 60070 of the California Code of Regulations, title 8, are not reimbursable. (Register 2006, No. 15.)

- g. The preparation, research, and filing of motions, including correction of transcript and responding to written motions in the course of a hearing and immediately after. (Cal. Code Regs., tit. 8, § 32190, 32209.)

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<sup>1</sup> Section 32206.

<sup>2</sup> Section 32455 – preparation of written position statements or other documents filed with the General Counsel.

<sup>3</sup> Section 32207.

**C. Non-Reimbursable Activities**

1. The following activities initiated by the local public agency are *not* state-mandated activities:
  - a. file an unfair practice charge (Cal. Code of Regs., tit. 8, §§ 32602, 32604, 32615, 32621, 32625, 32650);
  - b. appeal of a ruling on a motion (Cal. Code of Regs., tit. 8, § 32200);
  - c. amend complaint (Cal. Code of Regs., tit. 8, §§ 32625, 32648);
  - d. appeal of an administrative decision, including request for stay of activity and appeal of dismissal (Cal. Code of Regs., tit. 8, §§ 32350, 32360, 32370, 32635, and 60035);
  - e. statement of exceptions to Board agent decision (Cal. Code of Regs., tit. 8, § 32300);
  - f. request for reconsideration (Cal. Code of Regs., tit. 8, § 32410); and,
  - g. request for injunctive relief (Cal. Code of Regs., tit. 8, § 32450).
2. Sections 3501, 3507.1 and 3509 of the Government Code do not apply to persons who are peace officers as defined in section 830.1 of the Penal Code. Therefore, increased costs related to peace officers are ineligible for reimbursement under this program. (Gov. Code, § 3511.)
3. Effective May 11, 2006, activities based on former sections 60010, 60030, 60050, and 60070 of California Code of Regulations, title 8, are not reimbursable.

**V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

**A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for reimbursable activities. The following direct costs are eligible for reimbursement.

**1. Salaries and Benefits**

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

**2. Materials and Supplies**

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after

deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

## B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## **VI. RECORDS RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>4</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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<sup>4</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

#### **IX. REMEDIES BEFORE THE COMMISSION**

Upon the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.