STATE OF CONNECTICUT

AUDITORS' REPORT
DEPARTMENT OF ADMINISTRATIVE SERVICES
PERFORMANCE AUDIT

STIPULATED SEPERATION AND
RETIREMENT AGREEMENTS

AUDITORS OF PUBLIC ACCOUNTS
KEVIN P. JOHNSTON ♦ ROBERT G. JAEKLE

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EXECUTIVE SUMMARY

In accordance with the provisions of Section 2-90 of the Connecticut General Statutes, we have conducted a performance audit of the practice followed by some State agencies of granting special compensation agreements or payments to State employees, and reemployment contracts to employees leaving State service. Conditions found and our recommendations follow:

Statutory Authorization of Special Separation Agreements

There are no statutory provisions, State regulations or written policies over the practice of negotiating special separation agreements that provide for separation payments or other benefits in excess of that currently allowed to employees leaving State service.

Certain provisions of the State Personnel Act and the corresponding regulations govern the layoff or dismissal of an individual from State service -

Section 5-241 subsection (b) of the General Statutes states that an appointing authority desiring to lay off an employee shall give him not less than two weeks notice in writing. In the case of an employee not covered by a bargaining unit, but in the classified service for at least five years, four weeks notice is granted. For further years of service, that employee can be granted from four to eight weeks notice.

Section 5-240 subsection (c) of the General Statutes provides that an appointing authority may dismiss any employee in the classified service when he considers the good of the service will be served thereby. A permanent employee shall be given written notice of such dismissal at least two weeks in advance of his dismissal, and a copy of the same shall be filed with the Commissioner of Administrative Services.

Section 5-240-5a of the Regulations of the Department of Administrative Services allows the appointing authority to place an employee on leave of absence with pay for up to 15 days to permit investigation of alleged serious misconduct which could constitute cause for dismissal, if the employee's presence at work could be harmful to the public, the welfare, health or safety of patients, inmates or State employees or State property. The dismissal must be immediately reported to the Commissioner of Administrative Services.

In addition, the Regulations provide that, if the pending disposition of criminal charges hamper the completion of an independent administrative investigation, an employee can be placed on leave of absence with pay for up to 30 days, if that employee's presence at work could be considered harmful to the public, the welfare, health or safety of patients, inmates or State employees or State property.

We found that State agencies have been granting separation payments, called "notice period pay," under an unwritten policy that we were told has been in effect since 1973. This policy, as explained by the Department of Administrative Services, "is to allow agencies some flexibility where the affected employee's presence at the regular work site could create disruption and discord." The "notice period pay" is intended to facilitate the immediate removal of an employee from the workplace. Unlike the State statutes and regulations cited above, this policy does not

place any limitation on the number of days granted the employee as paid leave. This policy has had the effect of granting to such employees more monetary or other benefits than is presently allowed by State statutes and regulations. This unwritten policy does not have its basis in the statutes or in the regulations, and without guidelines that are more specific or provide more oversight, benefits to certain State employees can be granted in a manner that may be unfair to other State employees or discriminatory. Our audit examinations of State agencies, and a survey we conducted as part of this audit, found agreements granting benefits to departing employees that exceeded what is provided by the General Statutes or Department of Administrative Services regulations.

Most State employees are participants in collective bargaining agreements with the State. These agreements take legal precedence over State statutes and regulations governing the layoff, discipline and dismissal of State employees. Most of the collective bargaining agreements refer to the statutes in these matters. For those employees that are not under collective bargaining agreements there is no provision to provide for severance payments or a leave of absence with pay beyond what is specifically allowed by the General Statutes or by Department of Administrative Services regulations.

We identified many agreements granted to State employees, including those under collective bargaining agreements or those that were exempt from collective bargaining, which exceeded the scope of the statutes and regulations, and or collective bargaining agreements. Employees leaving State service, either under layoff or dismissal, were granted "notice period pay" in the form of a lump sum cash payment or other benefit, such as being allowed to remain on the payroll at home using sick or vacation leave until finally departing State service.

There are no State statutes that specifically allow lump sum severance payments or special use of paid sick leave, nor are there any regulations or written polices and procedures allowing it. Consequently, expenditures of State funds are being made without specific legal authority.

Statutory authority and corresponding regulations are needed to guide State agencies when situations require the granting of special separation payments or other benefits that exceed those now allowed by statute to State employees leaving State service (See Item No. 1).

Controls Over Special Separation Agreements

There are inadequate controls, in particular no outside oversight, review or approval, of special separation agreements granted to employees leaving State service.

The procedure for the layoff or dismissal of State employees generally requires some type of agreement, either a stipulated agreement with the employees' bargaining unit, or a settlement when the employee makes a claim for alleged discrimination.

There is no lead agency providing centralized control over the granting of special separation agreements. The Department of Administrative Services has the responsibility to administer the State personnel system. However, according to State statutes and regulations, State agencies are only required to advise the Department of a layoff or dismissal when it has occurred, and there is

no statutory requirement for the Department to review or approve final settlements.

The Office of Labor Relations of the Office of Policy and Management is charged with administering the collective bargaining process for State employees. It represents the interests of the State in the latter stages of the arbitration of grievances and provides consultation and advice to State agencies in these matters. It also represents the State in matters pertaining to non-union classified State employees before the State Employees Review Board. Representatives of the Office of Labor Relations are responsible for stipulated agreements that reach that particular level of arbitration.

The General Statutes provide that upon the recommendation of the Attorney General, the Governor may authorize the compromise of any disputed claim by or against the State or any department or agency thereof, and shall certify to the proper officer or department or agency of the State the amount to be received or paid under such compromise. Only a few agreements in our review were subjected to this process. Because of the collective bargaining process, claims pertaining to employment issues for most State employees are considered to be outside this statutory authority. The section of the General Statutes that enables a State agency generally grants the head of that agency the authority to take action as may be necessary for the discharge of his duties. We found that this authority generally has been delegated to the personnel administrator of the agency.

Our review of a sample of separation agreements found that the policies and procedures governing such agreements differed among State agencies; and at many agencies, there were no such policies and procedures at all. Also, there was no indication that, other than applying the minimum benefits granted by Statute or collective bargaining agreement, there was any effort to use standards or guidelines so that separation benefits would be granted on an equal and fair basis.

Controls should be established, in particular, outside oversight, review or approval, of special separation or stipulated agreements granted to employees leaving State service (See Item No. 2).

Immediate Removal of an Employee From the Workplace

The regulations and policies governing the immediate removal of a discharged employee from the workplace require revision.

As previously noted the General Statutes and corresponding regulations provide that any permanent employee in the classified service can be dismissed by his or her appointing authority and be given written notice of such dismissal at least two weeks in advance of his or her dismissal. They also provide for the dismissal of an employee without notice by granting a leave of absence with pay for up to 15 days to permit investigation of serious misconduct which could constitute cause for dismissal, if that employee's presence at work could be harmful to the public, the welfare, health or safety of patients, inmates or State employees or State property. The dismissal must be immediately reported to the Commissioner of Administrative Services. Regulations of the Department of Administrative Services also provide that an appointing authority may, pending disposition of criminal charges that would hamper the completion of an

independent administrative investigation, place an employee on leave of absence with pay for up to 30 days under the same conditions.

However, after the initial leave of absence, there is no provision in the statutes or regulations governing the rest of the process. Many separation agreements are the result of stipulated agreements with an employee being dismissed for misconduct. With the desire to remove the employee from the workplace as soon as possible, and to avoid litigation, management has an incentive to grant the employee lump sum payments and payment for time not worked. As noted previously, most State employees are under collective bargaining agreements. These agreements generally include a reference to Section 5-240 of the General Statutes or the corresponding regulations. However, there are differences among the various collective bargaining contracts and such contracts take legal precedence over State statutes and regulations.

We were told that when it becomes necessary to effect the immediate removal of an employee from the workplace either because that employee has access to sensitive accounting records or data processing systems, or to preclude any danger or disruption to other employees, State agencies have been granting notice period pay under an unwritten policy that has been in effect since 1973. This policy allows agencies to remove an employee from the workplace immediately under their own judgement. As detailed in a following section of this report, our review found a number of different ways this policy has been put into effect. As it is an unwritten policy, State agencies have no guidance to apply it, and consequently, it can be applied unfairly and in a discriminatory manner, in that it appears to reward disruptive employees and not reward responsible ones.

A standard set of criteria should be established that would guide State agencies as to the necessity of immediately removing an employee from the workplace and the proper procedures for doing so. Established criteria and procedures would serve to prevent claims of discrimination and unfair or unequal treatment among employees. These criteria should be in agreement with State policies concerning workplace violence.

State agencies, when placing employees on paid leave prior to layoff or dismissal, should be required to state the risk factors that require the immediate removal of an employee from the workplace, and verify that they meet certain criteria. To provide a centralized control, State agencies should be required to document this assessment to the Department of Administrative Services or Office of Labor Relations.

Regulations and policies governing the immediate removal of a discharged employee from the workplace should be revised (See Item No. 3).

Altering of Service Ratings and Removal of Employee Records

There is no statute, regulation or policy prohibiting the altering of service ratings and removal of disciplinary matters from an employee's records.

Our audit found that in many of the settlement or stipulated agreements, there were provisions included that required the State agency to revise the employee's prior service ratings and remove information regarding disciplinary matters from an employee's personnel records.

The sample of cases we reviewed included several cases in which employees that were found to have engaged in misconduct serious enough to require their dismissal were granted settlement or stipulated agreements that revised service ratings from "poor" to "fair" or "satisfactory" and required references to disciplinary matters to be eliminated from the employee's file. These agreements generally also require the State agency to respond to employment reference inquiries as to only job title, pay rate, length of service, and resignation in good standing. Also generally included was language that required the discharged employee to not seek or accept employment with that agency in the future. Some of the agreements we reviewed extended that provision to all of State service.

Current practices in employment law, in both the public and private sector, are designed to limit employment references to the minimum information that is described above. According to officials we contacted at various State agencies, the informal policy is not to permanently eliminate such materials, but to place them in a segregated file. However, routine requests for employment references would not require, or remind administrative staff at personnel offices to review the second file. As with other conditions noted in this report, the absence of Statewide policies and procedures and controls to ensure such policies and procedures are followed can result in personnel matters being administered unfairly and in a discriminatory manner. In this matter, the rights of the employee must be weighed against the State's responsibility to other employers, and possibly, in certain cases, the safety of the public.

Regulations or policies should be established to govern the practice of the altering of service ratings and removing disciplinary matters from an employee's records (See Item No. 4).

Use of Accumulated Leave Time by Laid Off or Discharged Employees

There are ineffective controls to prohibit laid off or discharged employees from extending their period of State employment by remaining on sick or vacation leave.

Our audit found a significant number of cases in which a laid off or dismissed employee was allowed to remain in State service by using accumulated sick or vacation leave for many months. We found this practice was specifically granted by language in the separation or stipulated agreement. Frequently the employee was only required to provide a single medical certificate to document an illness of many weeks or months. It also appeared that obtaining such certificates was not difficult for the employee.

State employees that resign or are dismissed from State service do not receive full payment for accumulated sick leave. Section 5-247 of the General Statutes provides that State employees that retire receive partial payment for unused sick leave. That payment is at a rate of one quarter of one day for each day of unused sick leave up to a maximum of 240 accumulated days, which may result in a payment equal to 60 days salary. By allowing employees as part of a separation or dismissal from State service to use up accumulated sick leave, State agencies are encouraging the abuse of sick leave. They are also extending employment benefits in the form of severance pay in a manner not intended by statute, regulation or collective bargaining agreement.

By allowing the use of sick leave, rather than requiring the employee to lose that time, or

receive payment for only one quarter of it, the employee remains on the payroll longer increasing the costs of personal services and fringe benefits to the State. In addition, as noted in another section of this report, allowing the use of extended sick leave has the result of increasing the length of State service the employee is credited with for retirement purposes.

Regulations or policies should be established to govern the practice of allowing laid off or discharged employees to collect their accumulated leave time by remaining in State service past the normal separation period (See Item No. 5).

Lump Sum Payments Included in the Calculation of Retirement Benefits

There is no provision in the State Employees Retirement Act that prohibits, nor allows, the inclusion of large lump sum payments of employment claims or the use of accumulated sick leave in the calculation of future retirement benefits.

Our audit identified cases where employees received, as part of a separation agreement that included retirement, amounts to settle claims for past discrimination. In the State employees retirement system, when an employee retires, the monthly benefits paid are calculated as a factor of the years of service, and the average annual regular salary for the three highest paid years of State service.

Under the Federal Age Discrimination in Employment Act, awards granted to individuals discriminated against in employment are considered wages. Therefore, for the purpose of calculating retirement benefits, an award under the Act, or other civil rights law, would be included in the retirement calculation. The law is not specific as to whether the award is to be treated as wages in one year, or allocated over several years. In addition, we found that in some of the cases we reviewed, the settlement amount was not a specific award for discrimination. Instead, it was considered as only a potential claim by the employee that was taken into account in the negotiation of the settlement agreement. Unless such awards are specifically identified as a settlement of a discrimination claim, they should not be included in the retirement calculation.

We also found, as detailed in another section of this report, that some employees retiring from State service were allowed to remain on the payroll using accumulated sick leave. Therefore, the length of State service used to calculate retirement benefits is increased. Our review also found separation agreements that were contingent upon having certain provisions approved by the State Retirement Commission, and, a stipulated agreement that ensured that a dismissed employee that was on an unpaid administrative leave of absence would be eligible for any early retirement incentives offered to State employees. In these cases, as noted for other findings in this report, certain employees are granted benefits that are not available to the majority of State employees.

The State Employees Retirement Act should be amended to address the practice of including large lump sum payments of claims or the extended use of sick leave in the calculation of future retirement benefits (See Item No. 6).

Reemploying Retirees at a Higher Hourly Rate

There is no statutory authority, regulation or administrative control over the practice of reemploying retirees, for the same or similar position that the retired employee was originally employed, at a higher hourly rate.

The General Statutes allow retired State employees to be reemployed for a maximum of 120 working days in any one calendar year without loss of retirement benefits, if that reemployment is not on a permanent basis. It is a common practice for State agencies to rehire retirees as consultants or for special projects. On occasion employees taking advantage of early retirement incentives were granted contracts to refill their original assignment until replacement staff is recruited. However, it has not been common to grant contracts with hourly rates greatly in excess of what a full time State employee in a comparable position would receive.

Our audit found that the Department of Public Safety reemployed its retired Commissioner as a part time employee at an hourly rate that was over four times the hourly rate he received before his retirement.

As detailed in a following section of this report, our review found another example of this practice. We believe that controls should be established that limit the compensation allowed to avoid the reemployment agreements that grant compensation at a level that appears excessive.

Statutory authority or regulation should be established over the practice of reemploying retirees, for the same or similar position that the retired employee was in, at a higher hourly rate (See Item No. 7).

Part Time Employment of Retirees in Critical Managerial Positions

There is no statutory authority, regulation or administrative control over the practice of reemploying retirees for critical management positions on a part time basis for considerable lengths of time.

As noted earlier the General Statutes allow retired State employees to be reemployed for a maximum of 120 working days in any one calendar year without loss of retirement benefits, if that reemployment is not on a permanent basis. Our review identified several cases that involved senior managerial level employees that were reemployed in their previous positions on a part time basis after retirement. These cases included the Commissioner of Public Safety and a Regional Director for Mental Retardation. Managers in critical positions, particularly those assigned to agencies involved with the safety of the public and the safety of clients under the State's care, should be held directly responsible for administering those agencies on a full time basis.

Section 4-8 of the General Statutes details the qualifications, powers and duties of Department heads. It specifies that each department head may appoint deputies as necessary for the efficient conduct of the business of the department. The Statute also specifies that such appointees shall devote full time to their duties with the department and shall engage in no other gainful employment. The Statute does not impose this requirement on the Department head. However, although the statutes do not explicitly specify, it is apparent the duties of an agency head, for example the Commissioner of Public Safety, require the full attention of the individual assigned those duties.

We believe the Statute should be revised to include the agency head as a full time employee. In addition, centralized controls should be implemented to restrict the filling of certain management positions with part time employees. The 120-day contract should be used to retain a critical manager for a short period of full time employment, until the position is refilled. It should not be used over a period of years.

Statutory authority or regulation should be established over the reemployment of retirees as part time employees in critical managerial positions (See Item No. 8).

INTRODUCTION

Background:

In the past several years our audits of State agencies, as well as our review of whistle blower complaints, have disclosed a number of occasions where employees leaving State service, either from layoff, retirement or dismissal, have received separation payments or other considerations as part of agreements made between the agency and the employee. The personnel director or personnel unit of the agency generally negotiated these agreements with the employee, his or her collective bargaining unit, or legal representative. There are no statutes, regulations or policies specifically governing these agreements.

Some of the agreements granted benefits not available to other State employees, such as severance payments, or service time credited to retirement, or pay for not working, with time sheets falsified to facilitate the practice. We also found agreements that specified the revision of service ratings and removal of disciplinary actions from an employee's records.

We found a few State employees that have retired and have been collecting retirement benefits while being reemployed in the same position at a significantly higher hourly rate. In addition, a few retired employees have been reemployed on a part time basis to fill critical managerial positions such as Commissioner of Public Safety and Regional Director for the Department of Mental Retardation.

Many of these agreements have not been subject to the review of outside agencies, such as the Bureau of Human Resources of the Department of Administrative Services or the Office of Labor Relations of the Office of Policy and Management. In particular, the Attorney General or the Governor has not reviewed and approved these agreements, as they would other claims against the State.

The potential for abuse when such agreements can be made is apparent; however, in most cases agency management is merely seeking the easiest solution to a difficult personnel issue. Employees use collective bargaining agreements and laws prohibiting discriminatory practices to enhance their bargaining position against management. The careless use of these agreements can produce results that are unfair to other State employees or lend the appearance of being discriminatory. The use of special agreements in an unregulated manner can encourage an increased number of claims of discrimination, union grievances and litigation that employees may use to obtain increased compensation or benefits.

Settling some of these cases required significant payments to the employee, or increased costs for other benefits granted. Our review found that the State incurred considerable administrative costs in processing grievance or discrimination cases. Our review found that the reason for many of these agreements was the reorganization of many State agencies that occurred with the new administration in 1995. Long term State employees were laid off or reassigned to lower level positions at reduced levels of pay. This resulted in age discrimination complaints and grievances that resulted in lump sum payment settlements. Many of these employees were managers that were not under collective bargaining agreements.

Our review also identified instances that did not involve written separation agreements; we found situations where State employees were allowed to remain on the payroll with minimal duties assigned for months and allowed to "transition out" until finding other employment or applying for retirement and finally leaving State service.

Issues Needing Further Study:

Our survey identified a large number of separation payments that were the result of the State failing to prevail in a dispute brought to collective bargaining arbitration. These were made to employees who left State service, or who were dismissed from State service and as a result of the settlement, were reinstated. A total of 18 settlements were reported; they included six lump sum payments of back wages over $60,000 and one of $160,000. These agreements were either the result of arbitration awards, or the State agreed to the settlement in order to avoid arbitration.

Further study could be made of the collective bargaining grievance and arbitration process. There may be reasons that the State does not prevail more often in some of these cases. Agency officials explained that witnesses are unavailable or unreliable, particularly with cases involving students, clients or inmates. At the arbitration hearing the witness or witnesses may fail to appear, change their testimony, or not be competent. We note that a lack of training on the part of State managers and the resulting procedural errors is one possibility. Managers and personnel officers can inadvertently violate an employee's rights, leaving the State liable. In addition, the issue of erosion of management rights could be a factor. Collective bargaining agreements and the procedures for the discipline of State employees may not be effective in promoting the best interests of the State.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives:

The Auditors of Public Accounts, in accordance with Section 2-90 of the Connecticut General Statutes, are responsible for examining the performance of State entities to determine their effectiveness in achieving expressed legislative purposes. We conducted a performance audit of the practice of granting special compensation or retirement agreements and payments to State employees. This audit was conducted in accordance with Generally Accepted Government Auditing Standards, and covered economy, efficiency and effectiveness issues, all of which are types of performance audits. Our purpose was to discover the extent of this practice and determine if these agreements and payments were made in accordance with State statutes and regulations and if they were a necessary and appropriate use of State resources.

The first objective of our audit was to identify the extent of the practice of granting separation or stipulated agreements to employees leaving State service. We also wanted to determine the extent of the practice of granting reemployment contracts to retired employees at a higher hourly rate for the position they previously held. After a number of such cases were identified, we reviewed them to determine if the agreements complied with State statutes or regulations. We also reviewed the control structure over these agreements and contracts in order to determine if there were any controls over the power of agency heads and personnel administrators to authorize them.

Our final objective was to determine if, and what, legislation, regulation or policy are required to place administrative controls over these agreements and contracts, and the payments or other costs resulting from them.

Scope:

Our audit considered separation and stipulated agreements, particularly those with significant separation payments either with cash and noncash compensation, made in the past five years. We planned to include in our review all State agencies, and to review in detail a sample of the cases identified. Although it was not the focus of this report, we also reviewed some agreements that resulted from cases settled by arbitration according to collective bargaining agreements. We reviewed agreements that were disclosed to us as part of our audits of State agencies, and those disclosed to us in a survey. This review did not encompass all State agencies, as some agencies did not respond to our survey, and some agencies may not have included all of the separation and stipulated agreements that existed. We also reviewed reemployment contracts granted to retirees for the position to which they previously were employed; in particular those reemployed at a significantly higher hourly rate.

The cases reviewed in detail and included as examples in this report were considered by us to be illustrative of the types of cases that are occurring, but not necessarily representing the State as a whole or providing a complete listing of all of the cases we found. Our examples generally do not include cases that were settled by arbitration in accordance with collective bargaining agreements because of the limitation those agreements place on the managers of State agencies to discipline or dismiss State employees. Many of the cases we reviewed had agreements that included confidentiality provisions. As such, we have deleted certain information from some cases included in this report.

Methodology:

We sent questionnaires to the personnel administrators at 84 State agencies to identify applicable agreements. We received responses to 58 of them. Agencies that did not respond to the questionnaire were contacted as follow up. The questionnaires solicited information related to any layoffs, separations, or retirements of State employees, either union or nonunion, that involved separation, or stipulated agreements, during the past five years, which -

1. involved settlements of grievances or claims for discrimination;
2. granted lump sum payments;
3. compensated State employees for time not actually worked, or
4. granted credit for time not worked (administrative leave with pay);
5. rescinded disciplinary action;
6. caused the rewriting of service ratings or the removal of documentation of disciplinary action from employee files;
7. granted retirement benefits in excess of what the standard criteria and method of determining service time or the amount of salary would grant;

The agencies were also asked if they had granted any contracts for the reemployment of a retiree in the same position, at a higher hourly wage rate.

The questionnaire also asked about the agency's policy for the immediate removal of an employee given notice, and the agency's policy for the approval of such agreements, whether it is either by the agency head, the Department of Administrative Services, the Attorney General or the Governor.

If the agency answered that it had concluded any separation, retirement or stipulated agreements with State employees, a second questionnaire was completed. That questionnaire requested detailed information about the reason for the agreement, what was included in the terms of the agreement, and who approved the agreement. We received affirmative answers from 35 State agencies, and a total of 206 separation, retirement or stipulated agreements were reported by these agencies.

We also identified separation, retirement or stipulated agreements by reviewing the reports and working papers from the audits of State agencies conducted by the Auditors of Public Accounts under Section 2-90 of the General Statutes, and correspondence reporting matters to the Governor under the same Statute.

We sampled a selection of those cases identified, either by the questionnaire or by other sources and reviewed them in detail. We included in our sample agreements made to facilitate an employee's layoff or resignation, agreements made to provide special arrangements for reemployment in retirement, and agreements made as part of collective bargaining grievances and claims for discrimination.

We researched State statutes and regulations to identify the controlling legal authority over such payments. We also researched collective bargaining contracts to identify any provisions regarding these agreements.

We also discussed these agreements with the management of the State agency responsible for the agreement and with the management of the Department of Administrative Services - Bureau of Human Resources, and the Office of Policy and Management - Office of Labor Relations.

RESULTS OF REVIEW

We have identified eight areas of greatest concern. A description of our findings follows:

Item No. 1 Statutory Authorization of Special Separation Agreements

There are no statutory provisions, State regulations or written policies over the practice of negotiating special separation agreements that provide for separation payments or other benefits in excess of that currently allowed to employees leaving State service.

The collective bargaining agreements that most State employees are participants in take legal precedence over State statutes and regulations governing the layoff, discipline, and dismissal of State employees. For those employees that are not under collective bargaining agreements there is no provision to provide for severance payments or a leave of absence with pay beyond what is specifically allowed by the General Statutes or Department of Administrative Services Regulations.

The following laws and regulations provide for either the layoff or dismissal of classified employees -

Section 5-241 subsection (b) of the General Statutes - states that an appointing authority desiring to lay off an employee in the classified service shall give him or her not less than two weeks notice in writing. In the case of an employee not covered by a bargaining unit, but in the classified service for at least five years, four weeks notice is granted. For further years of service, that employee can be granted from four to eight weeks notice. The Statute has no provision to provide for severance payments or a leave of absence with pay.

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Section 5-240 subsection (c) of the General Statutes - provides that any permanent employee in the classified service can be dismissed by the appointing authority and shall be given written notice of such dismissal at least two weeks in advance of his dismissal. The Statute also provides for the dismissal of an employee without notice according to regulations set by the Department of Administrative Services.

Section 5-240-5a of the Department of Administrative Services Regulations - allows the appointing authority to place an employee on leave of absence with pay for up to 15 days to permit investigation of alleged serious misconduct which could constitute cause for dismissal, if the employee's presence at work could be harmful to the public, the welfare, health or safety of patients, inmates or State employees or State property. The leave of absence must be immediately reported to the Commissioner of Administrative Services.

In addition, the Regulations provide that, if the pending disposition of criminal charges hamper the completion of an independent administrative investigation, an employee can be placed on leave of absence with pay for up to 30 days, if that employee's presence at work could be considered harmful to the public, the welfare, health or safety of patients, inmates or State employees or State property.

Collective bargaining agreements generally provide that the employee must receive at least four weeks notice prior to any layoff. They do not address the immediate removal of a laid off employee from the workplace, but generally incorporate the language of the Department of Administrative Services regulations regarding employees accused of misconduct.

Situations that involve employees in the classified service in executive branch agencies that are either under collective bargaining agreements or are managerial employees also fall under the jurisdiction of the Office of Labor Relations in the Office of Policy and Management. The Office of Labor Relations provides consultation and advice to State agencies and represents the State in the statutory appeal process and in administrative hearings. Employees that are in the classified service but not under collective bargaining agreements may file appeals with the State Employees' Review Board.

It is generally during or after this appeal and hearing process that the separation agreement is negotiated and concluded. With the exception of stipulated agreements negotiated under the authority of the Office of Labor Relations as part of the settlement of certain collective bargaining grievances, or in settlements by the use of arbitration, the agreement for the layoff, dismissal or continued employment of the State employee is generally negotiated and concluded by the management of the State agency involved. Officials at the Office of Labor Relations have indicated that generally, except under arbitration, it is the State agency that employed the individual in question that has the final authority as to the amount and type of compensation granted in the settlement agreement.

The Office of Labor Relations has issued General Notice 95-16 - *Layoff Procedures for Managers*. This memorandum restates the procedures to be followed for the layoff of managerial employees and those employees exempt from the collective bargaining process. It provides procedures that follow the Department of Administrative Services Regulations which grant a period of prior notice before a layoff in accordance with the length of State service of that employee. The memorandum does not authorize or address the use of paid leave or separation payments.

According to the Department of Administrative Services, State agencies granting separation payments have operated under an unwritten policy that has been in effect since 1973. This unwritten policy came to our attention during earlier audits when we found no statutory authorization for "notice period pay" that had been granted to terminated State employees. At that time, the policy was explained to the Auditors of Public Accounts by the Commissioner of the Department of Administrative Services in a memorandum of August 7, 1995. That memorandum stated, in part -

> "Our policy, which has been in effect for over twenty years, is to allow agencies some flexibility where the affected employee's presence at the regular work site could create disruption and discord…."
>
> "Dismissal of an employee also requires a period of notice under our statutes or the applicable labor relations contract…. Dismissal cases may involve theft, misuse of State property, or patient/client abuse. Clearly it is in the best interest of the State to remove such employees from the work site."
>
> "The statutory authority for such actions are contained in the enabling legislation for each of our agencies and is also reflected in Section 4-8 of the General Statutes. These sections typically provide the agency head with the authority to determine which actions are

necessary for the efficient conduct of the business of an agency. It should also be noted that there are no statutes prohibiting this generally accepted practice."

"Since the current policy has worked very effectively for over 22 years, since Commissioners and elected officials have statutory authority to take these actions, and since these actions are accepted good business and government practices, we will continue to review and approve these situations on a case by case basis where authority is provided."

This policy was also explained to the Governor by the Commissioner of the Department of Administrative Services in a memorandum dated October 18, 1995. That memorandum reiterated that -

"…it is clearly in the State's best interest to remove an employee from a work site if the employee's presence could be disruptive to or harmful to public health or safety."

"The Auditors of Public Accounts have suggested that the Department of Administrative Services propose legislation to specifically address this issue. We do not believe that legislation is necessary at this time. There are no statutes that currently prohibit this practice and agency heads do have broad statutory authority to conduct business in a way that promotes efficiency. Since current procedures and statutes have prevented misuse in the over twenty years that this practice has been in effect, we recommend that we continue in this way."

Employees leaving State service, either under layoff or dismissal, are granted severance pay, described as "Payment in Lieu of Notice" in the records, to compensate the employee for that period he or she was granted notice. The exact practice varies with different State agencies. Our survey found many agreements that complied with existing statutes and regulations; in particular, we found that agreements with employees that did not pass their working test period and had access to computer systems or the opportunity to cause harm generally included two weeks paid leave. In our survey the majority of the special compensation agreements that involved extra compensation were stipulated agreements to settle grievances that required the participation of the employee's collective bargaining unit. Most of these agreements involved disciplinary action that resulted in the termination or resignation of that employee. These agreements were not generally included in this report as examples of settlements that exceeded the scope of the statutes and regulations.

In cases involving a separation or stipulated agreement, the State agency involved has the responsibility as the appointing authority of the employee to negotiate the terms and conditions of the agreement to the best interests of the State. The statutes and regulations cited above provide only a limited framework to guide them. A review of the cases disclosed in our survey, or in audit examinations of State agencies, identified both separation and stipulated agreements that granted compensation to State employees that exceeded the scope of the statutes and regulations. To provide examples to illustrate the types of cases that we believe have exceeded the scope of the statutes and regulations we have selected and included the following cases in this report. The cases included do not represent all of the cases we identified, but we believe they were the clearest examples of the conditions noted.

Separation Payments - Office of State Treasurer -

Our audit of the departmental operations of the Office of State Treasurer for the fiscal years ended June 30, 1994 and 1995, reported that the State Treasurer made separation payments to a number of terminated employees for time not worked, and prepared time reports that erroneously indicated they were at work. Our audit report stated that there did not appear to be any statutory or regulatory authority to support payments for time not worked. It recommended that management disclose the actual process used for terminating employees and that time and attendance records should reflect employees actual time at work. As a result of our audit recommendation, in January 1997 the Office of State Treasurer revised its procedures for terminating employees. The revised policy was based on the unwritten policy in the Department of Administrative Services memorandum described above. The revised policy requires -

1. Time reports are to be prepared for those employees that are being paid but not at work during the notice period.
2. The time reports should reflect only the total hours to be paid. Included on the time report should be a statement that verifies the total number of hours and weeks to be paid.
3. The Assistant Treasurer should sign that statement.
4. The time report is to be coded leave of absence with pay and is not to be signed by the employee or supervisor.
5. A copy of the written notice of dismissal and the Department of Administrative Services August 7, 1995 and October 18, 1995 memoranda is to be attached to the time report as authorization to provide the separation payment.

We note that this policy does not provide for payments in excess of those specifically granted by Statute, or regulations. In addition, it does not take into account if an employee will or will not be potentially disruptive in the workplace.

Our survey of State agencies identified eight employees that were terminated from the State Treasurer's office after June 30, 1995. Six of these employees were granted separation payments in accordance with the revised procedure. They received from four to six weeks pay for time not worked, in amounts that ranged from $1,733 to $6,639. A seventh employee, who was listed as a durational project manager, was separated prior to the revised policy and received eight days of pay for time not worked.

An eighth employee, who was also listed as a durational project manager, was terminated before the policy was revised. He received a four-week notice period for which he was paid $7,380. The documentation attached to his time report stated that he "will be performing consultative services to the Treasury in order to effect a smooth transition, but will not be on the premises." As part of our review, we attempted to obtain a copy of the separation agreement for this individual; we found that the State Treasurer's office could not locate a copy of it.

Our review of a number of separation agreements and our survey of State agencies found that most of them were routinely granting two to eight weeks of "notice period pay" without specifically determining or documenting that an employee's presence could be disruptive or harmful to public health or safety. Most of them did not establish procedures to document this process such as those established by the State Treasurer.

Stipulated Agreement - University of Connecticut -

Our review found that some agreements did not employ "notice period pay" but instead granted benefits to employees that were not customarily allowed to other State employees under the sStatutes and regulations. As an example, in an agreement to resolve the situation of an employee accused of sexual harassment, the University of Connecticut completed a stipulated agreement to remove the accused employee from the workplace and secure that individual's resignation. The agreement extended that individual's full time employment by assigning the individual to work off campus for two months, then allowing the individual to continue as a full time employee by the use of accrued sick leave for six weeks. After that, the individual was allowed to continue as a part time employee working off campus for an additional three months until resigning.

In addition, we noted the University completed separation agreements with laid off employees that extended an existing child tuition waiver as a fringe benefit after leaving State service.

Stipulated Agreement - Department of Education -

When employees file claims for discrimination or other grievances, it results in an increase in the length of time that is required to handle the case from the initial notice of dismissal through the final settlement. The State can have difficulty prevailing in arbitration cases. Witnesses are unavailable or unreliable, particularly with cases involving students, clients or inmates. At the arbitration hearing the witness or witnesses may fail to appear, change their testimony, or not be competent. If the State does not prevail in the arbitration, an employee may be reinstated or depart State service and receive a settlement. The reinstatements or final settlements for dismissals result in significant payments of back wages for time the employee never worked for the State; also, the agency involved has to accept the return of the employee to the workplace under difficult circumstances. Our review identified a significant number of stipulated agreements that resulted in employees receiving amounts ranging from $20,000 to over $120,000 for time spent not working. In addition, employees reinstated from dismissal receive their sick and vacation leave accruals and personal days for the time they were not working. These agreements were either the result of arbitration awards, or were agreed to in order to avoid arbitration.

In one example, a teacher at the Department of Education was dismissed for allegedly assaulting a student. We were told that the teacher was already considered a poor employee, having been transferred to successive vocational schools. The teacher filed a grievance against the State regarding the dismissal. Subsequently, the two witnesses to the assault did not appear for the hearing, and we were told their stories would have been inconsistent. At a point in the arbitration process, the arbitrator informed the State that it was likely to lose and if that happened the State would be liable for $75,000 to $90,000 in back pay (for the 16 to 18 months the case was in dispute). The State offered to settle the case, and the employee accepted, receiving a lump sum payment of $32,000, and a final stipulated award that granted the employee the three-year early retirement incentive, including fully paid health coverage. The award required -

1. The State to withdraw the charges against the teacher.
2. The teacher to be reinstated to State service for one day in order to process his retirement.
3. The teacher to receive service credit for the time he was dismissed from State service.
4. The sum of $32,000 to be paid to the teacher, which will cover all monies due, including sick leave, and will not be offset against unemployment compensation or outside

earnings.
5. That the record relating to the allegations, which led to the dismissal will remain closed, and the materials related to the matter shall be removed to an appropriate non-personnel file.
6. That the settlement is to be contingent upon the ability of the teacher to secure the retirement.

Our review found that it is desirable to speed up the grievance and arbitration process thus eliminating hardships on the employee, and unnecessary costs to the State. If the special separation payments previously cited are to be permitted, they should only be used as a tool to avoid the lengthy and expensive process of arbitration and litigation that is currently employed. The proper and timely application of a settlement can remove an employee from the workplace without the costs of arbitration or other legal process and without the need to make large payments for back pay.

Separation Payment - Department of Higher Education -

Our review also found that some State agencies, because of their administrative structure, are exempted from Sections of the General Statutes regarding compensation and other employee benefits. Consequently, these agencies have granted benefits far in excess of the benefits allowed to other State employees under current laws. We found, as an example -

On November 18, 1998, by a vote at its regularly scheduled meeting, the Board of Governors for Higher Education approved a contract for the then Commissioner of Higher Education to continue as Commissioner for a three-year period, from January 1, 1999 to December 31, 2001. This contract was similar to the contracts granted in previous years, all for a three-year term, revised each year. It granted him an annual salary of $125,475 for the first year, at that time the highest salary received by a State Commissioner.

The contract contained four different provisions pertaining to the termination of employment. The first stated that "The parties may, by mutual consent, terminate this contract at any time." The second and third provisions stated that after the first 12 months of employment, the Commissioner or Board shall be entitled to terminate the contract upon 90 days notice. If the Board terminated the contract, the Commissioner was entitled to receive his salary for six months after notice was given. Such payments were to be considered full payment and satisfaction of all claims under the contract. The fourth provision entitled the Commissioner to a hearing if the Board terminated the contract for cause.

The Commissioner subsequently decided to leave State service. The Commissioner and the Chairperson of the Board signed a separation agreement on May 19, 1999. It provided that:

1. The Commissioner shall submit his resignation effective immediately and that the resignation be accepted by the Board.
2. He shall be paid for unused vacation and sick days.
3. He shall be paid the sum of $167,300 as a settlement for any or all claims, which have or may arise in the future. (We noted that this was the equivalent of one and one third of a year's salary.)

The total compensation received by the retiring Commissioner was $203,837. Provisions in the separation agreement granted him seven calendar days to revoke the agreement. Our review of this agreement and the Commissioner's resignation letter found that neither referred to the

reason for his resignation. We have also reviewed the minutes for the Board meetings and found no mention of the resignation of the Commissioner or the separation agreement. Our review of the available documents found no reference to either dissatisfaction by the Board or a desire by the Commissioner to retire from State service. In an interview with the business manager of the Department we found the Commissioner did submit retirement papers, effective June 1, 1999.

We noted that the Commissioner was a member of the State of Connecticut Alternate Retirement Plan and had served as a State Commissioner since January 2, 1992. Being over the age of 62 and having a minimum of five years State service, he was eligible for retirement under that plan. By retiring June 1, 1999, the Commissioner was able to meet a deadline imposed by the current collective bargaining agreement which entitled those employees retiring before July 1, 1999, to 100 percent paid State sponsored health coverage for retirees and dependents.

Our review of the legal structure of the Department of Higher Education found that Sections 4-5 to 4-8 of the General Statutes, which defines a Department head and the qualifications, powers and duties of such, is not applicable to the Department of Higher Education. Also considered not applicable to the Department, was Section 4-40 of the General Statutes, which governs the salaries, compensation, wages of State employees, and requires such to be determined by the Commissioner of Administrative Services, subject to the approval of the Secretary of the Office of Policy and Management. The Department of Higher Education maintains its own employee compensation schedules that are set solely by the Board of Governors for Higher Education. We found no State statute either directly authorizing or prohibiting the granting of this type of separation payment to the Commissioner. We observe that the $167,300 payment could be perceived as a retirement incentive that was not subject to outside review or approval. The granting of $167,300 as a separation payment, five months after receiving a new employment contract, and at a time when the Commissioner was eligible to receive a State retirement, illustrates the need for statutory authorization and regulatory guidelines for such payments.

Retirement Agreement - Connecticut State University -

Our review also identified some special retirement agreements. As part of an agency reorganization, the former Provost and interim President of the University system was granted a retirement agreement enabling him to transfer to a position as Assistant to the President at Central Connecticut State University. The transfer was granted on June 7, 1996. From that date until his retirement on June 1, 1999, he served in that capacity. His yearly salary, just before his retirement, was $100,687. Before his retirement, the agreement entitled him to return to the University system payroll in emeritus status as Provost of the Connecticut State University System for his final day of State service at a higher rate of pay. This allowed him to receive pay for the balance of his accrued vacation and sick leave based on a salary of $117,357 per year, rather than the lower salary. The amount he received for his accrued leave totaled $80,935, which was $13,394 greater than what he would have received under the lower salary rate.

This agreement was signed as approved by the Chancellor of the Connecticut State University and the President of Central Connecticut State University.

Employees Not Assigned Meaningful Duties -

In addition to separation payments, we also noted cases where State employees, in particular higher level managers, were allowed to remain in their positions without being assigned any meaningful duties. Our audits of State agencies have noted several such cases. During the consolidation of the Department of Economic Development with the Department of Housing, the Deputy Commissioner of Economic Development was allowed to remain on the payroll from August through December 1996 without being assigned meaningful duties. Our audit review at the time disclosed that this individual was instructed to "stay home" by the Commissioner, and that he was not given any work assignments or responsibilities.

We also found that at the Office of State Treasurer, the Assistant State Treasurer assigned to financial reporting remained on the payroll from mid-October 1999 to March 2000 without appearing to have any meaningful duties to perform. In his position the individual was assigned the preparation of the Annual Financial Report, which is completed on October 15 of each year, and some minor reports for miscellaneous funds, that are completed by December 31 of each year. After the completion of the Annual Financial Report, it was observed that from mid-October 1999 to his departure from State service in March 2000, this employee did not appear to have any duties appropriate to his position assigned to him.

By allowing these practices, State agencies did not use State resources in an appropriate manner. They were also in violation of Section 3-117 of the General Statutes, which specifies that claims for payment against the State be certified by the agency that services have been received or performed. As a part of the internal control procedures for the processing of payrolls, State employees and managers certify on timesheets and expenditure documents that time reports reflect time actually worked and that the services have been performed. We find that this practice is another example of the granting of benefits to certain employees that is not allowed by State Statute or regulation.

Statutory authority and corresponding regulations are needed to guide State agencies when situations require the granting of special separation payments or other benefits that exceed those now allowed by statute to State employees leaving State service (See Recommendation 1.).

Department of Administrative Services' Response:

"We concur that certain employment situations arise that may require the use of special separation payments or benefits. The Department of Administrative Services will draft applicable legislation and submit it through its normal legislative process. If legislation is enacted, the Department of Administrative Services will update the corresponding regulations. Please keep in mind that this recommendation also affects the Office of Labor Relations in the Office of Policy and Management who has the responsibility of oversight and review of special separation payments or benefits for employees under the collective bargaining process."

Office of Policy and Management - Office of Labor Relations' Response:

"There are a number of issues presented by this Recommendation which will be dealt with separately:

1. There are some limited circumstances wherein the nature of the duties performed by the individual or the volatility of the situation give rise to the agency allowing employees to be paid during the notice period without performing work. These should be the exception and not the rule. Statutory changes will be drafted by the Office of Labor Relations to authorize such payments during the notice period, together with regulations outlining those situations where the exception is permissible. Such statutory changes will only impact employees not covered by collective bargaining. In addition, the legislation can authorize the extension of the provision to employees covered by collective bargaining by agreement.

2. Settlements reached during the grievance/arbitration process are a function of collective bargaining. The settlement is limited by the authority of an arbitrator in an award, to a "make whole" remedy. For example, in a dismissal case, the arbitrator can only place the individual in the position he/she would have been in, but for the dismissal. It would be inappropriate for an agency or the Office of Labor Relations to have the authority to grant a larger benefit than that permitted under the contract to any employee covered by collective bargaining. The Attorney General has the authority to compromise other types of claims, for example, claims filed at the Commission on Human Rights and Opportunities. In situations where multiple claims have been filed, the Office of Labor Relations and the Office of the Attorney General have been involved in the settlement process. This is a desirable result. Settlements with employees covered by the Employees' Review Board are likewise limited to a "make whole" remedy although arguably the Employees' Review Board may have the ability under the statute to grant additional relief.

3. The granting of "special" or extra retirement benefits to employees in the executive branch would not be consistent with either collective bargaining agreements or statutes. The statutory authority of certain other employers may be greater.

4. There is no statutory or contractual authority that permits State employees to remain in their positions without being assigned any meaningful duties."

Item No. 2 Controls Over Special Separation Agreements

There are inadequate controls, in particular no outside oversight, review or approval, of special separation agreements granted to employees leaving State service.

Under the collective bargaining process that covers most State employees, the Office of Labor Relations of the Office of Policy and Management has the responsibility for representing the State during the upper levels of the contract grievance process and in arbitration hearings. In addition, under the collective bargaining process, the head of any State agency, and his designee, such as the personnel director for that agency, have the authority to negotiate and conclude agreements with employees and their union representatives. The collective bargaining contract process takes legal precedence over State statutes and regulations, and supercedes other administrative controls.

The procedure for the dismissal of State employees generally requires some type of agreement, either a stipulated agreement with the employees bargaining unit, or a settlement when the employee makes a claim for alleged discrimination. Section 3-7 subsection (c) of the General Statutes allows the Governor, upon the recommendation of the Attorney General, to authorize the compromise of any disputed claim by or against the State or any department or agency. The Governor is to certify to the proper officer, department, or agency of the State the amount to be received or paid under the authorized compromise. Because of the collective bargaining process, claims pertaining to employment issues for most State employees are considered to be outside this statutory authority. Therefore, only a few separation agreements are reviewed and approved by the Governor.

The section of the General Statutes that enables a State agency generally grants the head of that agency the authority to act as may be necessary for the discharge of his duties. Pertaining to personnel matters, we found that this authority has generally been delegated to the personnel administrator of the agency. Consequently, most separation agreements, and stipulated agreements that are not processed through the Office of Labor Relations, are negotiated and approved solely by the personnel administrator of the agency involved.

According to Sections 5-240 and 5-241 of the General Statutes, State agencies that are either dismissing or laying off an employee are required, as part of the two weeks notice granted to the employee, to notify the Department of Administrative Services. Our review found that the intent of this provision is the requirement that the Department of Administrative Services needs the information to update the Statewide automated personnel system. The Department of Administrative Services does not use this notification provision as an opportunity to establish controls over how State agencies are administering the dismissing or laying off of employees.

We found that there is no internal control structure to ensure that the Department of Administrative Services is notified by State agencies in a timely manner of proposed separation or stipulated agreements. The notification is after the fact, and there is no provision for review before the agreement is granted. There is no requirement for State agencies to submit either proposed or final agreements for review or approval, or to notify the Department of the details of the proposed separation agreement.

Our survey of the various State agencies found variances in the application of the statutes pertaining to the layoff or dismissal of employees. We found, for instance, that the Department of Correction appears to have taken a more aggressive stance against granting additional compensation to employees being dismissed from State service, such as separation payments or other benefits in excess of that currently allowed by Statute or regulation.

Our survey also found that policies and procedures varied among State agencies, particularly if the agency had a large number of employees, or if the agency had a greater percentage of managerial or professional employees. We found in most of the smaller State agencies such agreements are approved by the agency head. In larger State agencies, we found that the personnel director generally signs the agreement, with or without the review and approval of the agency head. Usually the determination of whether or not the agency head reviews the agreement is based on the size or seriousness of the claim, whether it is considered routine or exceptional, the experience of the personnel director, and the degree such responsibilities are delegated within an agency.

Some agencies, because of their lack of experience with the administration of these matters, are completely reliant upon the direction of the Office of Labor Relations. That Office maintains a staff of attorneys and others trained in the administration of personnel matters, including the arbitration of collective bargaining grievances. Our review found that the Office of Labor Relations does engage in training the personnel officers of State agencies in these matters, and, upon request, will assist an agency by providing an advisory role.

Because some cases involved lawsuits in Federal or Superior Court, the negotiation and administration of those cases are assigned to the Assistant Attorney General assigned to represent the agency involved. In particular, this happens when the case does not involve the collective bargaining process and the Office of Labor Relations.

Our review found that the State of Connecticut has been burdened with significant costs of administering collective bargaining grievances and costs of using arbitration or other means of settling disputes. By not properly administering the layoff or dismissal of an employee, costly arbitration or legal action can result. Proper policies and procedures, and training and oversight of personnel officers help to promote a consistent bargaining stance and serve to prevent costly procedural errors. A centralized review and control can be devised that does not eliminate the amount of flexibility necessary to suit the needs of the various State agencies.

Controls should be established, in particular, outside oversight, review or approval, of special separation or stipulated agreements granted to employees leaving State service (See Recommendation 2.).

Department of Administrative Services' Response:

"We concur that there appears to be variations among State agencies in administering the Statute pertaining to layoff or dismissal. The Department of Administrative Services will draft applicable legislation. If the legislation is enacted, corresponding controls in this area will be established."

Office of Policy and Management - Office of Labor Relations' Response:

"…[T]he separation or stipulated agreements involving employees covered by collective bargaining agreements, in the executive branch, are within the purview of the Office of Labor Relations. Therefore, we would like to make the following comments on Recommendation 2.

1. The Executive Summary observes: "The procedure for the layoff or dismissal of State employees generally requires some type of agreement, either a stipulated agreement with the employees' bargaining unit, or a settlement when the employee makes a claim for alleged discrimination." The procedure for the layoff and dismissal of State employees is generally done through strict adherence to the collective bargaining agreement, statute and/or regulation, as appropriate. The utilization of stipulated agreements is the exception and not the rule.

2. Since layoff and dismissal of State employees covered by collective bargaining agreements are covered by the contracts negotiated and administered by the Office of Labor Relations, control and oversight of stipulated agreements should be exercised by the Office of Labor Relations."

Auditors' Concluding Comments:

Our survey of State agencies did disclose those cases in which normal procedures applied; however, the survey and our audit examinations of State agencies found, and our comments refer to, a significant number of cases of a layoff or dismissal of a State employee that required settlements that granted benefits in excess of what is allowed by statute or regulation.

The Office of Labor Relations was transferred from the Department of Administrative Services to the Office of Policy and Management by a memorandum of understanding in 1997. State statutes, Department regulations and collective bargaining agreements have not completely reflected this change. Public Act 00-77, which became effective May 16, 2000, designates the Secretary of the Office of Policy and Management as the employer representative in all matters involving collective bargaining. It amends Sections 5-240 and 5-241 of the General Statutes by replacing the Commissioner of Administrative Services with the Secretary of the Office of Policy and Management or the Secretary's designated representative as the authority responsible in the dismissal or layoff of State employees. We believe that the conditions cited in this report represent an area best addressed by both agencies working together.

Item No. 3 Immediate Removal of an Employee From the Workplace

The regulations and policies governing the immediate removal of a discharged employee from the workplace require revision.

It frequently becomes necessary to effect the immediate removal of an employee from the workplace, either because that employee has access to sensitive accounting records and/or data processing systems, or to preclude any danger or disruption to other employees.

As noted previously, State statutes allow two weeks notice to any permanent employee in the classified service who is dismissed for misconduct, incompetence, or other reasons related to the effective performance of his or her duties. Regulations set by the Department of Administrative Services allow an employee to be placed on leave of absence with pay for up to 15 days to allow for an investigation, if that employee's presence at work could be considered harmful to the public, the welfare, health or safety of patients, inmates or State employees or State property. If the investigation involves the pending disposition of criminal charges that could result in dismissal, the employee could be placed on leave of absence with pay for up to 30 days, and extended an additional 30 days if necessary.

Collective bargaining agreements for State employees provide for a grievance process before the dismissal of any employee, whatever the cause. The process to arbitrate grievances takes much longer than the two weeks granted by the collective bargaining agreement. In cases involving unpaid leave due to the investigation or disposition of a criminal charge, some collective bargaining agreements allow the employee to charge vacation time.

Our survey of State agencies found variances in the criteria applied regarding the immediate removal of an employee from the workplace. We found, for instance, those State agencies with the responsibility for inmates, patients and clients or public safety, take a stricter stance than other State agencies. Other agencies responded by stating they reviewed each case on an individual basis. Many agencies responded by stating they had no policy, or none in writing. The polices and procedures established to guide State agencies in the layoff or dismissal of an employee, and allowing that employee to receive compensation for time not worked, should be set in writing, and should reflect an accepted standard. The policies should not be discriminatory or unfair and should take into consideration policies and procedures that prevent workplace violence.

Our survey also found that policies and procedures regarding the immediate removal of an employee from the workplace also varied among State agencies, according to the size of the agency, and if the agency had a greater percentage of managerial or professional employees. Most State agencies that provided us with their policies specified that immediate removal was frequently required in cases of layoffs or failure to meet the working test period and were always required in cases of dismissal for misconduct.

Most of the cases we reviewed, and most of the cases cited in other sections of this report, involved the immediate removal of an employee from the workplace. These agreements generally granted the employee at least two weeks paid leave, which was described as being in accordance with that employee's collective bargaining contract. Much longer leave times were

granted on occasion, usually to cover the time taken to conduct an investigation, and many of the large lump sum payments made in stipulated agreements resulted from the length of time that was granted to employees, when the dismissal was settled under arbitration.

Stipulated Agreement - Department of Transportation -

In one case we reviewed, a Department of Transportation employee was found for the second time to be making personal use of State resources. As part of a stipulated agreement, this employee was given a 27-day suspension as discipline. Following his return to work this employee was involved in a disruption with his supervisor, and following the procedures established by the collective bargaining agreement, the employee entered a stipulated agreement to facilitate his removal from State service. That agreement granted -

1. That the employee was able to resign in good standing from the Department, effective January 17, 2000. However, his last working day was October 21, 1999, and he remained on the payroll until January 17, 2000, using accrued sick leave, holidays, personal leave and leave accruals he earned during this period. His unused vacation time was paid as a lump sum upon severance of employment.
2. The employee will not seek reemployment with the Department of Transportation.
3. The one-day suspension served as a result of his first infraction was rescinded; he was reimbursed for that day and any reference to such suspension was removed from his personnel file.
4. The 27-day suspension he served for the second infraction was rescinded, he was reimbursed for the period of suspension and any reference to such suspension was removed from his personnel file, including the copy of the stipulated agreement that implemented the suspension. The vacation and sick leave accruals that were lost because of the suspension were restored.
5. The employee's last annual service rating was amended to show a satisfactory rating and any derogatory remarks were removed.
6. The employee was not disciplined for his involvement in the office disruption that occurred with his supervisor.
7. The Department did not challenge the employee for seeking and/or accepting other employment other than with the State of Connecticut during his sick leave, provided that such employment was not inconsistent with the medical documentation used to justify his continuation on paid sick leave with the Department of Transportation.
8. In response to employment reference inquiries addressed to the Department, the response will be to only provide the employee's job title, pay rate, length of service and the fact that he resigned in good standing. No other information will be provided without the authorization of this employee.

As part of this agreement, the employee agreed to waive any rights to any State or Federal medical leave of absence without pay or any other leave. He also waived any and all claims against the Department relating to matters in this agreement and any other matters pertaining to his employment with the Department. He further agreed not to appeal or pursue any such claims in any other forums and that this agreement is not appealable in any forums. He was allowed to remain at home, and produced a medical certificate that allowed him to charge accumulated sick leave until he left State service.

Our review of this employee's personnel file confirmed that the service rating was rewritten, and references to the previous stipulated agreement removed from the file. A review of the

payroll records confirmed that the employee was reimbursed for those days he was under suspension.

In our discussions with Department officials, we found that this second stipulated agreement resulted from the belief of the Department's management that this employee was no longer able to work in his assigned unit, and given the previous problems encountered with this employee, it was decided by management to provide incentives for the employee to resign. Department officials stated that this employee has been with the State for over ten years, and it would have been extremely difficult to document enough cause to fire him. By providing these incentives, the Department hoped the employee would be able to leave without bitterness and without the cost of lengthy legal proceedings.

Department officials also stated that the stipulated agreement was not considered as authorized under any specific State statute or regulation. The Personnel Administrator alone approved the stipulated agreement. Neither the Commissioner of Transportation nor any other Department official reviewed and approved this document. Depending on the nature of the proposed agreement, in the past, either subordinates of the Personnel Administrator, or a Department Bureau Chief, have approved stipulated or special separation agreements for the Department. The agreement was based on the disciplinary and grievance procedures per the employee's collective bargaining agreement. The intent of this agreement was to avoid the filing of a grievance by the employee. The Department of Administrative Services was not consulted and did not have a role in reviewing or approving the agreement.

In addition, this stipulated agreement was not sent to the Attorney General, or the Office of Labor Relations for review or approval. Generally, the policy of the Department of Transportation is to refer only those agreements that involve lawsuits, Workers' Compensation or discrimination complaints to the Attorney General. Moreover, only grievances that make the final administrative steps are referred to the Office of Labor Relations.

We consider this particular agreement an example of a practice that should be more strictly regulated. In order to effect the immediate removal of this employee from the workplace, the Department of Transportation agreed to: grant a resignation in good standing, rescind a 27 day suspension and effectively grant a paid vacation for that period, allow the use of sick leave until it was convenient for the employee to resign and allow the rewriting of that employee's personnel record.

Regulations and policies governing the immediate removal of a discharged employee from the workplace should be revised (See Recommendation 3.).

Department of Administrative Services' Response:

> "We concur that there may be instances that require the immediate removal of a discharged employee from the workplace. The Department of Administrative Services is in the process of proposing legislative changes to address the immediate removal of a discharged employee from the workplace."

Office of Policy and Management - Office of Labor Relations' Response:

> "…[T]he immediate removal of a discharged employee from the workplace involving employees covered by collective bargaining agreements, in the executive branch, are within

the purview of the Office of Labor Relations. Therefore, we would like to make the following comments on Recommendation 3.

1. Access to the grievance process is separate and distinct from the decision to and the action of dismissing a State employee.

2. There may be some misunderstanding of the procedure to dismiss a State employee. It may, therefore, be helpful to outline the normal process and how the contracts, statutes, regulations and court decisions interrelate. The following information is provided:

a. When it is reported or discovered that an employee may have engaged in conduct that may subject the employee to serious disciplinary action, the human resource professional or other agency representative begins an investigation.

b. …Regulation 5-240-5a subsection (f) permits the appointing authority to place the employee on a paid leave of absence for up to 15 days during the investigation, if the "employee's presence at work could be harmful to the public, the welfare, health or safety of patients, inmates or State employees or State property." If criminal charges are pending, the amount of paid leave of absence is increased to "up to 30 days" under Regulation 5-240-5a subsection (h). Such an employee can also request an unpaid leave of absence of up to one year, with the ability to request an extension. This provision is rarely, if ever utilized. Agencies have expressed difficulty completing their investigation during the applicable time periods.

c. At the conclusion of the investigation, the appointing authority must make a decision regarding the appropriate level of disciplinary action, if any.

d. Depending upon the collective bargaining agreement, the decision is either implemented immediately or after some notice period. If the decision is to terminate the employee, the appointing authority does not normally return the employee to service during the notice period.

3. Once the decision to terminate an employee is made, assuming all due process steps have been complied with, we concur that there may be instances that require the immediate removal of a discharged employee from the workplace. Legislation can only impact employees not represented by a collective bargaining representative, otherwise there is a Constitutional problem with the Impairment of Contract provision.

4. The Office of Labor Relations will draft a proposed legislative change to allow the appointing authority to immediately separate a nonrepresented employee where there is just cause. The Office of Labor Relations will propose in negotiation the removal of contractual provisions in those contracts where there is a notice requirement.

5. Both the contracts and Statute provide a procedure for layoff of employees. It is highly unusual where there might be the necessity to pay employees in lieu of working. If the employee were a member of a collective bargaining unit, the payment in lieu of notice would have to be authorized by the contract. A statutory change to permit payment in lieu of statutory notice for managerial employees could be proposed through legislative change. This should only be done in the most unusual of circumstances and requires centralized oversight by the Department of Administrative Services.

Item No. 4 Altering of Service Ratings and Removal of Employee Records

There is no statute, regulation or policy prohibiting the altering of service ratings and removal of disciplinary matters from an employee's records.

Our review of the sample of separation or stipulated agreements found several instances where disciplinary action or other matters were removed from an employee's personnel file as part of the agreement. As noted in Item No. 3 above, the stipulated agreement completed at the Department of Transportation in October 1999, required information about repeated misuse of State property and an altercation with a supervisor, information that a future employer would have an interest in, to be removed from the employee's file.

Stipulated Agreement - Department of Education -

Our review found at the Department of Education a teacher was dismissed for allegedly assaulting a student. At a point in the process, witnesses for the State failed to appear, and the arbitrator informed the State that it was likely to lose. As noted in Item No. 1 above, the final stipulated award required the State to withdraw the charges against the teacher and remove the materials related to this matter to "an appropriate non-personnel file."

Stipulated Agreement - Office of Consumer Council -

We also found that at the Office of Consumer Council a stipulated agreement completed in October 1998, stated in part -

1. "In accordance with the Agreement and Release, all service ratings, letters of discipline or other personnel related documents, which are subject to any of the grievances resolved by this agreement will be voided from… personnel files at the Office of Consumer Council…."
2. "Unless the grievant authorizes the release of additional information in writing, the Office of Consumer Council agrees to respond to inquiries by future or potential employers, outside State service, with the duration of employment, rate of pay, classification and separation status of voluntary resignation."

Attached to the stipulated agreement was a withdrawal agreement listing ten specific grievances that covered service ratings, reprimand, suspension and dismissal of the employee.

Stipulated Agreement - Department of Children and Families -

As noted in Item No. 1 of this report an employee of the Department of Children and Families was discharged from his position as social worker due to neglect of duty and giving falsified testimony in court. In the stipulated agreement, the employee and the Department agreed, among other items -

1. The employee will not apply for or accept employment with the Department of Children and Families.

2. The employee will be placed on the State reemployment list for social worker as a laid off employee, but will not accept any offer of reemployment that requires him to work directly with children.
3. The Department, if contacted by a prospective employer for a reference check, will provide only dates of employment, job classification and salary rate. The reason for separation will be given as layoff, except if the prospective employer is a social or human service agency licensed by or receiving funding from the Department of Children and Families. The employee agrees not to accept any offer of employment that requires him to work directly with children.
4. The Department agrees to remain silent on the employee's application for accelerated rehabilitation and on the issue of jail time regarding criminal charges against the employee. The Department agrees not to initiate any new criminal charges against the employee, unless there is evidence that during his employment with the Department he acted recklessly, willfully or wantonly in the performance of his duties.

There were other stipulated agreements in our sample that contained a provision of the kind cited above. They were not based on a standardized policy, and we found them to be worded differently and applied inconsistently in most cases.

At the Department of Public Health, the stipulated agreement commonly used specifies that if a potential employer should inquire with the agency about the individual's employment, only the title and dates of employment would be offered. However, the agreement also includes that, if another State of Connecticut entity inquires about his or her previous employment, the Department will be free to explain his or her performance while employed there.

We discussed some of these cases with agency officials. They explained to us that in these cases, the information cited is not destroyed but removed and placed in a separate file. Again, we were not able to find the application of a standard policy or procedure to administer this process. As with other conditions noted in this report, the absence of Statewide policies and procedures, and controls to ensure such policies and procedures are followed, can result in personnel matters being administered unfairly and in a discriminatory manner. In these situations, the rights of the employee, and the liability the State may be placed in, must be weighed against the State's responsibility to other employers, and possibly, in certain cases, the safety of the public.

Regulations or policies should be established to govern the practice of the altering of service ratings and removing disciplinary matters from an employee's records (See Recommendation 4.).

Department of Administrative Services' Response:

"For this subject matter, collective bargaining agreements, which cover the majority of State employees, supercede any State statute and are administered by the Office of Labor Relations. The Office of Labor Relations would be best suited to establish any policy regarding altering service ratings and removing disciplinary matters from an employee's record."

Office of Policy and Management - Office of Labor Relations' Response:

"The changing of service ratings and removal of disciplinary matters from the personnel files is the result of grievance activity. These approaches are utilized to resolve specific situations. Upon request, the Office of Labor Relations does provide guidance and assistance in these matters. Release of employment information to other employers is restricted as a matter of law. With respect to other State agencies, it is the State who is the employer. The Office of Labor Relations will issue policy guidelines for agencies to utilize when dealing with these situations."

Item No. 5 Use of Accumulated Leave Time by Laid Off or Discharged Employees

There are ineffective controls to prohibit laid off or discharged employees from extending their period of State employment by remaining on sick or vacation leave.

There were a significant number of cases in our sample in which a laid off or dismissed employee was allowed to remain in State service by using accumulated sick or vacation leave for many months. We found this practice was specifically granted by language included in the separation or stipulated agreement.

State statutes and collective bargaining agreements generally provide that in cases that involve a criminal investigation or the disposition of a criminal charge related to an employee's work or work performance, the employee may be placed on an unpaid leave of absence pending administrative action. In all other cases involving an investigation, the employee shall be placed on a paid leave of absence. When an employee is placed on an unpaid leave of absence pending an investigation, collective bargaining agreements generally allow employees to use accumulated leave, except for sick leave. Our review found exceptions to this policy.

If the employee is discharged as a result of the investigation, the discharge shall be effective on the first date of the leave of absence. If the employee is not dismissed, he or she shall be reinstated with full pay retroactive to the starting date of the leave. Other collective bargaining agreements refer to Section 5-240-5a of the Department of Administrative Services Regulations, which provides a similar provision; and some others provide for a suspension with full salary and benefits, pending disciplinary action. We noted there were many cases in our sample in which employees were granted leave with pay and benefits for a number of weeks pending disciplinary action or discharge. In these cases, upon subsequent dismissal, the costs of the leave with pay and benefits were not recovered as part of the stipulated or separation agreement.

Our review of separation, retirement or stipulated agreements also found many allowed the employee to use accrued sick or vacation leave until eventually departing State service. We noted that in the cases of sick leave use, employees were generally required to furnish only a single medical certificate to document an extended illness for a "medical" leave of absence that lasted for several months. We observed that employees do not appear to have any difficulty obtaining the required medical certificate. For example, our review found -

Separation Agreement - Department of Economic Development -

An employee at the Department of Economic Development was listed as terminated from State service effective October 25, 1994. We found that this individual was allowed to use sick leave from the union sick leave bank while she was looking for other employment. She was able to remain on the payroll until the sick leave bank was exhausted, which was on February 17, 1995. This employee received $6,872 in sick pay for that period.

Stipulated Agreement - Department of Labor -

In another case, in order to settle a grievance, an employee at the Department of Labor was granted reinstatement with back pay from the effective date of his dismissal, June 15, 1998, to February 5, 1999. He was also granted a medical leave of absence, using accrued sick leave, from February 5, 1999 to September 1, 1999, after which he was granted an unpaid administrative leave of absence from September 1, 1999 to September 1, 2000. The employee received a payment of $34,591 for the back pay and had the unsatisfactory service rating and final warning removed from his personnel file. It appears the Agency did this to accommodate a disability retirement application by the employee.

Stipulated Agreement - Department of Transportation -

In another case, previously cited in Item No. 3 of this report, an employee at the Department of Transportation was removed from State service for repeated misuse of State telephones and for engaging in a disruption with his supervisor. He was allowed to remain on the payroll from October 2, 1999 to January 17, 2000, using accrued sick leave, holidays, and personal leave, including time accrued during this period, as specified in a stipulated agreement.

By allowing these practices, State agencies are encouraging the abuse of sick leave and are extending employment benefits in the form of severance pay in a manner not intended by statute, regulation, or collective bargaining agreement. State employees that resign or are dismissed from State service do not receive payment for accumulated sick leave. Section 5-247 of the General Statutes provides that only State employees that retire receive payment for unused sick leave. That payment is at a rate of one quarter of one day for each day of unused sick leave. A retiring employee can only receive payment for a maximum of 240 accumulated days, which may result in a payment equal to 60 days salary.

By allowing the use of sick leave in a manner just described, rather than requiring the employee to lose that time, or receive payment for only one quarter of it, the employee remains on the payroll longer, increasing the costs of personal services and fringe benefits to the State. In addition, as noted in another section of this report, allowing the use of extended sick leave has the result of increasing the length of State service the employee is credited with for retirement purposes.

Regulations or policies should be established to govern the practice of allowing laid off or discharged employees to collect their accumulated leave time by remaining in State service past the normal separation period (See Recommendation 5.).

Department of Administrative Services' Response:

"The Department of Administrative Services does not condone the practice of allowing laid off or discharged employees the right to collect their accumulated leave time in order to remain in State service past the normal separation period. The Department of Administrative Services will draft legislation which will require State agencies to report to the Department any special situation requiring an employee to use sick leave past the normal separation period."

Office of Policy and Management - Office of Labor Relations' Response:

"…[T]he utilization of accrued sick or vacation leave upon termination or layoff of a State employee is governed by collective bargaining. As the rights of employees covered by collective bargaining agreements, in the executive branch, is within the purview of the Office of Labor Relations, the Office of Labor Relations would like to make the following comments on Recommendation 5.

If an employee is sick at the time of his/her termination, or during the time [of termination] he/she may be entitled to payment for sick leave. If a doctor signs the necessary medical certificate and indicates the employee is not able to work, it is under only limited circumstances the State could request a second opinion. If the employee is not sick, the payment of sick leave benefits should not occur. The Office of Labor Relations will draft a policy outlining those situations wherein employees would be allowed to utilize sick leave past the normal separation period."

Item No. 6 Lump Sum Payments Included in the Calculation of Retirement Benefits

There is no provision in the State Employees Retirement Act that prohibits, nor allows, the inclusion of large lump sum payments of employment claims or the use of accumulated sick leave in the calculation of future retirement benefits.

Our review identified cases where employees received, as part of a separation agreement that included retirement, significant amounts to settle claims for past discrimination. In the State employees retirement system, when an employee retires the monthly benefits paid are calculated as a factor of the years of service and the average annual regular salary for the three highest paid years of State service.

Under the Federal Age Discrimination in Employment Act, awards granted to individuals discriminated against in employment are considered wages. Therefore, for the purpose of calculating retirement benefits, an award under the Act, or other civil rights law, would be included in the retirement calculation. The law is not specific as to whether the award is to be treated as wages in one year, or allocated over several years. In addition, we found that in some of the cases we reviewed, the settlement amount was not designated as a specific award for discrimination. Instead, in the negotiation of the settlement agreement, it was considered as only a potential discrimination claim by the employee. Unless such awards are specifically identified as a settlement of a discrimination claim, they should not be included in the retirement calculation.

Our review identified several cases where employees received, as part of separation agreements, amounts totaling $122,000, $120,000 and $30,000 to settle claims for past discrimination. As part of the settlements, the employees subsequently retired. In the State employees retirement system, when an employee retires, the monthly benefits paid are calculated as a factor of the years of service and the average annual regular salary for the three highest paid years of State service. The amounts cited above were included in the retirement calculation thereby increasing the retirement benefits received.

Our review also found agreements that were contingent upon having certain provisions approved by the State Retirement Commission, and, an agreement that ensured that an employee be eligible for any early retirement incentives offered to State employees.

Separation Agreement - Office of State Comptroller -

In one of the cases we reviewed, a managerial State employee with over 17 years of service at the Office of the State Comptroller, had his position eliminated as a result of an office reorganization. He was on sick leave beginning September 15, 1995, presenting a note from a physician, until he retired from State service October 1, 1995. However, he was listed as terminated from State service on September 29, 1995.

As part of the separation, an agreement and release was completed on September 26, 1995. The agreement states -

1. Upon submission of medical certification the employee will be permitted to use accrued sick leave for the period between September 15 and September 29.

2. On September 29, the employee's position classification will be eliminated and his service terminated due to lack of work.
3. The employee will exercise his right to retire on October 1, 1995, under the provision of Section 5-163 subsection (c) of the General Statutes.
4. In his final paycheck he will receive an additional lump sum payment of $24,411.84, "…which for all purposes will be treated as wages earned in the calendar year 1995, except as otherwise provided in paragraph 5."
5. The average of the three highest years earnings under the State Employees Retirement System will be calculated with the $24,411.84 apportioned in thirds to each year.
6. That the agreement and release is contingent upon the Retirement Commission approving the employees application to purchase prior service time at another agency.
7. In the event the application is denied, the parties will enter into discussions to reach another such agreement along similar lines.
8. That the retirement application will be assigned priority processing and out of that the employee is expected to receive a gross annual retirement allowance of approximately $31,000 a year.
9. The agreement will be treated as a confidential personnel matter and the parties will make a good faith effort to avoid publicly disclosing the agreement and its terms and conditions.
10. The parties agree that no interference or wrongdoing on the part of either party should be drawn from the agreement and the parties specifically deny or accuse any wrongdoing.
11. The agreement constitutes a full and complete waiver and release of all claims against the State, including but not limited to, discrimination due to age or other criteria.

The employee was paid a lump sum for accumulated sick leave and received a lump sum separation payment of $24,411. The separation payment was authorized under Section 5-241 subsection (b) of the General Statutes, which grants eight weeks termination notice. However, based on the employee's regular salary of $82,147 yearly, the separation payment of $24,411 equaled approximately 15½ weeks of salary. The calculation of retirement benefits was made as if the separation payment was apportioned over the past three years; this was intended to result in a retirement salary of $31,000, based on 26 years, 9 months of service.

As a result of the apportionment the employee will receive an additional $2,775 annually for the entire time he is collecting retirement benefits, not including cost of living adjustments. In addition, at the time of the agreement this employee was 48 years old, and retired under the provisions of Section 5-163 subsection (c) of the General Statutes. Under that Section of the Statutes an employee, with a minimum of 25 years of State service and whose State service is terminated because of economy, lack of work, abolition of his position or lack of reappointment, may retire before he has reached the minimum age for retirement, which is 55 years.

The years of service included in the calculation of retirement benefits included a purchase of three years and four months of prior State service, that was approved by the Retirement Commission on January 18, 1996, which was several months after the employee began collecting retirement benefits. Without the purchase of the additional years of service, the employee would not have had the minimum 25 years of service to be eligible for retirement.

This agreement was referred to the Attorney General and the Governor for approval in accordance with Section 3-7 subsection (c) of the General Statutes. The Attorney General cited in the comments to his approval that at least two individuals with less age and experience were hired for the new positions the laid off employee was not offered. Also, that five of the seven employees appointed to the new positions were younger than the laid off employee, leaving the

State at risk of an age discrimination complaint. The Governor approved the agreement on January 16, 1996.

We referred this matter to the Attorney General on April 22, 1996, and on March 20, 1997, an opinion was issued. It stated that the claim by the employee was compromised in accordance with Statute and that it was proper to treat the lump sum payment as wages in the retirement calculation. The Attorney General's opinion did not specifically address our position that apportioning the lump sum settlement was contrary to the provisions of Section 5-162 of the General Statutes. Section 5-162 provides that, for the three year period that retirement benefits are based on, the salary in the highest paid year of State service cannot exceed 130 percent of the average of the two previous year's earnings. Instead, the Attorney General responded by stating that the allocation over the three years would result in only an additional $10.11 per month in retirement benefits and that "there was no language in that Section which addresses in any fashion how such payments should be treated."

The Attorney General's opinion referred to several decisions in employment discrimination law. Under the Federal Age Discrimination in Employment Act awards granted to individuals discriminated against in employment are considered wages. Therefore, for the purpose of calculating retirement benefits, an award under the Act would be included in the calculation. It was explained that awards based on claims should be attributed to income, including interest overtime, fringe benefits and pension fund contributions. The Attorney General's opinion did not address payments that would not be made as a settlement of discrimination claims.

Our review found that this type of condition should be clarified. The language in the settlement agreement does not specifically state that the lump sum payment was an award for the settlement of a discrimination claim. The General Statutes should include language specifying how such lump sum payments should be accounted for in the calculation of retirement benefits.

The State Employees Retirement Act should be amended to address the practice of including large lump sum payments of claims or the extended use of sick leave in the calculation of future retirement benefits (See Recommendation 6.).

Department of Administrative Services' Response:

"Changes to the State Employees Retirement Act fall under the auspices of the Office of the State Comptroller and are not the responsibility of the Department of Administrative Services."

Office of the State Comptroller's Response:

"In the case cited herein, the employee in question received in his final paycheck a lump sum payment of $24,411.84, which the separation agreement clearly characterizes as "wages." In an effort to maximize the impact of this payment on the employee's retirement income, it was allocated to three separate calendar years for benefit calculation purposes. This tactical device, which was the single most critical element of the separation agreement, has been reviewed by the Attorney General and found to be congruent with the State Employees Retirement Act. Within this context, the recommendation set forth above would needlessly limit the employer's ability to act with decisiveness when, as in this case, an employee's removal from the workplace is viewed as a strategic imperative."

Auditors' Concluding Comments:

We are not recommending the prohibition of this practice. We believe controls and procedures should be established that address this practice, and to require that the method used for such calculations be clarified.

Item No. 7 Reemploying Retirees at a Higher Hourly Rate

There is no statutory authority, regulation or administrative control over the practice of reemploying retirees, for the same or similar position that the retired employee was originally employed, at a higher hourly rate.

Section 5-164a subsection (c) of the General Statutes allows retired State employees to be reemployed for a maximum of 90 working days in any one calendar year without loss of retirement benefits, if that reemployment is not on a permanent basis. This Statute was modified by the State employees' retirement agreement, which allows a maximum of 120 working days in any one calendar year without loss of retirement benefits. It is a common practice for State agencies to rehire retirees as consultants or for special projects. On occasion, employees taking advantage of early retirement incentives were reemployed to refill their original assignment until replacement staff is recruited. However, it has not been common to reemploy retirees at hourly rates greatly in excess of what a permanent full time State employee would receive for the same position.

Reemployment Agreement - Department of Public Safety -

The Commissioner of the Department of Public Safety retired from State service effective July 31, 1998. He was appointed Commissioner on July 1, 1998, only one month earlier. He was an employee of the Department for many years before his appointment as Commissioner, serving as Director of the Forensic Laboratory. At the time of his retirement his salary as Commissioner was $106,377 yearly, the equivalent of $50.95 per hour.

Immediately after retirement, and for the remainder of the 1998 calendar year, he continued as Commissioner under a 120-day retiree reemployment. He was initially paid an hourly rate of $50.95, equal to his previous salary. On November 6, 1998, his hourly rate was increased to $67.87, or by 33 percent. The new rate resulted in an increase in earnings for the 40 days he was expected to work from November 6, through the end of the 1998 calendar year. This enabled him to earn the same amount by working 109 days from August to the end of the year as if he had worked a full 120 days. In the 1998 calendar year, he was paid $59,592 for the equivalent of 150 days of work for the period before his retirement and $49,842 for 109 days of work as a reemployed retiree. In addition, he collected his retirement salary from the State beginning on August 1. The total retirement salary collected, from August 1, to the end of the 1998 calendar year, totaled $24,300.

He continued to be Commissioner as a rehired retiree in the 1999 calendar year. He worked 70 days, from January through March at a rate of $67.87 per hour. On April 9, 1999, his hourly rate was increased to $213.64, or by 215 percent. The new rate was calculated to increase his earnings for the 50 days he was to work from April through the end of the 1999 calendar year. It enabled him to earn the maximum yearly salary of a Commissioner working full time. On October 24, 1999, his hourly rate was increased three percent to $220.05. In the 1999 calendar year, he was paid $124,030 for 120 days of work as a reemployed retiree. In addition, he collected a retirement salary from the State for the entire 1999 calendar year totaling $59,195.

In the 2000 calendar year, he continued as a rehired retiree, at an hourly rate of $138.41; this was increased after the first pay period by two percent, to $141.18 hourly or $135,533 or the maximum yearly salary of a Commissioner working full time. He continued to collect this salary until his "second" retirement, effective May 31, 2000. In the 2000 calendar year, he was paid $57,357, for 51 days of work as a reemployed retiree. In addition, from the beginning of the 2000 calendar year to the date of his "second" retirement, he collected retirement salary from the State totaling $30,240.

Interviews with State officials disclosed that, because of the importance of implementing the new State Police radio system and other matters, it was essential to retain him as Commissioner of Public Safety, and it was necessary to provide a financial incentive to do so.

Statutory authority or regulation should be established over the practice of reemploying retirees, for the same or similar position that the retired employee was in, at a higher hourly rate (See Recommendation 7.).

Department of Administrative Services' Response:

"The Department of Administrative Services does not establish the hourly rate paid to reemployed retired employees. The Office of the State Comptroller, in conjunction with the Office of Policy and Management, regulate practices in this area."

Office of Policy and Management's Response:

"The Office of Policy and Management agrees that it is not common practice to reemploy retirees at hourly rates in excess of what a permanent full time State employee would receive. However, as noted in the Recommendation, because of the importance of implementing the new State Police radio system and other matters, it was essential to retain the incumbent as Commissioner and provide a financial incentive to do so. It is important to note that in this particular instance, the incumbent was paid for 120 days and volunteered the balance of the time he worked."

Office of the State Comptroller's Response:

"Under the existing statute and regulation, the authority to establish rates of pay for employees and reemployed retirees is not within the jurisdiction of the Comptroller's Office. Accordingly, in the case cited herein, the hourly rate of pay for the reemployed retiree in question was developed by the Department of Administrative Services in concert with the Office of Policy and Management and the Department of Public Safety."

Auditors' Concluding Comments:

We are not assessing the decision to reemploy the retired Commissioner of Public Safety at a particular pay rate as not being beneficial to the State. However, we believe controls and procedures should be established that regulate this practice, and those controls should require that the criteria for the decision be documented.

Item No. 8 Part Time Employment of Retirees in Critical Managerial Positions

There is no statutory authority, regulation or administrative control over the practice of reemploying retirees for critical management positions on a part time basis for considerable lengths of time.

The State employees' retirement agreement allows a retired State employee to accept reemployment with the State for a maximum of 120 working days in any one calendar year without loss of retirement benefits. Our review identified two cases that involved a Commissioner and an upper managerial level employee, both of whom were reemployed in their previous positions on a part time basis after retirement. In these cases, the employees did not serve full time for several months, until the positions were refilled, but served just a few days each week for the entire calendar year.

Section 4-8 of the General Statutes details the qualifications, powers and duties of Department heads. It specifies that each Department head may appoint deputies as necessary for the efficient conduct of the business of the Department. The Statute also specifies that such appointees shall devote full time to their duties with the Department and shall engage in no other gainful employment. The Statute does not impose this requirement on the Department head. However, although the statutes do not explicitly specify, it is apparent that the duties of an agency head, for example the Commissioner of Public Safety, require the full attention of the individual assigned those duties. We note the following -

Reemployment Agreement - Department of Public Safety -

As previously noted in Item No. 7 of this report, the Commissioner of the Department of Public Safety retired from State service one month after being appointed as Commissioner. Immediately after retirement, he continued as Commissioner by being reemployed as a retiree for 120 days each year. He continued to serve as Commissioner, reemployed as a retiree for 120 days each year, until his final departure from State service on June 30, 2000.

Reemployment Agreement - Department of Mental Retardation -

An Assistant Regional Director at the Department of Mental Retardation retired on July 1, 1997. On July 7, 1997, he was rehired in the same position, as a retiree, for 120 days per year. He received successive reemployment agreements in 1998, 1999 and 2000. On August 28, 1998, he was promoted to Training School Director, with a corresponding increase in salary. On January 1, 2000, he was transferred to the position of Regional Director for the Department's Northwest region.

For three years, this individual has maintained employment and advanced his career in senior management positions on a part time basis after retirement. In each of those years, he has only worked a maximum of 120 days.

In both of these cases, the employees involved were in critical positions entrusted with the safety of clients or the public. We believe Section 4-8 of the General Statutes should be revised to include the agency head as a full time employee. In addition, centralized controls should be

implemented to restrict the filling of certain management positions with part time employees. The 120-day contract should only be used to retain a critical manager for a short period of full time employment, until the position is refilled, rather than allowing the position to be staffed on a part time basis for a period of a year or more.

Statutory authority or regulation should be established over the reemployment of retirees as part time employees in critical managerial positions (See Recommendation 8.).

Department of Administrative Services Response:

"Again, as in the response to the previous finding (Item No. 7), this is not within the Department of Administrative Services authority but more aptly rests with the Office of the State Comptroller and the Office of Policy and Management."

Office of Policy and Management's Response:

"There have been rare instances, especially when early retirement incentives are offered, where employees who have specialized expertise retire in advance of a time where succession planning can be implemented. Additionally, there have been instances wherein legal action has been instituted requiring the expertise of similar individuals. The Office of Policy and Management is involved in these instances and exercises oversight responsibility."

Office of the State Comptroller's Response:

"From our perspective, management should be empowered to operate with the greatest freedom in determining the means by which the State's mission is to be fulfilled. In the judicious exercise of this power, the outcome may be that certain retirees are reemployed in critical management positions within the limits of the State Employees Retirement Act. Parenthetically, this does not mean that a retiree's reemployment will be on a part time basis, as assumed by the recommendation set forth above. Certainly, it has not been suggested to date that the reemployment of a retiree as the Commissioner of Public Safety inured to the State's detriment; in fact, the reemployment of this retiree has been universally heralded as beneficial to the overall operations and prestige of the Department of Public Safety. That being the case, the Comptroller's Office views as dubious any proposed statute or regulation intended to inhibit this essential management right."

Auditors' Concluding Comments:

We are not assessing the decision to reemploy the retired Commissioner of Public Safety as not being beneficial to the State. We believe controls and procedures should be established that regulate this practice, and to require that the criteria for the decision be documented.

RECOMMENDATIONS

1. **Statutory authority and corresponding regulations are needed to guide State agencies when situations require the granting of special separation payments or other benefits that exceed those now allowed by Statute to State employees leaving State service.**

   Comment:

   Our examination found that State agencies were applying a Department of Administrative Services policy that was unwritten and never formally prepared and reviewed. This policy allows the head of a State agency flexibility without the benefit of guidelines. Therefore, separation agreements are completed that grant benefits to employees that are not specifically authorized by Statute.

2. **Controls should be established, in particular, outside oversight, review or approval, of special separation or stipulated agreements granted to employees leaving State service.**

   Comment:

   Our examination found that there was no centralized control or requirement for review of proposed separation or other agreements. Such agreements should be submitted to the Department of Administrative Services to verify that the provisions in such an agreement were not contrary to the policies of the State and were in accordance with statutes and regulations.

3. **Regulations and policies governing the immediate removal of a discharged employee from the workplace should be revised.**

   Comment:

   When it becomes necessary to effect the immediate removal of an employee from the workplace, either because that employee has access to sensitive accounting records, data processing systems, or to preclude any danger or disruption to other employees, State agencies have been granting paid leave under an unwritten policy. Our examination found a number of different ways this policy was put into effect. As it is an unwritten policy, State agencies have had no guidance in applying it, and consequently, it can be applied unfairly and in a discriminatory manner.

4. **Regulations or policies should be established to govern the practice of the altering of service ratings and removing disciplinary matters from an employee's records.**

   Comment:

   Our examination found that it is a very common practice to include as part of a separation or stipulated agreement a provision that essentially rewrites an employee's personnel file by changing service ratings, the reason for dismissal, and placing derogatory information in a separate file.

5. Regulations or policies should be established to govern the practice of allowing laid off or discharged employees to collect their accumulated leave time by remaining in State service past the normal separation period.

Comment:

Our examination found that it was possible for separation or stipulated agreements to provide employees leaving State service to continue on the payroll past a normal separation date, and receive full payment for accumulated sick leave and fringe benefits. This can be perceived as a benefit unfairly granted to a few employees.

6. The State Employees Retirement Act should be amended to address the practice of including large lump sum payments of claims or the extended use of sick leave in the calculation of future retirement benefits.

Comment:

Retiring employees receiving large lump sum payments or remaining on the payroll using accumulated sick leave until retirement date may receive credit for a higher salary or longer State service in their retirement calculation. This can be perceived as a benefit unfairly granted to a few employees.

7. Statutory authority or regulation should be established over the practice of reemploying retirees, for the same or similar position that the retired employee was in, at a higher hourly rate.

Comment:

Our examination identified a few reemployment contracts granted to retiring employees that could be considered as excessive or abusive.

8. Statutory authority or regulation should be established over the reemployment of retirees as part time employees in critical management positions.

Comment:

Our examination identified a few reemployment contracts granted to retiring employees that allowed them to serve as Commissioner or in other critical managerial positions on a part time basis. These positions directly affected public safety or the care and welfare of clients.

CONCLUSION

In conclusion, we wish to express our appreciation for the cooperation and courtesies extended to our representatives by the officials and staff of the Department of Administrative Services, the Office of Policy and Management, and other State agencies during this examination.

Matthew Rugens
Principal Auditor

Approved:

Kevin P. Johnston
Auditor of Public Accounts

Robert G. Jaekle
Auditor of Public Accounts

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