

SAN JOSÉ STATE UNIVERSITY
Early Exit Program (EEP)
First Separation Agreement and Release

This Separation Agreement and Release ("Agreement") is by and between the Board of Trustees of the California State University through San José State University (the "University") and _____ ("Employee"). As used in this Agreement, "University" includes the Board of Trustees of the California State University and its agents, employees, attorneys, officers, directors, trustees, auxiliary organizations, affiliates, predecessors, successors in interest and assigns, and representatives. The University and Employee are sometimes collectively referred to as the Parties.

Factual background

Whereas, Employee agrees to voluntarily resign through the Early Exit Program, effective _____

Whereas, the University has conditionally accepted Employee's application to participate in the Early Exit Program pending the timely execution of this Agreement, per the Terms and Conditions of the Early Exit Program;

Whereas, both the University and Employee desire to settle/avoid any actual or potential differences and disputes of their employment relationship, and wish to avoid the expense, inconvenience, and uncertainty of further proceedings.

Now, in consideration of the foregoing, and of the mutual covenants, commitments, and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, University and Employee each acknowledge and voluntarily agree as follows:

Agreement terms

1. Employee's Resignation - Employee agrees to voluntarily resign from Employee's employment with the University, effective _____. This signed settlement agreement serves as a resignation letter.

The University agrees to accept Employee's voluntary resignation. The University's execution of this agreement is deemed acceptance of Employee's resignation.

As a material consideration for the University entering into this Agreement, Employee acknowledges and agrees that Employee's resignation from all positions of employment with the University is voluntary and will be irrevocable as of the date that this Agreement is signed by both Parties. Further, Employee hereby waives any right Employee may have under any applicable law, regulation, Collective Bargaining Agreement or policy to revoke or rescind Employee's resignation.

2. Retreat Rights - As a further material consideration for the University entering into this Agreement, to the extent Employee has any applicable retreat rights, Employee agrees to waive any such retreat rights.
3. Future Employment - Employee will be prohibited from accepting employment for another position with SJSU for 18 months from the date of separation. This time period does not apply to rehired annuitant positions, which will adhere to time periods determined by CalPERs provisions.

4. Severance Benefit - Within thirty (30) days of Employee's last day of employment with the University, the University shall pay Employee the amount of _____, less all appropriate payroll deductions. This amount represents fifty (50) percent of the calculated separation package per the terms of the Early Exit Program. Employee understands and agrees that the Severance Benefit described in this Agreement exceeds what Employee is otherwise entitled, and such payment is in exchange for executing this Agreement and complying with the terms and provisions herein. Employee acknowledges that this severance benefit is not considered reportable to CalPERS nor will it be included in the calculation of CalPERS retirement benefits.
5. Tax Indemnification: Employee agrees that neither Employee nor Employee's attorneys have relied on any representations as to the tax consequences of this Agreement. Employee further agrees that if any taxing authority determines that any part of the Agreement is taxable, Employee will be solely responsible for all such taxes, and that Employee shall indemnify and hold harmless the University from liability to any tax authority, and from any claims made in any administrative or judicial action to collect taxes from the University. If a proceeding is instituted against the University, the University will give Employee notice of the proceedings at Employee's last known address, and Employee will be obligated to defend and indemnify the University.
6. General Release and Waiver of Claims -
- a. Employee hereby waives and fully releases and forever discharges the University from any and all claims, causes of action, complaints, damages, agreements, suits, attorney's fees, loss, cost or expense, obligations and liabilities, of whatever kind or character, any statutory claims, or any and all other matters of whatever kind, nature or description, whether known or unknown, occurring prior to the date of the execution of this Agreement, which Employee may have against the University, by reason of or arising out of or concerning Employee's employment with the University. Employee acknowledges and agrees that Employee's release of claims specifically includes, but is not limited to, any retreat rights, as well as any and all claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000 et seq.; the Age Discrimination in Employment Act, 29 U.S.C. section 621 et seq. ("ADEA"); the Federal Civil Rights Statutes, 42 U.S.C. sections 1981, 1982, 1983, 1985 and 1986; the Americans with Disabilities Act; the Equal Pay Act; the California Fair Employment and Housing Act, California Government Code section 12940 et seq.; the Family and Medical Leave Act; the California Labor Code; and the Unruh Civil Rights Act based upon events occurring prior to the date of the execution of this Agreement.

In so doing, Employee expressly acknowledges and agrees that Employee hereby waives all rights Employee may have under Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Employee understands and acknowledges that the consideration provided for in this Agreement is in full and complete settlement of all claims of any kind, whether known or unknown, actual or potential, which Employee may have against the University in connection with Employee's employment, working conditions, and any other conduct of the Parties occurring prior to the date of the execution of this Agreement.

- b. Nothing in this Agreement shall be construed to prohibit Employee from filing a charge with or participating in any investigation or proceeding conducted by the EEOC or a comparable state or local agency. Notwithstanding the foregoing, the Employee agrees to waive Employee's right to recover monetary damages in any charge, complaint, or lawsuit filed by Employee or by anyone else on Employee's behalf.
 - c. Nothing in this Agreement shall be construed as waiving any entitlement to any compensation Employee may have under any applicable Collective Bargaining Agreement that is earned by Employee on or before Employee's last day of employment with the University.
7. Worker's Compensation - The General Waiver and Release of Claims in this Agreement does not affect worker's compensation benefits.
 8. ADEA Release - Employee hereby expressly agrees that this General Waiver and Release includes but is in no way limited to any and all claims and rights employee may have under the Age Discrimination in Employment Act of 1967, as amended. Employee expressly acknowledges that (a) Employee is hereby advised to consult an attorney prior to executing this Agreement; and (b) Employee has carefully read the entirety of this Agreement and knows the contents thereof, and (c) Employee has had a reasonable opportunity to consult with an attorney of Employee's own choosing prior to executing this Agreement.
 9. Voluntary Agreement - Employee acknowledges that they have read this Agreement in its entirety, understands it, and enters into this Agreement freely and voluntarily.
 10. Non-Assignment - The Parties expressly warrant that they have not transferred to any person or entity any right, cause of action or claim released in this Agreement.
 11. Governing Law - This Agreement shall be interpreted under the laws of the State of California.
 12. Severability - The provisions of this Agreement are severable, and if any part of it is found to be invalid or unenforceable, the other parts shall remain fully valid and enforceable.
 13. Counterparts - This Agreement may be executed in several counterparts, and each executed counterpart shall have the same effect as an original and shall constitute an effective, binding Agreement on all of the parties hereto, and their successors and assignees. Electronically scanned copies of signatures will constitute acceptable, binding signatures for purposes of this Agreement.
 14. Complete Agreement - This Agreement represents the full and complete agreement and understanding between the Parties with respect to the matters stated herein. Any agreement or promises alleged to have been made which are not reflected in the written terms of this Agreement are and shall be superseded by the terms of this Agreement and shall have no effect.

- 15. Modification - No supplement, modification, waiver or amendment of this Agreement shall be binding unless executed in writing by the Party against whom enforcement of such supplement, modification, waiver or amendment is sought.

- 16. Captions - Captions and headings of the sections of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

- 17. Costs - The Parties shall bear their own costs, expenses, and attorneys' fees.

- 18. Effective Date - The execution date of this Agreement shall be the date of the last signature of the Parties, upon which this Agreement shall become effective and enforceable ("Effective Date").

By signing below, the Parties witness their agreement to all the terms and conditions of this Agreement.

Employee Signature

Date

SJSU Signature

Date