

Accretion FAQs

1. [What is a unit modification petition to accrete a job title into a union?](#)

A legal administrative process in which a union files a petition with the Public Employment Relations Board (PERB) to add a job classification(s) to an existing union bargaining unit. When PERB issues an Order granting the petition, that job classification(s) is accreted (added) to the union.

2. [How does this affect employees in the impacted titles?](#)

During the Unit Modification Process: Employees in impacted titles maintain their current status until such time that PERB grants the unit modification (by issuing an Order) or the University and union reach an agreement (often through a mediation process). In most instances, PERB will grant the Order despite the University's repeated attempts to challenge these types of petitions. Once the University is put on notice that a petition has been filed to change the bargaining unit to include additional title(s), any changes we make or attempt to make may be viewed as obstructing the petition or retaliation for filing the petition and could result in an Unfair Labor Practice charge filed by the union against the University.

After the Accretion Order is Issued by PERB: Employees in the impacted titles are now represented by the union according to the effective date in the Order. Their employment is governed by the collective bargaining agreement (CBA) between the University and the union. They are no longer governed by UC's Personnel Policies for Staff Members (PPSM). Some terms and conditions of employment, such as wages and benefits, will need to be negotiated separately. New union specific job codes will be created into which the newly accreted employees will be placed.

3. [What if PERB denies the unit modification petition?](#)

While this happens very rarely, if PERB denies a unit modification petition, the job classifications do not accrete into the union and the incumbent employees remain as policy-covered staff.

4. [How does this process affect me as a supervisor / manager / leader?](#)

During the Unit Modification Process: You should refrain from making any significant changes to the title/position (including changes to salary, job descriptions, reclassifications, confidential designations, etc.) after a petition is filed up to the completion of related accretion bargaining, without first consulting your HR Partner who will consult with ELR as necessary.

After the Accretion Order is Issued by PERB: You now have represented staff members. You cannot make unilateral changes to terms and conditions of employment of the impacted staff. You must follow the terms and conditions set forth in the collective bargaining agreement.

- You are encouraged to take the [Berkeley People Management class, *Managing in a Union Environment*](#).

5. [What can or can't I say to staff who ask questions about unit modification / accretion?](#)

- Do not discuss your opinions about unions or union representation with represented employees, including newly accreted staff members.
- Refrain from providing guidance beyond referring staff to their union that filed the accretion petition.
- In many instances, staff are unaware that a unit modification petition has been filed as the process does not require a union to communicate with impacted staff or obtain their feedback. Direct the employee to their union representative for all questions by impacted staff about unit modification or accretion, such as what this change means, how it will impact them, payment of union dues or whether or not to join the union. Union contact information may be found [here](#).

6. Why can't I discuss unit modifications or accretion with impacted employee(s)?

As a leader, you represent the University. If you engage directly with staff potentially impacted by a unit modification petition, this could be viewed as retaliation in response to a unit modification, a violation of the law, or direct dealing. It puts the University at risk and subjects the University to an Unfair Labor Practice (often referred to by its acronym ULP) charge. Additionally, the Prohibition on Public Employers Detering or Discouraging Union Membership (PEDD) is a California law that prevents public employers from interfering with employees' rights to join or remain in a union. The PEDD allows PERB to issue significant penalties if it finds that the law was violated.

7. What is direct dealing?

Direct dealing is a type of unfair labor practice where the employer bypasses the union. One type of direct dealing involves a situation where the employer (a supervisor, department head, appointing authority, etc.) deals directly with individual employees to make a change in the terms and conditions of employment instead of dealing with the employee's collective bargaining representative. An employer may not bypass the union and deal directly with employees on matters that are properly the subject of negotiations with the bargaining unit's exclusive representative.

The second type of direct dealing involves an employer communicating directly with employees to undermine the union's authority to represent the bargaining unit.

It is not direct dealing to provide objective and fact-based updates regarding bargaining. The Office of the President may periodically provide authorized updates to your employees during this process. You will receive a copy of any such communications.

8. What if I have questions about unit modification or accretion?

Please contact your human resources partner, who will consult with ELR as needed.

9. How long will the unit modification and accretion bargaining process take?

Unit Modification: This part of the process can take up to several months, and ends with PERB issuing the Order granting or denying the petition.

Accretion Bargaining: It depends; it could take several months or longer, and has sometimes taken years.

10. What if I believe that one of my employees in a position being accreted should be considered “Supervisory, Confidential or Managerial” and should be excluded from the union?

Upon receiving notice that a unit modification petition to accrete positions has been filed, supervisors must review the Employee Relations Code (ERC) of impacted employees (both new and current) to ensure they are properly designated as supervisory, managerial or confidential (see definitions below), when appropriate to do so. Supervisors should:

- Consult with your HR Partner / Compensation during this process to ensure that ERCs are appropriately reviewed and accurate.
- If an ERC needs to be updated, the department or HR Partner must immediately notify ELR at hradmin_elr@berkeley.edu.

HEERA Definitions of Supervisor, Confidential, Manager

Supervisor: HEERA Section 3580.3 defines **supervisory employee** as “any individual, regardless of the job description or title, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. With respect to faculty or academic employees, any department chair, head of a similar academic unit or program, or other employee who performs the foregoing duties primarily in the interest of and on behalf of the members of the academic department, unit or program, shall not be deemed a supervisory employee solely because of such duties; provided, that with respect to the University of California and ... there shall be a rebuttable presumption that such an individual appointed by the employer to an indefinite term shall be deemed to be a supervisor. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.”

To qualify, the supervisor must supervise at least two FTE in total.

Confidential Employee: HEERA Section 3562(d) defines a **confidential employee** as “any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of those management positions.”

- Please note- the everyday definition of “confidential” differs from the statutory definition set forth above.
- Although the wording of the law might be unclear, legal interpretations do make it clear that a Financial Analyst or Financial Services Analyst is not considered "confidential" just because they have access to confidential information, related to bargaining or otherwise. For a FA or FSA to be classified as "confidential," they must be someone or support someone who is directly involved in developing or presenting management's positions during bargaining meetings.
- Most of our FAs or FSAs likely do not qualify as "confidential" under the relevant

definition.

Manager: HEERA Section 3562(k) defines a **managerial employee** as “any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participates in decisions with respect to courses, curriculum, personnel, and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of those duties”.

PERB CHECKLISTS - used by PERB to determine if employees should be excluded from a bargaining unit

Supervisor Checklist

<https://perb.ca.gov/wp-content/uploads/forms/sup-employee-checklist-880.pdf>

Confidential Checklist

<https://perb.ca.gov/wp-content/uploads/forms/confidential-emp-chkl-864.pdf>

Managerial Checklist

<https://perb.ca.gov/wp-content/uploads/forms/management-emp-chkl-868.pdf>

11. Is a non-confidential represented employee allowed to have access to “normal” confidential information unrelated to collective bargaining? Can we prevent them from sharing collective bargaining information with the union if they inadvertently see it?

Yes. You can permit your employees to have access to confidential information. We recommend, however, that you provide explicit written direction to *all* employees (confidential or not), as to how confidential information should be handled. For example, “All information marked confidential shall not be forwarded without explicit written permission from the Dean” or “Any information you have access to by virtue of your employment in the AVC’s office shall be treated as confidential and not shared outside of this office without explicit written permission.” Your HR Partner or ELR can help support you with specific directions.

12. Can we prohibit non-confidential employees from sharing collective bargaining information with the union if they inadvertently see it?

Yes. As with any other form of confidential information, we can direct employees not to share it. As above, we recommend that you provide explicit direction as to how confidential information should be handled.

13. What performance evaluation is now applicable to the impacted employee(s)?

- a. For CX employees, please use the following performance evaluation form:
 - i. [Represented Staff Performance Review Form #2\(link is external\)](#)
- b. For all other union represented employees, please use the following evaluation

form:

- i. [Represented Staff Performance Review Form #1\(link is external\)](#)
- c. For information regarding the represented employee performance management process please visit:
 - i. [Managing the Performance Review Process for Represented Employees\(link is external\)](#)

14. Where can my employees find out more about unions and collective bargaining?

Please direct employees to contact their union representative with any and all questions about union representation. Union contact information may be found [here](#). You may also refer them to the UC Office of the President's web page at <https://ucnet.universityofcalifornia.edu/labor/faq.html>

15. What needs to be negotiated in accretion bargaining after the PERB Order is issued?

Title-specific terms and conditions of employment will be addressed through a process called accretion bargaining. In systemwide accretion bargaining, UC systemwide negotiators at the Office of the President with representatives from the locations negotiate title-specific terms such as step structures, step placement, wage increases, etc. All other terms of the CBA that apply to bargaining unit employees (i.e. terms that are not title-specific) apply to the accreted employees. Examples of terms that are not title-specific include but are not limited to - Vacation, Sick Leave, Corrective Action, Discipline & Dismissal, Grievance, Leaves of Absence, Benefits, Retirement, etc.

16. Will newly accreted employees have to pay union dues?

UC employees represented by a union can elect to become union members, subject to union rules, including but not limited to paying membership dues. Employees with questions about union membership shall be directed to their union. Union contact information may be found [here](#).

17. Will unit modification or accretion impact any salary increases already in process for policy-covered employees?

Accretion Process: You will be provided specific information as the accretion bargaining proceeds. Impacts can vary depending on what time of year and date the Order is effective. The accretion date determines what increases a unit member may be entitled to receive. Generally speaking, if an accretion date occurs before an across-the-board ("ATB") increase provided for in the union contract occurs, all eligible newly accreted employees would receive the ATB increase provided for in the union contract - as union members, not as policy-covered employees.

18. Is there training available to help me understand how to manage a unionized employee?

Yes. You are strongly encouraged to take the [Berkeley People Management class, *Managing in a Union Environment*](#).

19. The job classification accreted is classified as exempt. What effect does the accretion have on this classification?

Job titles that are classified as Exempt will remain as such unless it is determined through the accretion bargaining process to change their status. Generally speaking, unionization does not have an effect on whether an employee is classified as exempt or non-exempt.

20. The job classification is currently in a Contract Appointment. If the collective bargaining agreement doesn't provide for Contract Appointments, what should be done?

It depends on the contract, and may also become the subject of accretion bargaining. Usually, contract appointments should be converted to Limited or Career Appointments. Generally, the date the incumbent was first appointed to their Contract Appointment would serve as the date their Limited or Career Appointment began.

Please check with your HR Partner to confirm for each accretion as this answer may vary, depending on which contract is involved or if there are changes agreed to during the accretion bargaining process.