

Know Your *Rights!*

A guide to workplace laws for
classified employees and
paraprofessionals in California

Council of Classified
Employees

CFT, AFT, AFL-CIO



A Union of Professionals

Weingarten Rights

When to bring a union representative

You have the right to have a union representative at any meeting or investigatory interview with a supervisor or administrator that you reasonably believe might lead to discipline. These are called your Weingarten Rights, named after a 1975 U.S. Supreme Court decision. Your supervisor does not have to notify you of your right to union representation — you must assert your Weingarten Rights. This applies to everyone who works in a unionized child care center, school, college or university, whether public or private.

What is discipline?

Discipline might include a written reprimand, a demotion, an unpaid suspension from work, or termination.

Attending meetings

If you are told to attend a meeting with your supervisor, ask what the topic will be. If it sounds to you as if it might lead to discipline, contact your union and ask for a representative to accompany you. Or, if you are in a meeting with your supervisor and the direction turns toward reprimand, say that you would like to reschedule the meeting to allow you to have a union rep present. If the supervisor refuses, explain that you prefer not to answer questions, but that you will if directly ordered to do so.

To assert your Weingarten Rights, say:

If this discussion could in any way lead to my being disciplined, terminated, or could affect my personal working conditions, I respectfully request that my union representative be present.

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Personnel Files

Classified Employees have the right to review their personnel files and enter into their file responses to negative documents.

Source: California Education Code 44031 (K - 12 Districts)

Source: California Education Code 87031 (Community College Districts)

- Your employer keeps your personnel records. These records form the basis for any decisions affecting your employment. Personnel files kept by supervisors are not the official personnel file.
- You have the right to see your file — at a time when you are not required to provide service to your employer. You can review all materials in your file except pre-employment records, examination committee records or promotional examination records. You do have the right to have access to “...numerical scores obtained as the result of a written examination.”
- Information of a derogatory nature shall not be placed in your personnel file “unless and until” you have been given notice and opportunity to review and comment on the information. You have the right to enter and have attached to any negative document placed in your file your own comments. This process “...shall take place during normal business hours, and the employee shall be released from duty for this purpose without salary reduction.”

Enforcement: If language is in the collective bargaining agreement — file a grievance; if not, civil action may be pursued.

Case Law: Miller v. Chico Unified School District (1979) Cal. 3d. 703.

Wages

Classified employees' earned wages are their property.

Source: California Education Code 45166, 45167, 45169 (K – 12 Districts)

Source: California Education Code 88165, 88166, 88168 (Community College Districts)

- Classified employees' earned wages are their property. Once you have earned your wages, you are entitled to receive them in full. You must be compensated for all hours that you work. This includes all time that you are on duty, whether or not you are performing the specific functions of your job.
- Classified employees must receive their pay at least once during each calendar month. Such pay must be made on the last working day of the month in which the employer is open for business. The employer is not precluded from making payment of earned wages prior to the last working day of the month.
- Errors in the calculation, reporting or payment of a classified employee's salary must be corrected and a supplemental payment shall be made from any available funds, within five work days following the determination of the error.
- Classified employees must receive upon initial employment, or change in classification, a copy the following information: job description, salary data, assignment or work location, work hours and work week. The salary data must include the annual, monthly or pay period, daily hourly, overtime and differential rates of compensation, what ever is applicable.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (US Department of Labor, Wage and Hour Division, Fair Labor Standards Act).

Overtime Pay

Classified employees have a right to overtime pay.

Source: California Education Code 45128, 45131 (K – 12 Districts)

Source: California Education Code 88027, 88030 (Community College Districts)

- Classified employees must be paid at one and one-half times their “regular rate of pay” for all work “suffered or permitted” (allowed) in excess of eight hours a day and/or in excess of forty hours per week.
- Classified employees who are part-time employees and average four or more hours per day during their regular workweek must be paid at the overtime rate for all time worked on the sixth and seventh day following the beginning of their work week. Classified employees who are part-time and average less than four hours per day must be paid at the overtime rate for all time worked on the seventh day following the beginning of their workweek.
- Classified employees may be allowed the use of compensatory time off (earned at the rate of time and one-half for time worked over 40 hours a week) in lieu of cash compensation, if not restricted by the collective bargaining agreement. Compensatory time can accumulate to a maximum of 240 hours and can be used at any time up to twelve months in which it was earned so long as it does not unduly disrupt the district’s operation. Compensatory time, when taken, must be paid at the rate in effect when it is taken. This applies equally to when a classified employee elects to receive a payo instead of taking the time.
- Under the “suffered or permitted” concept classified employees cannot be both a “paid” employee and a “non-paid” volunteer while performing the same type of work for the same employer. Classified employees must be paid for all work that might be considered work within their classification. (For example: A food service worker could volunteer to type letters for “back to school night”, but could not volunteer to cook at the school’s pancake breakfast.)

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (US Department of Labor, Wage and Hour Division, Fair Labor Standards Act).

BENEFITS — Vacation

Classified employees are entitled to vacation.

Source: California Education Code 45190, 45197 (K – 12 Districts)

Source: California Education Code 88190, 88197 (Community College Districts)

- Every school district must grant all classified employees (excluding substitute, short term or limited-term employees) an annual vacation at not less than the accrual rate of five-sixths of a day for each month the classified employee is in paid status.
- After the initial six months of employment, vacation becomes a vested right for classified employees. As a vested right, earned vacation becomes your property and is protected. However, if your collective bargaining agreement requires that vacation must be requested and taken, failure to do so may put your vacation in jeopardy.
- Classified employees may with the approval of the district, take vacation at any time during the school year. If a classified employee is not permitted to take his/her full annual vacation, the amount not taken shall accumulate for use in the next year or he/she must be compensated for it or as specified in the collective bargaining agreement.
- Classified employees may be advanced vacation before it is earned. If, however, you separate from the district, the appropriate amount of salary must be deducted from your final paycheck to pay for all unearned days of vacation.
- Permanent classified employees must be compensated in a lump sum for all earned and unused vacation upon separation from service.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

BENEFITS — Holidays

Classified employees are entitled to holidays.

Source: *Government Code 6700*

Source: *California Education Code 1318, 37220, 37221, 37222, 45203, 45204, 45205, 45206, 45206.5 (K – 12 Districts)*

Source: *California Education Code 88203, 88204, 88205, 88205.5, 88206 (Community College Districts)*

- All classified employees are entitled to eleven paid holidays provided they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday. These holidays are as follows:
 - January 1, New Years Day
 - Third Monday in January, Martin Luther King Jr. Day
 - February 12, Lincoln Day
 - Third Monday in February, Washington Day
 - Last Monday in May, Memorial Day
 - July 4, Independence Day
 - First Monday in September, Labor Day
 - September 9, Admissions Day
 - November 11, Veterans Day
 - That Thursday in November declared as Thanksgiving Day (normally the fourth Thursday)
 - December 25, Christmas Day
- In addition to the holidays listed, classified employees are entitled to any day declared by the governor or president as a day of public fast, thanksgiving or holiday. Further, classified employees have the ability through the negotiations process to further expand their total number of holidays.

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- Holidays for classified employees which fall on a Saturday are taken on the preceding Friday. Holidays which fall on a Sunday are taken on the following Monday.
- Classified employees who are required to work on a any holiday must be paid (or given compensating time o) at the rate of time and on-half their regular rate of pay, in addition to the regular pay received for the holiday.
- If there are any additional staff development days provided to teachers or classified employees by the district during the year, classified employees must receive their regular pay (whether or not they are required to report for duty). This applies for any school day during which students are not in attendance but for which certificated employees receive their regular pay.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

Case Law: California School Employees Assn. v. Azusa Unified School District (1984) 152 Cal App 3d 580.

BENEFITS – Sick Leave

Classified employees are entitled to sick leave.

Source: California Education Code 45136, 45191, 45202 (K – 12 Districts)

Source: California Education Code 88035, 88191, 88202 (Community College Districts)

- Classified employees are entitled to twelve days leave of absence for illness or injury (sick leave), with full pay, for a fiscal year of service. Classified employees who work less than a full fiscal year are entitled to a prorated portion of twelve days as it relates to the total number of months they work in a fiscal year.
- Compensation for these days must be the same as would normally be received had the employee worked.
- New employees are entitled to six (6) days of sick leave for the first six months of their employment. The district must carry over into the new fiscal year all unused sick leave.
- Sick leave is not a property right. Therefore, upon separation from the district, all accrued sick leave is lost. Accrued sick leave, however, can be transferred from one school district to another, but must be done within one year.
- For PERS eligible employees, any unused sick leave you have at the time of retirement will automatically be converted to additional service credit. (25 eight-hour days equal one additional month of service credit) You are asked to have your employer verify your unused sick leave on your application at the time of retirement. You will be given credit immediately.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

BENEFITS – Industrial Accident and Illness

Classified employees are entitled to leave of absence for industrial accidents and illness.

Source: California Education Code 45192, 45196 (K – 12 Districts)

Source: California Education Code 88192, 88196 (Community College Districts)

- When an employee has suffered an industrial accident or illness, such employee shall be entitled to a paid leave of absence for up to sixty working days in any one fiscal year for the same accident or illness.
- Industrial Accident and Illness leave will commence on the first day of absence.
- Allowable leave does not accumulate from year to year. However, if the accident or illness occurs at a time when the full 60 days will overlap into the next fiscal year, the employee is entitled to only that amount remaining at the end of the fiscal year.
- This leave will be reduced by one day for each day of the authorized absence regardless of the workers' compensation award made under workers compensation, if any.
- If an employee exhausts all available leaves of absence, paid or unpaid, and is not medically able to return to work and if they are not placed in a different position, they shall be placed on a reemployment list for a period of 39 months. Once the employee is able to return to work, they shall be employed in the next vacant position in the class of the person's previous assignment over all other available candidates, except for a re-employment list established for layoff due to lack of work or funds.
- When an employee is injured on the job, prompt notice usually within 24 hours, must be reported to the immediate supervisor at the first opportunity. A claim form (DWC-1) must be filed within one year from the date of injury.
- Every employee should pre-designate his/her physician prior to any accident or illness.

This physician then becomes the "treating physician" for the purpose of the claim. Most decisions relative to the claim are made by that physician.

- Once an employee has utilized their 60 days of industrial accident or illness leave, they are then entitled to use extended sick leave (or differential), vacation, and compensatory time off.
- Once a claim has been approved, the employee will receive temporary disability payments. Payments will then be coordinated with the sick and vacation leaves.
- It is highly recommended the employee contact the chapter representative and/or Labor Relations Representative to ensure that your rights to an industrial accident or illness leaves are protected.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (Workers' Compensation Appeals Board).

BENEFITS – Additional Sick Leave

Classified employees are entitled to additional sick leave.

Source: Federal Family and Medical Leave Act; California Family Rights Act; Government Code Section 12945.2

Source: California Education Code 45196 (K – 12 Districts)

Source: California Education Code 88196 (Community College Districts)

- Classified employees, in accordance with their negotiated contract, are entitled to additional sick leave as follows:
 1. For a period of up to five months which will run concurrently with accrued sick leave and vacation. Utilization of sick leave during this period results in a salary deduction equal to an amount paid an actual substitute employee to fill your position during your absence (in other words, during this leave you receive the difference between your salary and what a substitute is paid). Another classified employee filling in your assigned hours is not considered a substitute. This leave does not accumulate from year to year. However, if the leave usage began at a time where days will overlap into the next fiscal year, the employee is entitled to only that amount remaining at the end of the fiscal year.
 2. For a period of one hundred days (100) of additional sick leave in lieu of the five months described above. Utilization of sick leave during this period generally results in a salary deduction of not more than fifty percent of a classified employee's regular salary (in other words, you receive fifty percent of your salary during this leave). Accumulated sick leave is included in the 100 days, but vacation is not. This leave does not accumulate from year to year. However, if the leave usage began at a time where days will overlap into the next fiscal year, the employee is entitled to a new one hundred days (100) days beginning in the new fiscal year.

- Classified employees may also be entitled to medical leave for a serious health condition as provided by the Federal Family and Medical Leave Act and the California Family Rights Act
- It is recommended that the employee contact the chapter representative and/or Labor Relations Representative in determining which additional sick leave entitlement benefit is applicable.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (Department of Fair Employment and Housing; Department of Labor).

BENEFITS – Bereavement Leave

Classified employees are entitled to bereavement leave.

Source: California Education Code 45194 (K – 12 Districts)

Source: California Education Code 88194 (Community College Districts)

- Classified employees are entitled to a leave of absence as a result of the death of any member of their immediate family. This leave is restricted to three days, or five days, if out of state travel is required.
- A classified employee's immediate family is defined as the mother, father, grandmother, grandfather, or a grandchild of the employee or the spouse of the employee, and the spouse, son, son-in-law, daughter, daughter-in-law, brother, sister, or any relative living in the immediate household of the employee.
- Classified employees may, through the negotiation process, expand the class of relatives listed above as member of the immediate family.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

BENEFITS – Pregnancy and/or Family Leave

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Classified employees may be entitled to pregnancy and/or family care leave.

Source: Federal Family and Medical Leave Act; California Family Rights Act

Source: California Education Code 45193 (K – 12 Districts)

Source: California Education Code 88193 (Community College Districts)

- Classified employees may be entitled to leaves of absence because of pregnancy or convalescence following childbirth. Leaves of absence for this purpose may or may not be with pay. Classified employees should reference their collective bargaining agreements to determine what specific rights are applicable to them.
- Classified employees may also be entitled to up to twelve weeks in a calendar year of paid or unpaid leave for care associated with the birth of a child, adoption, or placement of a foster child, or to care for a family member who is seriously ill. Health and welfare benefits must be provided during the leave on the same basis as if the employee were actively employed.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

BENEFITS – Personal Leave

Classified employees are entitled to personal leave.

Source: California Education Code 45207 (K – 12 Districts)

Source: California Education Code 88207 (Community College Districts)

- Classified employees can use up to seven days of their sick leave for reasons of personal necessity.
- Personal necessity can be used when:
 1. Employees require additional bereavement leave due to the death of a member of their immediate family
 2. When they are needed to care for an ill member of the immediate family
 3. When there has been an accident involving them, their property or a member of their immediate family
 4. When it is necessary for them to appear in any administrative forum as a litigant, party, or witness under subpoena.
 5. Any other reason, as negotiated between the union and the district.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

BENEFITS – Jury Duty

NOTES

Classified employees are entitled to jury duty leave.

Source: California Education Code 44036, 44037 (K – 12 Districts)

Source: California Education Code 87036 (Community College Districts)

- Classified employees are entitled to leave of absence with pay for the purpose of serving on a jury. The district must pay a classified employee called for jury duty at his/her regular rate of pay and generally requires the employee to turn into the district any juror's fee.
- It is illegal for any district to, directly or indirectly; suggest to any classified employee they seek exemption from jury duty. It is also illegal for any district to discriminate against any employee with respect to assignment, employment, promotion, or in any other manner because of the employee's service on a jury.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

BENEFITS – Military Leave

Classified employees are entitled to military leave.

Source: *Military Code Section 395.1*

- Generally, classified employees who enter the active military service of the United States of America or the state of California during times of national emergency (or certain other circumstances) are entitled to a leave of absence from their duties as a district employee.
- Within six months after being honorably discharged from active duty, the public employee shall have the right to the position they formerly held, provided the active military service does not extend beyond the national emergency. Their rate of pay upon reemployment shall be the current salary for that position.
- Any classified employee who is a member of the reserve corps of the armed forces or National Guard or Naval Militia shall be entitled to a temporary military leave of absence as provided by federal law while engaged in military duty ordered for purposes of active military training, encampment, navel cruises, special exercise of like activity, provided the ordered duty does not exceed 180 calendar days.
- Generally, such classified employee shall have the right to be restored to his/her former position formerly held upon the termination of temporary military duty.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (US Department of Labor).

Hours of Employment

Classified employees workweek and workday must be set.

Source: *California Education Code 45127, 45131, 45132, 45133, 45180 (K - 12 Districts)*

Source: *California Education Code 88026, 88040, 88180 (Community College Districts)*

- The workweek and workday must be set for all classified employees. The district cannot increase, decrease or in any way alter the workweek or workday without fully negotiating the change with the union. A classified employee's workweek shall normally be no more than forty hours per week, and their workday shall normally be no more than eight hours per day. The district may, however, establish a workweek of less than forty hours or a workday of less than eight hours for all or any of its classified positions.
- Classified employees are entitled to a duty-free meal period of not less than one-half hour, which shall occur approximately at the midpoint of their shift.
- Classified employees may negotiate a 10-hour four-day-a-week or 9-hour 80-hour-per two-week schedule.
- A district must negotiate with the union before reducing the hours of occupied or vacant positions.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (US Department of Labor, Wage and Hour Division, Fair Labor Standards Act).

Case Law: Healdsburg Union High School District (1984) PERB Decision No. 375 [8 PERC 15021], Reduction of occupied or vacant positions — Huntington Beach Union High School District (2003) PERB Decision No. 1525

Collective Bargaining Rights

Classified employees have the right to negotiate.

Source: California Government Code Sections 3540 – 3549.3 (EERA)

Source: California Government Code Sections 3560 – 3599 (HEERA)

Source: California Government Code Sections 3500 – 3510 (MMBA)

- Classified employees have the right to “...form, join and participate in the activities...” of the union. It is unlawful for a public school employer to threaten, retaliate, interfere with or coerce classified employees because of their participation in union activities
- Classified employees have the right to be represented by the union in meetings with district management that affect their “hours, wages and working conditions.” This includes grievance meetings (formal and informal); and meetings that could reasonably lead to discipline including negative or threatening evaluations).
- The union has the right to negotiate for unit members regarding their “wages, hours and working conditions...” The Public Employment Relations Board (PERB) has interpreted this language to include nearly all action that affects employee working conditions. This includes, but is not limited to:
 - Affirmative action plans
 - Bidding
 - Contracting out
 - Discipline
 - Discrimination
 - Early retirement
 - Grievance procedures
 - Health and welfare
 - Holidays
 - Hours of work
 - Job descriptions
 - Layoff
 - Leaves
 - Overtime
 - Personnel files
 - Promotions
 - Reclassification
 - Reductions in hours
 - Release time
 - Safety
 - Seniority
 - Tools and Uniforms
 - Training
 - Transfer of bargaining unit work
 - Transfer
 - Work calendar
 - Work load

- An employer cannot negotiate with individual employees and is legally required to negotiate only with designated union representatives.
- The union and employees have the right to file Unfair Practice Charges with PERB against employers if rights guaranteed by the government codes have been violated.

Enforcement: Violations of the EERA are addressed by the filing of Unfair Practice Charges with PERB.

Case Law: Anaheim Union High School District (1981) PERB No. 177 (Negotiability).

Case Law: Healdsburg Union High School District (1984) PERB No. 375 (Detailed Negotiable Matters).

Case Law: Novato Union School District (1982) PERB No. 210 (Retaliation or Discrimination against a Union Activist).

SAFETY – Devices

Public employees must be provided with safety devices.

Source: Labor Code Section 6401, 6403

Source: Title 8 California Code of Regulations Section 3380 – 3390

- In general, the district must provide public employees with safety devices and safeguards which are reasonably adequate to make their jobs safe and healthful.
- Public employees must be provided with eye protection whenever there is a risk of receiving eye injuries such as punctures, abrasions contusions, or burns as a result of contact with flying particles or hazardous substances or projections, or as a result of injurious light rays.
- Public employees must be provided with appropriate foot or hand protection when conditions require. Foot protection is required if there is potential exposure to foot injuries from falling objects; hot, corrosive, or poisonous substances; or crushing or penetrating action; or when you are working in abnormally wet locations. Hand protection is required for public employees whose work involves unusual or excessive exposure to cuts, burns, or harmful physical chemical, or radioactive agents.
- Public employees must be provided with head protection such as helmets or hard hats if they are exposed to flying or falling objects.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (California Occupational Safety and Health Administration (CAL-OSHA)).

SAFETY – Healthful Workplace

Public employees are entitled to a safe and healthful workplace.

Source: Labor Code Section 6300

Source: Title 8 California Code of Regulations Section 330 – 340

- Public employees have the right to a safe and healthful work environment. The employer must provide the use of safety devices and safeguards to reasonably ensure their health and safety. The employer must also use methods and processes which are reasonably adequate to insure health and safety, and do every other thing reasonable to protect public employees' lives, safety and health.
- The California Occupational Safety and Health Administration (CAL-OSHA) adopts occupational safety and health standards. The employer must comply with these standards. The standards, in addition to specifying certain safe work practices, are also developed to describe hazardous conditions of toxic materials, specific equipment and work practices which must be used to prevent or eliminate those conditions, and to limit worker exposure to dangerous substances.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (California Occupational Safety and Health Administration (CAL-OSHA)).

SAFETY – Workplace Inspection

Public employees have the right to ask Cal-OSHA to inspect their workplace and have their union present when the inspection occurs.

Source: *Labor Code Section 6309, 6314*

- If a public employee believes that there are unsafe or unhealthy conditions where he/she works, he/she can ask CAL-OSHA to inspect his/her workplace. A public employee's request for an inspection is kept confidential unless otherwise requested.
- Union officers or stewards have the right to accompany the CAL-OSHA investigator on his/her inspection. The employer may not elect the employee representative, and must pay the union officer or steward for time spent on the inspection.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (California Occupational Safety and Health Administration (CAL-OSHA)).

SAFETY – Refusal to Perform Unsafe Work

Public employees have the right to refuse to do unsafe work under certain conditions.

Source: *Labor Code Section 6311 and 6312*

- Public employees can refuse to perform work under certain conditions. The work must violate a CAL-OSHA standard or create a real and apparent hazard. Meaning, a reasonable person would agree that there is a danger, and the danger is to the health or safety of the employee or of another worker, and there is enough time to eliminate the danger through regular complaint channels.
- As a public employee you need to take certain steps before refusing to do any unsafe job so that your rights can be fully protected. These steps should include:
 - Tell your supervisor about the hazard and ask that it be fixed;
 - Reference the collective bargaining agreement to determine what safety protections currently exist;
 - Make it clear to the supervisor that the only reason you are refusing to do the work is because you believe that your health or safety would be in danger if you did the work;
 - Make it clear to your supervisor that you are willing to do the work as soon as the job is made safe. Inform your supervisor that you will do work that is safe in the meantime;
 - If you are not sure whether a particular job presents a hazard, talk to your site representative, job steward, chapter officer or Labor Relations Representative;
 - If the employer does not immediately eliminate the hazard, call the employer's safety office or nearest office of CAL-OSHA with your complaint.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (California Occupational Safety and Health Administration (CAL-OSHA)).

Case Law: CSEA v. Oakdale Union Elementary School District (1998) PERB Decision No. 1246

Layoff and Reemployment

Classified employees have the rights to notice, seniority, displacement, reemployment and retirement.

Source: *California Education Code 45101 (g), 45115, 45117, 45298, 45308 (K - 12 Districts)*

Source: *California Education Code 88001 (g), 88015, 88017, 88117, 88127 (Community College Districts)*

- Classified employees who are subject to layoff have a right to receive notice of the layoff not less than 45 days in advance of the layoff. The notice must also include their “bumping” rights, if any, and their reemployment rights.
- Classified employees are subject to layoff based upon their length of service. “Length of service” is negotiated in the classified contract as either “hours in paid status” or “date of hire”. The classified employee who has been employed the shortest time in the classification shall be laid off first. Time spent in a permanent status in a higher classification is also counted for seniority purposes in lower classifications.
- Classified employees who are subject to layoff may have what are commonly referred to as “bumping rights”. These rights allow a more senior employee to displace or “bump” employees with less seniority in the other classifications. These “bumping” rights are set forth specifically in the provisions of the classified contract and should be reviewed carefully with a union representative to determine specific “bumping” options.
- Classified employees that are laid off are eligible for reemployment for a period of 39 months and must be re-employed in the reverse order of layoff and in preference to new applicants in any classification in which they meet the qualifications... Classified employees who take a “voluntary reduction of hours” in lieu of layoff have an additional 24 months to be re-employed to their former position.
- Classified employees who are subject to, or laid off may elect a service retirement from the Public Employees Retirement System in lieu of layoff. Classified employees electing to retire retain their re-employment rights.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

- Case Law: California School Employees Association v. Pasadena Unified School District (1977) 71 Cal App. 3d 315, 322 (A district's determination of a "lack of work or lack of funds" can be challenged and set aside only if it is "fraudulent or so unreasonable and arbitrary as to indicate and abuse of discretion").
- Case Law: North Sacramento School District (1981). PERB Decision No. 193 (A reduction of hours is not a layoff for bargaining purposes and requires a negotiated agreement with the union to be effected).
- Case Law: Tucker v. Grossmont Union High School District (2008) 168 Cal App 4th 640 (Right to re-employment over outside applicants in any classification for which employee qualified).

Discipline and Due Process

Classified employees have the right to due process, including the right to receive written notice of charges, the right to be represented & the right to informal and formal responses.

Source: California Education Code 45101, 45113, 45116 (Non-merit System K - 12 Districts)

Source: California Education Code 45116, 45302 - 45307, 45311 - 45312 (Merit System K - 12 Districts)

Source: California Education Code 88001, 88013, 88016 (Non-merit System Community College Districts)

Source: California Education Code 88016, 88121 - 88124, 88126, 88130 (Merit System Community College Districts)

- Permanent classified employees have a “property interest” in their jobs which requires the district to comply with “due process” elements before imposing discipline. These basic rights include: notice of the charges, a right to respond orally and/or in writing and the right to representation.
- Under Education Code Section 45116 (88016), classified employees have the right to be notified in writing of the charges against them. The document must set forth the “cause” for which the action is taken, and “...in ordinary and concise language, the specific acts or omissions upon which the disciplinary action is based...”
- Under Education Code Section 45113 (88013), classified employees can not be subject to acts that occurred while the employee was on probation or that are over two (2) years old. This standard automatically exists in non-merit districts but can be negotiated in merit system districts.
- In a merit system school district, the governing board and its management agents impose discipline and must advise employees what is commonly referred to as a “Skelly” conference. Here the employee has the right to respond orally and/or in writing to the charges. The district’s “Skelly” hearing officer is supposed to be an “objective official” from the district. An employee has the right then to appeal any imposed discipline to the personnel commission (or its hearing officer), whose findings are binding upon the employee and the District.

- In non-merit districts, the governing board's management agents propose the disciplinary action, providing the employee with written charges and five (5) days to request a hearing. The Governing Board may hear the case or the parties may delegate the hearing to a hearing officer or arbitrator but "... the governing board's determination of the sufficiency of cause for disciplinary action shall be conclusive."
- Under the provisions of California Government Code section 3543.1(a) classified employees have a right to be represented at all investigative meetings that could reasonably lead to discipline and any meeting to challenge the discipline.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

Case Law: Skelly v. State Personnel Board (1975) 15Cal.3d 194,

Case Law: CSEA v. Personnel Commission (1970) 3 Cal.App.3rd 139

Case Law: Marin Community College District (1980) PERB No. 145 (Denial of Representation)

Sexual Harassment

Classified Employees Cannot Be Sexually Harassed

Source: Title VII of the Civil Rights Act of 1964

Source: Fair Employment and Housing Act

Source: Government Code Section 12950

Source: California Education Code Sections 212.5, 212.6, 230

- Sexual harassment in the workplace is any unwanted sexual attention which makes a classified employee feel uncomfortable and causes problems on the job. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other continuous verbal or physical conduct of a sexual nature.
 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
 2. submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting such individual; or
 3. such conduct is severe or pervasive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating
 4. hostile or offensive working environment.
- Sexual harassment can take many forms including, but not limited to:
 1. sexist remarks regarding an employee's body, clothing, or sexual activity;
 2. constant leering or ogling;
 3. offensive touching, patting, or pinching;
 4. repeated and unanswered invitations for dates;
 5. explicit demands for sexual activity;
 6. poster depicting nude or scarcely clad persons.

- There are several things classified employees should do if they are being harassed including:
 1. **Act quickly.** The best defense to harassment is a strong offense. Confront the harasser. Tell him/her that his/her behavior is offensive, and ask him/her to stop.
 2. **Get support from co-workers.** Make sure co-workers are aware of sexual harassment situations and efforts being made to remedy it.
 3. **File a grievance.** If the collective bargaining agreement contains language prohibiting sexual harassment, utilize the grievance procedure to resolve the problem. If not, suggest to the chapter negotiating team that a sexual harassment clause be proposed in the next negotiation proposal. In addition, review the employer's written policy on sexual harassment.
 4. **Notify the employer** regardless of whether your harasser is a supervisor or co-worker. If the employer is not notified, they can claim ignorance and deny responsibility for the harassing behavior. Put it in writing, and keep a copy.
 5. **Find other victims.** If evidence can be built to show that the harasser has abused other workers, or that the harassment has been condoned by management, your harassment claim will be strengthened.

Note: The laws governing discrimination are extensive. If a classified employee feels he/she has been the victim of a discriminatory practice he/she should contact his/her Labor Relations Representative, or federal or state agency to determine what actions are appropriate.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (Department of Fair Employment and Housing, Equal Employment Opportunity Commission).

Discrimination & Harassment

Classified employees cannot be denied employment/advancement for discriminatory reasons.

Source: Title VII of the Civil Rights Act of 1964

Source: Fair Employment and Housing Act

Source: Age Discrimination Employment Act of 1967

Source: Rehabilitation Act of 1973

Source: Americans with Disabilities Act

Source: Government Code Section 11135

- Public employers cannot refuse to employ or advance public employees because of their:
 - Age
 - Ancestry
 - Disability
 - Marital Status
 - Nationality
 - National origin
 - Race
 - Religion
 - Sex
 - Sexual Orientation
- Questions regarding these subjects cannot be asked on written job applications or questionnaires. They cannot be asked in personal or telephone interviews with you or your reference. It is illegal for the employer to discipline a public employee for not answering questions regarding the above subjects.

Note: The laws governing discrimination are extensive. If a classified employee feels he/she has been the victim of a discriminatory practice he/she should contact his/her Labor Relations Representative or federal or state agencies to determine what actions are appropriate.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued (Department of Fair Employment and Housing, Equal Employment Opportunity Commission).

Unemployment Compensation Insurance

Classified employees may be entitled to unemployment compensation when they are involuntarily employed.

Source: Unemployment Insurance Code

Source: Employment Development Department Rules and Regulations

Source: California Unemployment Insurance Appeals Board Rules and Regulations

- A person must file an unemployment claim with the Employment Development Department (EDD) upon notice of layoff, asserting a right to benefits. The EDD makes the initial “determination” regarding whether or not a claimant is “eligible” for unemployment compensation benefits.
- In addition to weekly compensation payments, a person is entitled to assistance in finding employment. A person claiming benefits must make reasonable efforts to secure employment on their own behalf.
- If the EDD determines that an unemployed person is not entitled to benefits, the unemployed person is entitled to appeal the EDD’s determination to an Administrative Law Judge, and finally, to the California Unemployment Insurance Appeals Board.
- It should be noted that employees might be entitled to unemployment compensation if they voluntarily become unemployed. If you have questions, contact your Labor Relations Representative or local EDD office.

Enforcement: Employment Development Department; California Unemployment Insurance Appeal Board; civil action.

Family and Medical Leave Act Leave

Classified employees are entitled to leave under the Family and Medical Leave Act ("FMLA").

Source: Family Medical Leave Act

- The FMLA provides 12 weeks of unpaid leave. The leave may be taken for the classified employee's own serious medical condition to care for an immediate family member with a serious health condition, for the birth and care of a newborn child of the employee, or for the placement with the employee of a child for adoption or foster care.

A serious medical condition is defined as:

- Inpatient care in a hospital, hospice or residential medical-care facility or subsequent treatment in connection with that inpatient care;
 - Continuing treatment by a health care provider through either two or more visits to a health care provider or one visit to a health care provider with a continuing regimen of treatment such as prescription medication or physical therapy;
 - Any period of incapacity related to pregnancy or for prenatal care with or without a visit to a health care provider;
 - Any period of incapacity or treatment for a chronic serious health condition this requires at least two visits to a health care provider per year;
 - A period of incapacity that is permanent or long term due to a condition for which treatment may not be effective — only supervision by a health care provider is required rather than active treatment; or
 - Any absence to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.
- In order to be eligible for this leave, the employee must have worked 1250 hours over the past 12 months for his or her current employer and the employer must have 50 or more employees.
 - The employer may run FMLA leave concurrently with other leaves such as sick leave and vacation.

- The employer is required to maintain the employee's medical health insurance while the employee is on FMLA leave.
- Under certain circumstances, the employee may use FMLA leave intermittently.
- An employee must give 30 days advance notice of the need to take FMLA leave when the need for leave is foreseeable. If the leave is foreseeable less than 30 days in advance, the employee must give notice as soon as possible. When the need for leave is not foreseeable the employee must give notice as soon as facts and circumstances permit. The employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave such as calling in.
- The employee need not request FMLA leave by name the first time he or she is requesting such leave, but must provide the employer with sufficient information to determine that the leave is FMLA eligible. Subsequent requests for FMLA leave for the same situation require the employee reference FMLA leave.
- After an employee requests FMLA leave or the employer learns that the employee may be eligible for FMLA leave, the employer must provide the employee with a notice of eligibility for FMLA leave and the employee's rights under the FMLA. When the employer has sufficient information to designate the leave as FMLA leave it must inform the employee that the leave is being designated FMLA leave.
- Employers may require that an employee's leave be supported by a certification from a health care provider. The employer may require second and third medical opinions at the employer's expense and periodic recertification of a serious health condition.
- An employer may have a policy of requiring certification that an employee is able to resume work if it has such a policy for those returning from non-FMLA leave.
- Upon return from FMLA leave the employee is entitled to be restored to the employee's original job or one with equivalent pay, benefits, and other terms and conditions of employment.

Military Related Leave under the FMLA

- Employees are entitled to up to 26 weeks of FMLA leave to care for a service member injured in the line of duty with a serious injury or illness. A serious injury is one which renders the service member medically unfit to perform the duties of his or her office, grade, rank or rating. For this type of leave, the 12 months begins on the first day of leave and ends 12 months later regardless of how the employer normally counts the year for FMLA leave.

- Spouses are entitled to a combined total of 26 weeks of leave to care for a military member with a serious injury or illness.
- An employer must grant an employee a total of 12 workweeks of unpaid leave over 12 months to an employee for qualified exigencies arising out of the fact that the employee's son, daughter, or parent is on active duty or has been notified of an impending call to active duty to support a contingency operation. This benefit is only for those whose family member is in the National Guard or Reserves and not in the Regular Armed Forces.
- A qualified exigency includes the following:
 - Issues arising from the military member's deployment when the notice provided is seven days or less;
 - Military events and related activities;
 - Certain child care related activities such as arranging for alternative child care or providing childcare on an urgent, non-routine basis; enrolling a child in a new day care facility or school attending certain meetings at school or day care;
 - Making or updating financial and legal arrangements to address the military member's absence
 - Attending counseling provided by someone other than a health care provider for oneself, the military member, or the child of the military member;
 - Taking up to five days of leave to spend with a military member who is on short term rest and recuperation during deployment;
 - Post-deployment activities within 90 days of the termination of the military member's active duty including issues arising from the death of the military member;
 - Any other event that the employer and employee agree is a qualifying exigency.
- FMLA leave may be taken intermittently when medically necessary to care for a service member with a serious injury or illness or for qualifying exigencies arising out of the active duty status or call to active duty of the military member.
- The notice and certification requirements are the same for military FMLA leave as for regular FMLA leave.

- Employees requesting military FMLA leave may be required to support their request by providing to the employer with a copy of the military member's active duty orders and certification providing the relevant facts. When the leave is to care for a service member with a serious injury or illness the employer may require a certification completed by an authorized health care provider or a copy of an Invitational Travel Order or Invitational Travel Authorization issued to any member of the service member's family.
- Second and third medical opinions are not permitted for a service member's serious medical condition.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, civil action may be pursued.

NOTES

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California Federation of Teachers

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The Council of Classified Employees
is a division of the
California Federation of Teachers.

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