

## **Layoff/Rehire**

AR 4217.3(a)

### **Personnel**

Classified employees shall be subject to layoff for lack of work or lack of funds. (Education Code 45114, 45308)

A classified employee shall not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. (Education Code 45117)

(cf. 4121 - Temporary/Substitute Personnel)

#### **Order of Layoff Within a Classification/Determination of Seniority**

Within each class, the order of layoff shall be determined by length of service. (Education Code 45114, 45308)

Length of service shall be determined by the date of hire. The employee who has been employed the shortest time by the district shall be laid off first. (Education Code 45308)

For an employee in a "restricted position" under Education Code 45105 or 45259, the original date of employment in the restricted position shall be used to determine his/her length of service, provided he/she has completed six months of satisfactory service and has successfully passed the qualifying examination required for service in the class. (Education Code 45105)

(cf. 4200 - Classified Personnel)

### **Notice of Layoff**

Whenever a classified employee is to be laid off for lack of work or lack of funds, written notice shall be given to the employee, informing him/her of the layoff, the date the layoff goes into effect, any displacement rights, and reemployment rights. The notice shall be given: (Education Code 45117)

1. At least 60 days prior to the effective date of the layoff, if the layoff is for lack of work resulting from a bona fide reduction or elimination of service being performed.
2. No later than April 29, if the layoff is for lack of funds due to the expiration of a specially funded program at the end of any school year. However, if the termination date of the specially funded program is other than June 30, the employee shall be given notice at least 60 days from the effective date of the layoff.

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

The district is not required to provide the 60-day notice in the event of an actual and existing financial inability to pay the salaries of classified employees or if the layoff is due to a lack of work resulting from conditions not foreseeable or preventable by the district. (Education Code 45117)

The district also is not required to provide the 60-day notice to any person hired as a short-term employee for a period not exceeding 60 days whose service may not be extended or renewed. (Education Code 45117)

### **Reemployment**

Classified employees laid off because of lack of work or lack of funds shall be eligible for reemployment for a period of 39 months and shall be reemployed in preference to new applicants. Reemployment shall be in order of seniority. Persons so laid off also have the right to apply and establish their qualification for vacant promotional positions within the district during the 39-month period. (Education Code 45114, 45298, 45308)

When a vacancy occurs, the district shall give the employee with the most seniority an opportunity to accept or reject the position, by first calling the employee at his/her last known telephone number to notify him/her of the vacancy and then sending written notice by certified and standard mail to his/her last known address. The employee shall advise the district of his/her decision by any means no later than 10 calendar days from the date the notice was sent. If the employee accepts, he/she shall report to work no later than two calendar weeks from the vacancy notification date or on a later date specified by the district.

In order to be reemployed, the employee must be capable of performing the essential duties of the job with or without reasonable accommodations. When an otherwise eligible employee is unable to perform the essential duties of the job, he/she shall be kept on the reemployment list until another opportunity becomes available or the period of reemployment eligibility expires, whichever occurs first.

(cf. 4032 - Reasonable Accommodation)

Upon rejecting two offers of reemployment, the employee's name shall be removed from the reemployment list and he/she will forfeit all reemployment rights to which he/she would otherwise be entitled.

When an employee is notified of a vacancy and fails to respond or report to work within time limits specified by district procedures, his/her name shall be removed from the reemployment list and all reemployment rights to which he/she would otherwise be entitled shall be forfeited.

If an employee is employed in a new position and fails to complete the probationary period in the new position, he/she shall be returned to the reemployment list for the remainder of the 39-month period. The remaining time period shall be calculated as the time remaining in the 39-month

period as of the date of reemployment. (Education Code 45114, 45298)

### **Reinstatement of Benefits**

When a laid-off employee is reemployed, all accumulated sick leave credit shall be restored.

A laid-off permanent employee shall be reemployed with all rights and benefits accorded to him/her at the time of layoff.

A laid-off probationary employee shall be reemployed as a probationary employee, and the previous time served toward the completion of the required probationary period shall be counted. He/she shall also be reemployed with all rights and benefits accorded to a probationary employee at the time of layoff.

A laid-off employee, when reemployed, shall be placed on the salary step held at the time of layoff. An employee who was bumped into a lower class shall, when reinstated to the previous class, be placed on the salary step to which he/she would have progressed had he/she remained there. An adjusted anniversary date shall be established for step increment purposes so as to reflect the actual amount of time served in the district.

### **Voluntary Demotion or Reduction of Hours**

Classified employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff, or in order to remain in their present position rather than be reclassified or reassigned, shall be granted the same rights as employees who are laid off. In addition, such employees shall retain eligibility to be considered for reemployment in their previously held class or position with increased assigned time, for an additional period of time up to 24 months as determined by the Governing Board on a class-by-class basis, provided that the same test of fitness under which they qualified for appointment to that class shall still apply. (Education Code 45114, 45298)

Employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff shall have the option of returning to a position in their former class or to positions with increased assigned time as vacancies become available and without limitation of time. If there is a valid reemployment list, they shall be ranked on that list in accordance with their proper seniority. (Education Code 45114, 45298)

#### **Legal Reference:**

EDUCATION CODE

45101 Definitions

45103 Classified service in districts not incorporating the merit system

45105 Positions under various acts not requiring certification qualifications; classification

- 45113 Rules and regulations for classified service in districts not incorporating the merit system
- 45114 Layoff and reemployment procedures; definitions
- 45115 Layoff: Reinstatement from service retirement
- 45117 Notice of layoff
- 45286 Limited term employees
- 45297 Right to take equivalent examination while employee in military service
- 45298 Reemployment of persons laid off; voluntary demotions or reductions in time; districts adopting merit system
- 45308 Order of layoff and reemployment; length of service
- 45309 Reinstatement of permanent noncertified employees after resignation

UNITED STATES CODE, TITLE 38

4301-4307 Veterans' Reemployment Rights

COURT DECISIONS

Tucker v. Grossmont Union High School District (2008) 168 Cal.App.4th 640

San Mateo City School District v. Public Employment Relations Board (1983) 33 Cal.3d 850, 866

Management Resources:

WEB SITES

California School Employees Association: <http://www.csea.com>