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LEGAL UPDATE

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To: Superintendents/Presidents/Chancellors, Member Community
College Districts

From: Nancy L. Klein, Senior Associate General Counsel

Subject: Categorical Employee Agreements
Memo No. 09-2014(CC)

Education Code section 87470 provides that a community college district may employ academic employees in “[1] programs and projects to perform services conducted under contract with public or private agencies, or [2] other categorically funded projects of indeterminate duration under terms and conditions mutually agreed upon by the employee and the governing board.” Section 87470 specifically requires that the terms and conditions of categorical employment be “mutually agreed upon” and “reduced to writing.”

In 2012 the California Court of Appeal for the Third District¹ held that categorical employees in a K-12 district may be treated as temporary and summarily terminated only at the end of the categorically funded project. If terminated at any other time, categorical employees are entitled to be treated like probationary employees. Thus, to make clear that an employee’s status is categorical, rather than probationary, we recommend that community college districts:

1. Give written notice to the employee on or before the first date of paid service that the employment is in a categorical project or program pursuant to Education Code section 87470;

¹ *Stockton Teachers Association v. Stockton Unified School District* (2012) 204 Cal.App.4th 446.

2. Memorialize the terms and conditions of employment of the categorical employment in a written agreement; and
3. Document that the terms and conditions of employment were “mutually agreed upon” by obtaining the employee’s signature on the written agreement preferably on or before the employee’s first date of paid service.

Please note that the right to terminate an employee summarily pursuant to 87470 is dependent upon employment in a true categorical program or project. Not every grant or fund qualifies as “categorical.”

In 1979, the California Attorney General considered the meaning of the phrase “categorically funded project of indeterminate duration....” with respect to certain K-12 district programs.²

The term ‘category’ refers to a class, group, or classification of any kind, and may connote a division of the dependent population whose needs are attended to by specific government measures. ‘Categorically funded’ refers to the authorization and allocation of funds according to specific categories. ‘Indeterminate duration’ refers to a period of time which is not clearly established or known in advance. Based on the foregoing, a ‘categorically funded project of indeterminate duration’ within the meaning of Education Code section 44909 is **a project the continuance of which beyond a certain date is not established or known in advance, i.e., which is subject to some future contingency** such as the enactment of further enabling legislation, and which is specifically funded according to the specific class or classes therein designated.” (62 Cal.Atty.Gen. 120.) (Emphasis added.)

The State Chancellor for Community Colleges adopted the Attorney General’s definition of “categorically funded project of indeterminate duration....” in a 1983 opinion. (Legal Opinion 83-12.)

Please contact one of our attorneys with any questions concerning categorical employment or to request a sample categorical employment agreement.

² At that time Education Code section 44909, which applies to K-12 districts, included the same language (i.e., “categorically funded projects of indeterminate duration”) that currently appears in Section 87470.