



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

June 1, 2018

To: Superintendents, Member School Districts (K-12)
From: Steven P. Reiner *SPR*
Associate General Counsel
Subject: July Notice of Temporary Employment
Memo No. 12-2018

This is a reminder that districts are required to provide each temporary certificated employee written notice indicating the temporary nature of his or her employment, the salary, and length of time for which he or she is hired. **This notice must be given at the time of initial employment and thereafter in the month of July each school year.** A temporary certificated employee must be given written notice of his or her classification before starting work.

The notice and classification requirements are described in Education Code section 44916 as follows:

The classification shall be made at the time of employment and thereafter in the month of July of each school year. At the time of initial employment during each academic year, each new certificated employee of the school district shall receive a written statement indicating his employment status and the salary that he is to be paid. **If a school district hires a certificated person as a temporary employee, the written statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. If a written statement does not indicate the temporary nature of the employment, the certificated employee shall be deemed to be a probationary employee of the school district, unless employed with permanent status.**



The written notice required by section 44916 is critically important when a district hires a temporary certificated employee. Failure to provide specific notice to each temporary certificated employee that he or she is classified as temporary may entitle that employee to claim probationary status. A temporary certificated employee can be released from employment under the following circumstances¹:

1. At the pleasure of the board prior to serving during one school year at least 75 percent of the number of days the regular schools of the district are maintained.
2. After serving the number of days set forth above, if the employee is notified before the end of the school year of the district's decision not to reelect the employee for the next succeeding year.

Once an employee is considered a probationary employee, he or she can only be dismissed for cause² or through the non-reelection process³. Classification as a probationary employee greatly limits a district's ability to remove that employee as compared to a temporary employee.

Accordingly, we cannot overemphasize the importance of complying with Education Code section 44916 and giving each temporary certificated employee the written notice described above that specifically identifies him or her as a temporary employee at the time of initial employment before starting work and in the month of July each year.

Please also ensure that your district is able to identify a specific Education Code provision that allows for temporary employment for each certificated employee that you classify as temporary. If the district cannot identify a specific basis for temporary status, the individual employee may claim probationary status.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹ Education Code section 44954

² Education Code section 44948

³ Education Code section 44948.5