



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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October 15, 2019

**To: Superintendents, Member School Districts (K-12)**  
**From: Carl D. Corbin, General Counsel** *CDC*  
**Subject: AB 1353 – Classified Probationary Period Limited to Six Months  
or 130 Days Paid Service  
Memo No. 29-2019**

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On October 7, 2019, the Governor approved Assembly Bill (“AB”) 1353, which effective January 1, 2020, reduces the maximum length of a classified probationary employee from one year to six months or 130 days of paid service, whichever is longer.<sup>1</sup>

To the extent that the classified employee probationary period specified in an existing collective bargaining agreement is greater than six months or 130 days of paid service, AB 1353 does not apply until the expiration or renewal of the collective bargaining agreement.

For your convenience, a copy of AB 1353 is included with this Legal Update.

Please contact our office with questions regarding this Legal Update or any other 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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<sup>1</sup> AB 1353 revises Education Code § 45113.

## Assembly Bill No. 1353

### CHAPTER 542

An act to amend Section 45113 of the Education Code, relating to school employees.

[Approved by Governor October 7, 2019. Filed with Secretary of State October 7, 2019.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1353, Wicks. Classified employees: probationary period.

Existing law requires the governing board of a school district to employ persons for positions not requiring certification qualifications and to classify those employees and positions and requires that they be known as the classified service. Existing law requires the governing board of a school district to prescribe written rules and regulations governing the personnel management of the classified service whereby classified employees are designated as permanent employees of the school district after serving a prescribed period of probation that is prohibited from exceeding one year.

This bill instead would shorten the maximum length of a prescribed period of probation from not exceeding one year to not exceeding six months or 130 days of paid service, whichever is longer. The bill would provide that, to the extent these provisions conflict with any provision of a collective bargaining agreement entered into before January 1, 2020, by a public school employer and an exclusive bargaining representative, the provisions shall not apply to the school district until the expiration or renewal of that collective bargaining agreement.

*The people of the State of California do enact as follows:*

SECTION 1. Section 45113 of the Education Code is amended to read:

45113. (a) The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are designated as permanent employees of the school district after serving a prescribed period of probation that shall not exceed six months or 130 days of paid service, whichever is longer. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional position, shall be employed in the classification from which the employee was promoted.

(b) An employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of

the governing board of the school district, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board of a school district shall adopt rules of procedure for disciplinary proceedings that shall contain a provision for informing the employee by written notice of the specific charges against the employee, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested that shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board of the school district, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause that arose before the employee's becoming permanent, nor for any cause that arose more than two years preceding the date of the filing of the notice of cause unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing school district.

(e) This section shall not be construed to prohibit the governing board of a school district, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third party hearing officer. However, the governing board of the school district shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) (1) A governing board of a school district shall delegate its authority to a judge, as defined in Section 44990, to determine whether sufficient cause exists for disciplinary action against a classified employee involving allegations of egregious misconduct, as defined in Section 44932, and involving a minor, as defined in Section 44990. The judge's ruling shall be binding upon all parties.

(2) A judge authorized under this subdivision to conduct a hearing involving allegations as described in Section 44010 or 44011 of this code, or as described in Sections 11165.2 to 11165.6, inclusive, of the Penal Code, shall conduct that hearing in accordance with Article 3.3 (commencing with Section 44990) of Chapter 4 and Section 49077 of this code.

(3) The term "representative of the respondent," within the meaning of Article 3.3 (commencing with Section 44990) of Chapter 4, shall include, but not necessarily be limited to, an exclusive labor representative.

(g) This section shall apply only to school districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240).

(h) To the extent that this section as amended by Assembly Bill 1353 of the 2019–20 Regular Session conflicts with a provision of a collective

bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2020, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the changes made to this section by Assembly Bill 1353 of the 2019–20 Regular Session shall not apply to the school district until expiration or renewal of that collective bargaining agreement.

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