



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclsca.org
www.sclsca.org

General Counsel
Carl D. Corbin

Attorneys
Jennifer Henry
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Kaitlyn A. Schwendeman
Leah M. Smith
Loren W. Soukup
Erin E. Staggs

Of Counsel
Robert J. Henry
Frank Zotter, Jr.

LEGAL UPDATE

November 17, 2021

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

**From: Carl D. Corbin *CDC*
General Counsel**

**Subject: AB 438 - Significant Changes in Classified Layoff Process
Memo No. 18-2021(CC)**

On October 8, 2021, the Governor approved Assembly Bill (“AB”) 438.¹ Effective January 1, 2022, Education Code section 88017 is amended to treat layoffs of permanent classified employees through essentially the same process that has long been used for layoffs of academic employees.² Our office will be updating our “layoff packets” (which include instructions and model templates) to assist our clients in effectuating the new layoff process for classified employees.

Below, key points in AB 438 will be discussed along with a summary of the new classified layoff process. Also, in addition to updating relevant policies, we anticipate that our clients will also need to review any applicable Collective Bargaining Agreement (“CBA”) and will very likely need to negotiate revisions to the layoff procedures with their classified labor partner.

Key Points

- The new layoff process does not apply to “short-term” employees who are hired for a period not exceeding 60 days after which the short-term service may not be extended or renewed.³ The new layoff process also does not apply to substitute employees.⁴
- The new layoff process does not apply to classified positions that are eliminated as a result of the expiration of a “specially funded position.”⁵ In this situation the classified employee is only entitled to 60 days’

¹ Available at: https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB438.

² In addition, as per Education Code § 88017(l), if academic employees are granted any additional rights associated with layoffs then classified employees will also be granted those same rights.

³ Education Code § 88017(j)(2). All subsequent references are to the Education Code.

⁴ §§ 88003(a)(1), (b).

⁵ § 88017(k).



notice, which includes notice of any displacement (“bumping”) rights to another position.

- The new layoff process applies to any “permanent” classified employee, defined as “an employee who was permanent at the time the notice or right to a hearing was required and an employee who became permanent after the date of the required notice.”⁶
- If a permanent classified employee is not provided a timely layoff notice and a right to a hearing, then the employee will be deemed rehired for the next college year.⁷
- However, employers do retain the right to release probationary employees without a layoff notice or right to a hearing.⁸

Summary of Layoff Process

- Layoffs are authorized by the governing board of the district only for “cause” which is defined as relating “solely to the welfare of the colleges and the students thereof and provided that cause is a bona fide lack of funds or reduction in services.”⁹
- No later than March 15, “the governing board of the community college district and the employee shall be given written notice by the superintendent of the community college district or the superintendent’s designee, or, in the case of a community college district that has no superintendent, by the clerk or secretary of the governing board of the community college district, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.”¹⁰
- The notice must be delivered to the employee in person or via registered mail to the last known address of the employee.¹¹
- The notice must inform the employee of the right to request a hearing to determine if there is cause for not reemploying the employee for the subsequent college year. Cause for a layoff includes the employer complying with all Education Code seniority requirements including those in Section 88127.¹²
- The request for a hearing must be made by the employee on or before a date selected by the employer, but must allow at least seven days after the notice is served on the employee.¹³
- Upon an employee requesting a hearing, the employer must serve on the employee a District Statement of Reduction in Force after which the employee has five days after service to file a Notice of Participation in Reduction in Force Hearing.¹⁴
- Any request for discovery must be made within 15 days after the District Statement of Reduction in Force is served on the employee by the employer.¹⁵

⁶ § 88017(h)(2).

⁷ § 88017(h)(1).

⁸ *Id.* Specifically, “If the governing board of a community college district does not give notice provided for in subdivision (e) on or before May 15, a permanent employee shall be deemed reemployed for the ensuing college year, except that this section shall not be construed to interfere with the right of a district to release probationary employees who never become permanent without notice or hearing.”

⁹ § 88017(d)(1).

¹⁰ § 88017(a)(1).

¹¹ § 88017(g).

¹² § 88017(d)(2).

¹³ § 88017(b).

¹⁴ § 88017(c)(1).

¹⁵ § 88017(c)(2).



- The hearing will be conducted by an Administrative Law Judge (“ALJ”) from the Office of Administrative Hearings (“OAH”) and a proposed decision will be issued; however, the governing board will make the final decision as whether to proceed with the layoff.¹⁶
- Copies of the ALJ’s proposed decision must be submitted by the ALJ to the governing board and the employee on or before May 7.¹⁷
- The final decision of the governing board on whether to proceed with the layoff must be made and a copy of the decision provided to the employee on or before May 15.¹⁸
- All costs associated with the layoff hearing process, including the costs of the ALJ, are paid by the employer.¹⁹

In closing, AB 438 represents a significant shift in the process to lay off classified employees and employers will have to prepare to navigate this new process and some of the associated unanswered questions and challenges.²⁰

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.

© 2021 School and College Legal Services of California

All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client’s own non-commercial purposes.

¹⁶ § 88017(c)(3).

¹⁷ *Id.*

¹⁸ § 88017(e).

¹⁹ § 88017(c)(3).

²⁰ OAH will have to address how to “scale up” to handle all of the classified layoff hearings that are in addition to the certificated layoff hearings.