



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

September 9, 2022

**To: Superintendents, Member School Districts (K-12) and
Superintendents/Presidents/Chancellors, Member Community
College Districts**

**From: Damara Moore *DM*
Senior Associate General Counsel**

**Subject: Merit Systems: Permanent Employees Have the Right to Return
to Former Classification Upon Failing Probation in a
Promotional Position
Memo No. 19-2022**

On August 15, 2022, Governor Newsom signed Senate Bill (“SB”) 874, which requires that a permanent classified employee in a merit system local educational agency (“LEA”)¹ who fails probation in a promotional position be re-employed in the classification from which the employee was promoted. This change in the law creates parity with non-merit LEAs. (Cal. Educ. Code §§ 45113(a) and 88013(a).)

The implication of this change for merit system LEAs is that permanent employees who do not complete the probationary period in a promotional position have a right to retreat to their former classification. To ensure a position in the former classification is available, for the duration of the employee’s probationary period in the promotional position, we recommend that the LEA hire a limited-term employee (Cal. Educ. Code §§ 45286 and 88105) who can be released, if necessary, to enable a permanent employee’s return to the former classification.

SB 874 takes effect January 1, 2023, except in LEAs where a collective bargaining agreement, entered into before January 1, 2023, contains a contrary

¹ An LEA is within a merit system if the governing board or the county office of education has elected to create a merit district, pursuant to sections of the Education Code (Educ. Code §§ 1317, 45240 *et seq.*, and 88060 *et seq.*), which include appointment of a personnel commission for matters including establishment of lists of persons eligible for employment, discipline, promotional examinations, and more, applicable to the classified service.



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provision. In such LEAs, the collective bargaining agreement provision will continue to apply until expiration or renewal of the agreement.

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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