

Administrative Regulation

Layoff/Rehire

AR 4217.3

Personnel

Classified employees shall be subject to layoff for lack of work or lack of funds. (Education Code 45114, 45308)

A classified employee shall not be laid off if a short-term employee who is employed for more than 45 days is retained to render a service that the classified employee is qualified to render. (Education Code 45117)

(cf. 4121 - Temporary/Substitute Personnel)

Order of Layoff Within a Classification/Determination of Seniority

Within each class, the order of layoff shall be determined by length of service. (Education Code 45114, 45308)

"Length of service" means all hours in paid status, whether during the school year, a holiday, recess, or during any period that school is in session or closed. However, length of service shall not include hours compensated solely on an overtime basis, as provided in Education Code 45128, and shall not include hours for any service performed prior to entering into probationary or permanent status, except for service in a restricted position pursuant to Education Code 45105. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. (Education Code 45308)

For an employee in a "restricted position" under Education Code 45105 or 45259, the original date of employment in the restricted position shall be used to determine his/her length of service, provided he/she has completed six months of satisfactory service and has successfully passed the qualifying examination required for service in the class.

(cf. 4200 - Classified Personnel)

Length of service credit shall be granted for military leave of absence, including voluntary and involuntary active duty during a period of national emergency or war, as a member of the Military Reserve or the National Guard. (Education Code 45297, 45308)

(cf. 4161.5/4261.5/4361.5 - Military Leave)

Length of service credit may be granted for time spent on unpaid illness or maternity leave, unpaid family care leave, or unpaid industrial accident leave. Length of service credit shall not be granted for other types of unpaid leaves. (Education Code 45308)

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

(cf. 4261.1 - Personal Illness/Injury Leave)

(cf. 4261.11 - Industrial Accident/Illness Leave)

Notice of Layoff

Whenever a classified employee is to be laid off for lack of work or lack of funds, notice shall be given to the employee, informing him/her of his/her displacement rights, if any, and reemployment right. The notice shall be given: (Education Code 45117)

1. At least 45 days prior to the effective date of the layoff, if the layoff is for lack of work resulting from a bona fide reduction or elimination of service being performed.
2. In writing, no later than April 29, if the layoff is for lack of funds due to the expiration of a specially funded program at the end of any school year. However, if the termination date of the specially funded program is other than June 30, the employee shall be given notice at least 45 days from the effective date of the layoff.

The district is not bound to provide 45-day notice in the event of an actual and existing financial inability to pay the salaries of classified employees or if the layoff is due to a lack of work resulting from conditions not foreseeable or preventable by the district. (Education Code 45117)

The district also is not bound to provide 45-day notice to any person hired as a short-term employee for a period not exceeding 45 days. (Education Code 45117)

Reemployment

Classified employees laid off because of lack of work or lack of funds shall be eligible for reemployment for a period of 39 months and shall be reemployed in preference to new applicants. Reemployment shall be in order of seniority. Persons so laid off also have the right to apply and establish their qualification for vacant promotional positions within the district during the 39-month period. When an employee is reemployed in a class that is different from the one in which he/she had permanent status, the employee shall be required to serve the probationary period for the new position. (Education Code 45114, 45298, 45308)

In order to be reemployed, an employee must be capable of performing the essential duties of the job. When an otherwise eligible employee is unable to perform the essential duties of the job, he/she shall be kept on the reemployment list until another opportunity becomes available or the period of reemployment eligibility expires, whichever occurs first.

(cf. 4032 - Reasonable Accommodation)

Upon rejecting two offers of reemployment, the employee's name shall be removed from the reemployment list and he/she will forfeit all reemployment rights to which he/she would otherwise be entitled.

When an employee is notified of a vacancy and fails to respond or report to work within time limits specified by district procedures, his/her name shall be removed from the reemployment list and all reemployment rights to which he/she would otherwise be entitled shall be forfeited.

Voluntary Demotion or Reduction of Hours

Classified employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff, or in order to remain in their present position rather than be reclassified or reassigned, shall be granted the same rights as employees who are laid off. In addition, such employees shall retain eligibility to be considered for reemployment in their previously held class or position with increased assigned time, for an additional period of time up to 24 months as determined by the Governing Board on a class-by-class basis, provided that the same test of fitness under which they qualified for appointment to that class shall still apply. (Education Code 45114, 45298)

Employees who take voluntary demotion or voluntary reduction in assigned time in lieu of layoff shall have the option of returning to a position in their former class or to positions with increased assigned time as vacancies become available and without limitation of time. If there is a valid reemployment list, they shall be ranked on that list in accordance with their proper seniority. (Education Code 45114, 45298)

Legal Reference:

EDUCATION CODE

45101 Definitions

45103 Classified service in districts not incorporating the merit system

45105 Positions under various acts not requiring certification qualifications; classification

45113 Rules and regulations for classified service in districts not incorporating the merit system

45114 Layoff and reemployment procedures; definitions

45115 Layoff: Reinstatement from service retirement

45117 Notice of layoff

45286 Limited term employees

45297 Right to take equivalent examination while employee in military service

45298 Reemployment and promotional examination preference of persons laid off; voluntary demotions or reductions in time

45308 Order of layoff and reemployment; length of service

45309 Reinstatement of permanent noncertified employees after resignation

UNITED STATES CODE, TITLE 38

4301-4307 Veterans' Reemployment Rights

COURT DECISIONS

California School Employees Association v. The Governing Board of East Side Union High School District (2011) 193 Cal.App.4th 540

Tucker v. Grossmont Union High School District (2008) 168 Cal.App.4th 640

San Mateo City School District v. Public Employment Relations Board (1983) 33 Cal.3d 850, 866

Management Resources:

WEB SITES

California School Employees Association: <http://www.csea.com>

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Policy

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FORTUNA UNION HIGH SCHOOL DISTRICT

Fortuna, California