



# LAW UPDATE

## LABOR AND EMPLOYMENT

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### SUPERINTENDENT BUYOUT CLAUSES JUST GOT SKIMPIER

Governor Brown recently signed Assembly Bill 215 into law, shortening the legal maximum for K-12 superintendent buyouts.

Current law requires all contracts between a local agency and its employees to include a provision limiting the maximum cash settlement an employee can receive to an amount equal to the employee's monthly salary multiplied by the number of months left on the contract, but no more than 18 months.<sup>1</sup>

In addition, current law limits the amount of a settlement that can be provided to a district superintendent of schools to an amount no greater than the monthly salary multiplied by zero to six (as determined by an administrative law judge after a hearing) if the agency terminates the employment contract with the belief (as later confirmed by an independent audit) that the superintendent engaged in fraud, misappropriation of funds, or other illegal fiscal practices.<sup>2</sup>

Assembly Bill 215 amends the Government Code to address "buyout" provisions for school superintendents specifically. For superintendent contracts executed on or after January 1, 2016, the maximum cash settlement is reduced to an amount equal to the superintendent's monthly salary multiplied by 12.

In addition, for agreements executed on or after July 1, 2015, the legislation prohibits any settlement with a superintendent in the case of a termination based on the belief that the superintendent engaged in fraud, misappropriation of funds or other illegal practices, as confirmed in an independent audit.

The bill's author, Assembly Member Luis Alejo (D-Salinas) was quoted as saying, "The combination of high paying salaries and high superintendent turnover is an issue that does not

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<sup>1</sup> Government Code section 53260(a)

<sup>2</sup> Government Code section 53260(b)(1)

receive enough attention. The two factors combined create a problem of excessive severance packages at the expense of students and taxpayers.”<sup>3</sup>

The bill would initially have limited the buyout clause to a maximum of 6 months’ salary, but was later amended to 12 months. The Senate Floor Analysis recited potential unintended consequences, stating,

While the purpose of this bill is to save money for students by placing a cap on school district superintendents’ severance pay, it could have several unintended consequences. First, by reducing and/or eliminating some of the “protections” in place for superintendents in existing law, this bill could provide potential disincentives for highly-qualified candidates to become a superintendent. This could also affect the school district’s recruitment efforts and its ability to hire a quality superintendent.

Nevertheless, the bill passed and was signed into law. The bill was opposed by the Association of California School Administrators, California School Boards Association and Small School Districts’ Association. No support was on record.

Districts considering new superintendent contracts to be executed on or after January 1, 2016, will need to modify contract language accordingly. It should be noted that the Education Code permits a district to cancel an existing superintendent’s contract “at any time,” effective on the next succeeding July 1, and with the consent of the superintendent, reemploy him or her for a new term to commence on the effective date of the termination of the existing term of employment.<sup>4</sup> Accordingly, it would follow that employment agreements which are renegotiated and executed before the end of 2015 will not be subject to AB 215, even if they do not take effect until the following July 1.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

—Grant Herndon

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*Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*

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<sup>3</sup> Press Release, Assembly Member Alejo’s Office, February 2, 2015. The Press Release stated that about 150 superintendents earned more than Governor Jerry Brown, and one Los Angeles County superintendent had a compensation package of \$750,000.

<sup>4</sup> Education Code section 35031