



## Labor & Employment Law Update

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May 27, 2009

### Midsummer Certificated Layoff Options The “August 15” Layoffs

Since the mid-1980’s, the Education Code has permitted midsummer certificated layoffs when the state budget for schools falls short of a two percent funding increase. The 2009-2010 state budget confirms we are in a year when the midsummer layoff window is reopened.

Several financial advisors and budget monitoring agencies may be urging public school entities to consider a midsummer round of certificated program reductions and layoffs. If your district decides to go forward with midsummer layoffs, Schools Legal Service stands ready to help with schedules and documents.

#### The Process

The statutory authority for this largely untested off-cycle process appears in Education Code section 44955.5. The statute has some gaps. On one level, it seems clear that this year a district may reopen a layoff window. The traditional March 15-May 15 time frame simply slides forward.

Start Date: We believe that an employer may and should start the process immediately.

End Date: Although the statute refers to August 15, we advise a completion date of Friday, August 14, 2009.

#### Phase A: Document Assembly and Preparation

Preparation moves on two parallel tracks. The Superintendent and CBO decide on what to recommend to the board regarding which programs or services are to be reduced or eliminated. (We believe that administrator reassignments can be included in the layoff notice process.) That decision is formalized in a resolution voted on in an open board meeting.

Meanwhile, personnel and payroll staff assemble the paperwork needed to update the certificated layoff seniority list. Both tasks are often daunting, but must be handled with precision. Failure to get things right may void the entire process. Examples of tasks include assembling and reviewing personnel files, transcripts, credentials and authorizations, NCLB compliance, CLAD or B-CLAD compliance, and reviewing any applicable parts of the district’s current certificated labor contracts.

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We recommend that activities on both tracks be coordinated with counsel immediately. An ideal target date for initial board action should be no later than June 1 if notice paperwork is to be served before staff departs for the summer.

### **Phase B: Serving Timely Notices on Affected Staff**

Immediately after the board adopts the layoff resolution, the employer must serve each affected staff member with two overlapping types of individualized notices and documents. If staff have already scattered and become hard to locate, proper service will be hard to accomplish.

For some districts, we may advise combining into a single packet what are typically two consecutive notice system documents (an initial set required under the Education Code, including the layoff notice itself, and a subsequent set under the Government Code for those who actually request a hearing). The combined packet would be served on each affected staff member immediately after the board acts and before school lets out.

### **Phase C: The State Hearing**

This part of the layoff system does not change - unless the state issues guidelines for an expedited process. Everyone who gets a preliminary layoff notice has a right to a hearing before an Administrative Law Judge assigned by the state Office of Administrative Hearings. Our office will make those arrangements and participate as counsel to the administration.

### **Phase D: Post-Hearing Activities**

The advisory proposed decision of the Administrative Law Judge will have to be reviewed and acted upon by the board. If the board confirms some or all of the layoffs, final notices must be prepared and served on affected individuals no later than Friday, August 14, 2009.

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Time is of the essence. If for any reason you might be contemplating midsummer August 15 layoffs, please give us a call today. Carol Grogan, Chris Hine, and I are prepared to assist and coordinate preparations.

— Peter C. Carton

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