



## LAW UPDATE LABOR AND EMPLOYMENT

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### ASSEMBLY BILL 438 CLASSIFIED EMPLOYEE LAYOFF NOTICES AND HEARING

Assembly Bill 438 is a critical bill for California schools as it amends the Education Code and Government Code to align with certificated employee layoff provisions in an effort to make statutory job protection rights of education employees equitable across classifications. AB 438 constitutes a dramatic shift in that it establishes a rigid March 15 layoff notice deadline. The law thus moves away from a District's previous ability to lay off classified employees upon 60 days' notice as a result of a bona fide reduction or elimination of the service being performed by any department. Districts do, however, retain the ability to layoff classified employees upon no less than 60 days' notice where positions must be eliminated as a result of the expiration of a specially funded program. Classified employees are now provided the right to a hearing.

Beginning January 1, 2022, AB 438 will require layoff notices to be given to every permanent classified employee no later than **March 15** if the employee's services will not be required for the ensuing school year due to lack of work or lack of funds. "Permanent classified employees" include those employees who were permanent at the time of the notice or right to a hearing was required, as well as any classified employee who became permanent after the date of the required notice.

The bill also extends to permanent classified employees the right to an administrative hearing when the employees' services will not be required for the following school year. An employee's request for hearing must be made in writing within seven days of service of the layoff notice, otherwise the employee waives the right to a hearing. Hearings will be held in front of an administrative law judge, who must prepare a proposed, non-binding decision as to sufficiency of the cause for layoff. Despite that, however, the Districts will continue to have the final layoff decision-making authority, and notice of termination must be provided to the employee prior to May 15.

To the extent that classified positions are eliminated due to the expiration of a specially funded program, the employees subject to layoff must be provided at least **60 days' notice**, informing them of their layoff date and their displacement rights, if any, and reemployment rights.

As is the case with certificated employee layoffs, expenses of hearings requested by classified employees, including the cost of the administrative law judge, will be shouldered by the District. If the California legislature provides certificated employees with any additional rights or hearing as to layoff after January 1, 2021, such rights will be likewise extended to permanent classified employees.

Notwithstanding these significant changes, AB 438 provides a bit of a safety net in allowing a time period between five days after the enactment of an annual Budget Act and August 15 of the fiscal year to which the Budget Act applies to lay off classified employees as necessary if the District determines that its total local control funding formula apportionment per unit of average daily attendance has not increased by at least 2 percent. If the District determines it is therefore necessary to decrease the number of classified employees due to lack of work or lack of funds, the District may issue a District Statement of Reduction in Force in accordance with a schedule of notice and hearing to be adopted by the board.

Schools Legal Service recognizes that AB 438 imposes a significant new requirement and obligation for school districts. We recommend Districts create classified employee seniority lists in accordance with Education Code section 45308. We also suggest reviewing your district policies and collective bargaining agreements to ensure that they are consistent with AB 438. Our office is in the process of preparing tools to assist clients in navigating this new process, and plans to hold both its Certificated and Classified Layoff Workshops on January 12, 2022. Please reach out to our office should you have any questions or concerns.

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