



SLS HANDBOOK

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Memo 3

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COMPELLING CERTIFICATED EMPLOYEES TO COMMIT TO RETURN FOR THE FOLLOWING SCHOOL YEAR

The Education Code requires classroom teachers to inform their employing school district whether they intend to return to a teaching position for the following school year. Subject to certain restrictions, school district employers may impose a deadline for certificated employees to commit to return for the following school year. These requirements are applicable for school year 2022-2023 and we advise you to proceed with sending your annual Notice of Intent to Return to your teaching staff, if not already completed.

Districts Under 2,500 ADA

Education Code section 44832 requires certificated employees in districts with less than 2,500 ADA to give the employer notice, by May 15 of each year, whether they intend to return the following school year. An employer's request for such notice cannot *require* a response earlier than May 15. The employer and the teachers' exclusive bargaining representative may include this requirement in any collective bargaining agreement.

All Districts

Education Code section 44842 permits all school district employers to require a notice of intent to return from each certificated employee in the district. The request to provide notice, which is given by the clerk or secretary of the governing board, must be personally served on, or mailed by certified mail with return receipt to, the employee no later than May 30 of any school year. The request must be in writing and include a copy of Education Code section 44842. If, without good cause, the employee fails to notify the governing board by July 1 of his or her intent to return, the employee may be deemed to have declined employment and his or her employment may be terminated on June 30 of that year. The employer cannot *require* a response earlier than June 30 (for year-round schools with a track that starts within 14 days of July 1, the employer's request must be properly served by April 30 and notice of intent returned by the

employee by June 1). If an employee gives notice of resignation after May 31, but before June 30, the employee must be released from his or her contract within 30 days of the employee's notice, or as soon as a replacement employee is obtained, whichever occurs first.

Employees on a leave of absence for 20 or more consecutive working days after April 30 who have notified the governing board of their intent to return, but fail to report for duty at the beginning of the ensuing school year, may be deemed to have declined employment and may be terminated on the 21st consecutive day of absence. The employer, however, must first notify the employee five days in advance of the time and place to report to work and the employee must not have previously requested or been granted authorized leave.

Proper Service of the Notice of Intent to Return in Light of COVID-19

It is important to note that the Education Code is very specific on how a certificated employee must be served with the notice of intent to return. We recognize personal service may be challenging due to the on-going COVID-19 pandemic. Our best practice advisement is to utilize multiple means of communication for sending the notice. Districts should utilize certified mail with return receipt to provide the statutorily required notice. Each certificated staff member should be mailed a copy of the request to provide notice, the necessary memorandum, intent to return form, and code sections. Additionally, districts should email (or otherwise electronically notify) all certificated employees a copy of the notice and attachments sent via certified mail.

Reporting to CTC – Failure to Fulfill Employment Contract

Education Code section 44420 provides for action by the Commission on Teacher Credentialing (“CTC”) if a school district reports a credential holder who refuses, without good cause, to fulfill a valid contract of employment or leaves employment without the consent of the governing board or superintendent. Adverse action by CTC is discretionary, may not include revocation, and the credential holder may not be suspended for more than one year for a first offense. CTC may suspend the credentials of a person for not more than two years for a second offense.

Forms

We enclose sample notice forms under both Education Code sections 44832 and 44842, as well as CTC's section 44420 contract abandonment notice form.

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Comments

The statutorily prescribed time windows (May 15 or June 30) discussed above are ineffectual if the employer needs the written commitment, or resignation, in time to avoid the necessity of March 15 layoff notices. Recruiting efforts may be similarly hampered. While the employer cannot mandate an earlier response, the employer may reasonably request one while

simultaneously notifying employees of their right to provide later notice in accordance with the statutes.

Additionally, what if the employee fails or refuses to respond to the employer's request to provide a notice of intent to return without good cause? Neither code section provides consequences for a failure or refusal to respond by the deadline imposed. Section 44842 states the employee "may be deemed to have declined employment," and "may be terminated." Board action is, therefore, discretionary. A board's delay in employing another teacher following dismissal, though aware of the dismissed teacher's intention to remain employed, has been deemed an abuse of discretion necessitating reinstatement of the dismissed employee.¹ We advise clients to work with counsel when such situations arise.

What if the employee turns in a written commitment to return, then fails to show up when school reopens? Unless the employee was on a leave of absence for 20 or more consecutive working days after April 30 of the previous school year (the 21-day dismissal process is described above), the Code sections do not address this issue. Again, additional action by the employer may be required to effect separation from service and clients should work with counsel when these situations arise. Where the employee's absence is unauthorized, districts should report the employee to CTC, pursuant to section 44420, for abandonment of his or her employment contract without good cause.

What if the employee timely turns in a written commitment to return, then, on July 1 or some other date over the summer, submits a letter of resignation? Is this abandonment of an employment contract without good cause? Each case must be examined on its own facts and districts should work closely with legal counsel when these situations arise. While districts may recover damages against the employee in the absence of good cause, realistically civil action (small claims or superior court) is rarely pursued given the associated costs, burdens and uncertainty of recovery. Where the employee abandons employment without good cause, districts should report the employee to CTC. CTC is required to investigate and employers should provide CTC with a detailed explanation of the costs and burden to the district in hiring a replacement. Typically, where good cause is not found, CTC will suspend the credential for 7 to 14 days for an initial offense and will increase the suspension for subsequent offenses.

-Abigale M. Auffant

-Tumara M. Thelen

Attachments

¹ *California Teachers Assn. v. Gov. Bd.* (1977) 70 Cal.App.3d 833.