

CLIENT NEWS BRIEF

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**AMENDMENT REQUIRES ACCRUED LEAVE AND DIFFERENTIAL PAY
FOR RETURNING DRUG DIVERSION PROGRAM PARTICIPANTS**

Senate Bill 1303, which goes into effect January 1, 2009, amends Education Code 44940.5 to limit compensation to an employee placed on mandatory leave for a drug-related offense who completes a drug diversion program and returns to work.

Education Code section 44940.5 requires salary payment to a certificated or classified employee placed on compulsory leave of absence, so long as the employee furnishes a bond or other security to guarantee repayment in the event of conviction. If the employee is acquitted of all charges or completes a drug abuse diversion program, the district must pay the employee's costs of seeing the bond. Currently, if an employee elects not to furnish a bond and the charge is dismissed, not by acquittal, but because the employee completes a diversion program, the district must pay full back pay for the leave once the employee returns to service.

Under the amended statute, an employee who posts no bond or other security must use accrued leave to participate in a drug diversion program. Leave applied to such an absence may include vacation, sick leave, and other leave benefits. Once leave is exhausted, the employee may receive differential pay up to the length of the employee's compulsory leave of absence, not to exceed five months, 100 days, or other negotiated period of time. Payment of differential pay, rather than full back pay, leaves the employee sentenced to a diversion program in the same position as an employee who voluntarily takes a leave for drug treatment.

The change in Education Code section 44940.5 lightens the financial impact on school districts when an employee returns to work from a compensated leave. Currently, school districts might pay not only the cost of a substitute during the leave, but also full back pay to the returning employee. Effective January 1, 2009, the returning employee will be fully compensated by accrued leave and differential pay. As a result, the District's lump sum payment may be less.

Please contact any of our seven offices statewide with any questions regarding this topic.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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