CLIENT NEWS BRIEF

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COURT OF APPEAL HOLDS THAT THE KAVANAUGH REQUIREMENT DOES NOT APPLY TO "WALK ON" ATHLETIC COACHES

In Neily v. Manhattan Beach Unified School District (Jan. 27, 2011) ___Cal.Rptr.3d ___ (2011 WL 242008), the court of appeal held that a school district employer's alleged failure to provide a "walk-on" coach with timely notice of the temporary nature of his employment did not render the coach a probationary employee, emphasizing that a temporary athletic coach does not fall under the same classification rules as a temporary classroom teacher.

In January 2002, the Manhattan Beach Unified School District ("District") hired Michael Neily as a varsity baseball coach pursuant to Education Code section 44919, subdivision (b) ("section 44919(b)"). The District continued to employ Mr. Neily as a baseball coach until June 2009, when the District served Mr. Neily with written notice that he was being released from his temporary athletic coach assignment. Mr. Neily challenged his dismissal in court, contending that the District had a mandatory duty to classify him as a probationary certificated employee because the District never provided him with written notice that his assignment was temporary. The trial court denied Mr. Neily's claims, and the court of appeal affirmed.

The court restated the general rule that pursuant to Education Code section 44916 ("section 44916") and the Supreme Court's decision in Kavanaugh v. West Sonoma County Union High School District (2003) 29 Cal.4th 911 ("Kavanaugh"), a certificated employee must receive written notice of his temporary classification before rendering his first day of service; if not, the employee will be deemed to be a probationary, rather than temporary, employee. The court noted that unlike the sections of the Education Code that provide for the transformation of temporary certificated employees into probationary employees, temporary athletic coaching positions under section 44919(b) may be filled by certificated or noncertificated employees.

Moreover, the court held that strict compliance with section 44916 is not the "one, mutually exclusive path to defining a position as temporary." Employees may be classified as temporary when hired for a position the Education Code specifically defines as temporary.

The court found that the District hired Mr. Neily as a temporary employee pursuant to section 44919(b), which states in relevant part:

> (G)overning boards shall classify as temporary employees persons, other than substitute employees, who are employed to serve in a limited assignment supervising athletic activities of pupils . . . . Service pursuant to this subdivision shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.

The court concluded that an athletic coach position under section 44919(b) is statutorily deemed a temporary position, and that it cannot be transmuted into a probationary position based upon a school district's failure to provide notice of temporary employment under section 44916.

Finally, the court rejected Mr. Neily's argument that the District's June 22 notice of release from temporary employment, four days after the last day of student instruction, was untimely. Pursuant to Education Code section 37200, which expressly defines the end of the school year as the "last day of June," the District's notice was indeed timely.

If you have any questions about classifying temporary employees, or questions regarding labor and employment issues generally, please do not hesitate to contact one of our eight offices located statewide or consult our website.

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