



# CLIENT NEWS BRIEF

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## CLASSIFIED EMPLOYEES DO NOT RETAIN PERMANENT STATUS WHEN REHIRED IN A LOWER CLASSIFICATION

In California School Employees Association v. Governing Board of East Side Union High School District (2011) 193 Cal.App.4th 540, the court of appeal found that classified employees who obtain permanent status in non-merit system districts, and who are laid off and then rehired in a lower classification, do not maintain their permanent status and may be released from the lower level positions as probationary employees.

In this case, a California School Employees Association (CSEA) member had been employed with the East Side Union High School District ("District") since 1989 in a School Community Liaison (SCL) position, a year-round position at Range 18 on the classified salary schedule. The District later eliminated the SCL position due to lack of funds, and the employee was placed on the 39-month rehire list at the end of the 2007-2008 school year. In September 2008, the District hired the employee for a Campus Monitor (CM) position, a 10-month position at Range 6. The District informed the employee that she would be on probationary status for the first six months. In February 2009, less than six months later, the District released the employee from her probationary position.

CSEA sought a court order compelling the District to reinstate the employee, reasoning that she was a permanent employee in the CM position and therefore had statutory and due process rights which the District violated by releasing her without notice, cause, or a hearing. CSEA argued that once the employee completed her probationary period in the SCL position, she retained her permanent status upon reemployment in any position, even the different and lower classified CM position.

The court disagreed with CSEA and held that the employee did not retain permanent status for purposes of reemployment in any position with the District. Rather, the court found that classified employees' permanent status is restricted to the position or class for which they have completed the probationary period. Consequently, while the District may have been required to rehire the employee into a lower level position for which she was qualified pursuant to Tucker v. Grossmont Union High School District (2008) 168 Cal.App.4th 640, the District was permitted to rehire her as a probationary employee and release her if she failed to satisfactorily complete the probationary period in the lower classification.

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This case clarifies the definition of permanent status for classified employees in non-merit districts. It further confirms that classified employees must serve a probationary period when reemployed in a different, lower assignment and may be released from employment during the probationary period with no right to notice, cause, or a hearing.

If you have any questions regarding this case or its application to your district, or any other questions regarding employment discrimination, please do not hesitate to contact one of our [eight offices](#) located statewide or consult our [website](#).

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