



CLIENT NEWS BRIEF

September 2011

Number 50

COURT CLARIFIES TEMPORARY STATUS OF COMMUNITY COLLEGE ATHLETIC COACHES

In *Theiler v. Ventura County Community College District* (2011) ___ Cal.App.4th ___, the court affirmed that a basketball coach was not entitled to an evidentiary hearing before his termination for cause. The court ruled that an athletic coach's ancillary duties, such as planning practices, recruiting high school students, attending games, and managing the team, were not comparable to the duties of a classroom instructor. Consequently, the court found that the basketball coach was properly classified as a temporary employee without due process rights because the coach was employed to teach less than the specified percentage of the hours per week considered a full-time assignment, exclusive of the time he spent performing ancillary duties.

In *Theiler*, the Ventura County Community College District hired a part-time basketball coach. The employment agreement specified that he would teach a basketball course, and that the coach was a temporary employee pursuant to Education Code section 87482.5 because the time he spent teaching the course was less than 0.6 of the full-time equivalent (FTE) of a regular employee. Section 87482.5 has since been amended to increase this percentage to 67%. The coach was also a member of the teachers' union. The collective bargaining agreement (CBA) with the union provided that coaches would be compensated for ancillary duties performed outside of class with a stipend, and that the District did not consider ancillary duties in calculating FTE. Finally, the CBA stated that physical education is a laboratory teaching assignment, and such assignments are given 2/3 the value of a lecture teaching assignment for purposes of calculating FTE.

The District terminated the coach's employment after an investigation revealed the coach had submitted false transcripts to obtain eligibility for student athletes, granted favors to nonresident athletes, and interfered with the investigation of his wrongdoing. As a temporary employee, the coach was released without an evidentiary hearing. The coach initiated a lawsuit, contending that he should have been afforded a hearing because he was actually a contract employee due to the actual time spent coaching and performing his ancillary duties, which required a greater time commitment than the teaching hours specified in his employment contract. California law categorizes community college academic employees as regular, contract, or temporary, and only regular and contract employees are entitled to due process before termination for cause.

CLIENT NEWS BRIEF

September 2011

Number 50

The court rejected the coach's argument, concluding instead that the 60% requirement applied only to the coach's hours of actual, contracted-for teaching per week, as opposed to all hours worked by the coach, because the coach's ancillary duties were not comparable to those of a classroom instructor. The court further emphasized that the District and union had collectively bargained to compensate ancillary duties with a stipend instead of including them in FTE calculations, and to define hours teaching physical education as "laboratory teaching assignments" that are not treated as full hours when calculating FTE.

This decision clarifies that the non-classroom teaching duties of athletic coaches are not comparable to those of classroom instructors, and therefore only contracted-for teaching hours may be counted for purposes of determining a part-time academic employee's classification. However, the outcome in *Theiller* was also heavily influenced by the specific language in the CBA between the District and the union. Implementation of the following strategies may assist community college districts' efforts to classify particular positions as temporary:

- (1) When drafting contracts for academic employees hired on a part-time basis (for athletics and other subject areas), consider including a clear explanation of the parties' calculation of teaching hours justifying the temporary classifications under section 87482.5.
- (2) If a district treats laboratory teaching assignments differently than regular lecture assignments, determine whether such laboratory teaching assignments are defined and whether hours spent in such teaching assignments are discounted in comparison to regular hours for purposes of determining an employee's FTE.
- (3) Consider including language in the CBA for the academic bargaining unit that excludes stipended or ancillary duties from consideration as teaching hours for purposes of calculating an employee's FTE under section 87482.5.

If you have any questions about this decision or how to implement the above strategies, please contact one of our [eight offices](#) located statewide or consult our [website](#).

Written by:

[Kevin Mills](#)

Shareholder & Higher Education Practice Group Chair

Walnut Creek Office

kmills@lozanosmith.com

[Kirsten Zumwalt Kuitu](#)

Associate

Fresno Office

kkuitu@lozanosmith.com



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.