
AB 438 Overhauls Classified Layoff Procedures

October 22, 2021
Number 33

Written by:

Gabriela D. Flowers
Partner
Sacramento

Allison B. Hernandez
Associate
Sacramento

On October 8, 2021, Governor Newsom signed Assembly Bill (AB) 438 into law. AB 438 modifies the Education Code's classified layoff statutes by providing classified employees with the same notice and hearing rights afforded to certificated employees.

Prior to AB 438, classified employees of school districts and community colleges districts could be laid off at any time during the school year if given at least 60 days' advance notice. Further, classified employees subject to a layoff notice were not entitled to a hearing to contest their layoff.

Beginning January 1, 2022, permanent classified employees cannot be laid off during the school year; they can only be laid off for the following school year, unless the layoff is due to the expiration of a specially-funded program. Affected employees must be notified no later than March 15 that their services will not be required for the following school year due to a lack of work or lack of funds. After receiving notice, permanent classified employees have the right to request a hearing to determine if there is cause for not reemploying them for the following school year. Cause includes lack of work or lack of funds and the order of layoff, which is based on the employee's length of service within the class identified for layoff. An administrative law judge will conduct the classified layoff hearing and prepare a proposed decision. The proposed decision must be provided to affected employees by May 7 of the year in which the proceeding is commenced. However, district governing boards retain the right to make the final determination as to the sufficiency of the cause and disposition. Employees must be given final notice of their layoff before May 15.

A classified employee shall not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. Short-term employees are not afforded layoff rights.

The new classified layoff process only applies to permanent employees. Under AB 438, a "permanent employee" includes employees who are permanent at the time the notice or right to hearing was required, and employees who became permanent after the date of the required notice.

Takeaways

AB 438 will have extensive impacts on school and community college districts both in staffing and budgeting classified positions going forward. Additionally, human resources personnel who have already been tasked with processing certificated layoffs covered by this same timeline, will now have to ensure the same notices are provided to classified employees. It is also likely that, as a result of AB 438, the layoff process will be significantly backlogged due to an increased demand for hearings and needs for administrative law judges. Consequently, this may also lead to delay in other hearings. If there is classified layoff language in existing collective bargaining agreements, those will likely need to be revised, as will board policies covering classified layoffs. In addition, it is recommended that districts verify their classified seniority lists to ensure they are accurate and verify which employees are properly designated as short-term. Many districts have negotiated “length of service” to mean date of hire, which is permitted by law. For districts who have not negotiated this language with their labor partners, it may be worth considering because it may make it easier to determine which employee is the least senior in the class and, therefore, should get a layoff notice.

Upcoming Lozano Smith Webinar

Lozano Smith will be hosting a complimentary webinar, providing an overview of the new classified layoff process, including steps school districts should take now in anticipation of the new rules. This webinar will be conducted via Zoom, on Wednesday, October 27, 2021, from 12:00 to 1:00 p.m. This event is reserved for school district or public agency employees only. [Register here.](#)

If you have questions regarding AB 438, classified layoffs, or labor and employment issues in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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.