

Know Your Rights

Module 311

MEMBER EDUCATION PROGRAM



CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION

REVISED DECEMBER 2000



TABLE OF CONTENTS

INTRODUCTION	1
PERSONNEL FILES	2
WAGES	3
OVERTIME PAY	4
BENEFITS	5
Vacation	5
Holidays	6
Sick Leave	8
Industrial Accident & Illness	9
Additional Sick Leave	10
Bereavement Leave	11
Pregnancy and/or Family Leave	12
Personal Leave	13
Jury Duty	14
Military Leave	15
HOURS OF EMPLOYMENT	16
COLLECTIVE BARGAINING RIGHTS	17
SAFETY	18
Devices	18
Healthful Workplace	19
Workplace Inspection	20
Refusal to Perform Unsafe Work	21
LAYOFF & REEMPLOYMENT	22
WORKER'S COMPENSATION	24
DISCIPLINE & DUE PROCESS	26
SEXUAL HARASSMENT	28
DISCRIMINATION & HARASSMENT	30
UNEMPLOYMENT COMPENSATION INSURANCE	31

INTRODUCTION

Many basic rights of classified employees are contained in the California Education Code. These rights, enacted over the years through the lobbying efforts of CSEA, are the foundation upon which CSEA has built its negotiated collective bargaining agreements. Additional rights, though not formally negotiated, may be granted by local school district policy, or in merit system school districts, by the rules of the personnel commission. Other public employees represented by CSEA, though not covered by the California Education Code, are protected by similar rights negotiated into a binding memorandum of understanding (MOU) between CSEA and their employer.

The basic rights of public employees cannot be diminished by the terms of a collective bargaining agreement, MOU, local policy or personnel commission rule – they can only be improved. In addition, the enforcement of collective bargaining agreements and MOUs is under the control of you and your union, and is generally more timely, decisive, and relevant – especially if the contractual grievance procedure culminates with final and binding arbitration by an impartial third party.

In all of our bargaining units, CSEA and local chapters negotiate collective bargaining agreements with school district, community colleges, county offices of education, and other public employers covering hours, wages, and terms and conditions of employment. The body of law pertaining to the rights of public employers, public employees, and the workplace in California is immense, and even if not an integral part of your collective bargaining agreement, is still there protecting you.

This *Know Your Rights* module is intended to give you a general description of your rights, the laws that protect your rights, and the appropriate person to contact if you feel your rights have been violated. In CSEA bargaining units, there are site representatives, job stewards, grievance committees, and chapter officers, as well as CSEA professional staff, to assist you in the enforcement of your rights.

On the following pages are rights provided through various acts, codes, and court decisions. They are rights which CSEA enforces regardless of whether or not they are incorporated in your collective bargaining agreements. You may note as you read throughout this module that many of these rights are currently integrated into your collective bargaining agreements.

Personnel Files

Classified Employees Have the Right to Review Their Personnel Files- and Enter Into Their File Responses to Negative Documents

California Education Code

K - 12 Districts - 44031

Community Colleges - 87031

- Your employer keeps your personnel records. These records form the basis for any decisions affecting your employment. Personnel files kept by supervisors are not the official personnel file.
- You have the right to see your file - at a time when you are not required to provide service to your employer. You can review all materials in your file except- pre-employment records, examination committee records or promotional examination records. You do have the right to have access to “...numerical scores obtained as the result of a written examination.”
- You have the right to respond to any negative documents placed in your file and have your response attached to the negative document. This process “...shall take place during normal business hours, and the employee shall be released from duty for this purpose without salary reduction.”



Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued.



Case Law: *Miller v. Chico Unified School District (1979) Cal.3d.703.*

Wages

Classified Employees' Earned Wages Are Their Property

California Education Code

K - 12 Districts - 45166, 45167, 45169


Community Colleges - 88165, 88166, 88168

- Classified employees' earned wages are their property. Once you have earned your wages, you are entitled to receive them in full. You must be compensated for all hours that you work. This includes all time that you are on duty, whether or not you are performing the specific functions of your job.


- Classified employees must receive their pay at least once during each calendar month. Such pay must be made on the last working day of the month in which the employer is open for business. The employer is not precluded from making payment of earned wages prior to the last working day of the month.

- Errors in the calculation, reporting or payment of a classified employee's salary must be corrected and repaid, from any available funds, within five days following the verification of the error.

- Classified employees must receive upon initial employment, or change in classification, a copy of their job description, salary data, work location, work hours and work week. The salary data must include the annual and monthly salary and pay period.

 Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued. US Department of Labor, Wage and Hour Division, Fair Labor Standards Act.

Overtime Pay

Classified Employees Have A Right To Overtime Pay	
California Education Code	
K - 12 Districts – 45128, 45131	Community Colleges – 88027, 88030
<ul style="list-style-type: none"> • Classified employees must be paid at one and one-half times their “regular rate of pay” for all work “suffered or permitted” (allowed) in excess of eight hours a day and/or in excess of forty hours per week. 	
<ul style="list-style-type: none"> • Classified employees who are part-time employees and average four or more hours per day during their regular workweek must be paid at the overtime rate for all time worked on the sixth and seventh day following the beginning of their work week. Classified employees who are part-time and average less than four hours per day must be paid at the overtime rate for all time worked on the seventh day following the beginning of their workweek. 	
<ul style="list-style-type: none"> • Classified employees may be allowed the use of compensatory time off (earned at the rate of time and one-half for time worked over 40 hours a week) in lieu of cash compensation, if not restricted by the collective bargaining agreement. Compensatory time can accumulate to a maximum of 240 hours and can be used at any time up to twelve months in which it was earned so long as it does not unduly disrupt the district’s operation. Compensatory time, when taken, must be paid at the rate in effect when it is taken. This applies equally to when a classified employee elects to receive a payoff instead of taking the time. 	
<ul style="list-style-type: none"> • Under the “suffered or permitted” concept classified employees cannot be both a “paid” employee and a “non-paid” volunteer while performing the same type of work for the same employer. Classified employees must be paid for all work that might be considered work within their classification. (For example: A food service worker could volunteer to type letters for “back to school night”, but could not volunteer to cook at the school’s pancake breakfast.) 	
<p> Enforcement: If language is in the collective bargaining agreement - file a grievance. If not, civil action may be pursued; U.S. Dept. of Labor, Wage and Hour Division; Fair Labor Standards Act.</p>	

BENEFITS- Vacation

Classified Employees Are Entitled To Vacation

California Education Code

K - 12 Districts – 45190, 45197

Community Colleges - 88190, 88197

- Every school district must grant all classified employees (excluding substitute, short-term or limited-term employees) an annual vacation at not less than the accrual rate of five-sixths of a day for each month the classified employee is in paid status.

- After the initial six months of employment, vacation becomes a vested right for classified employees. As a vested right, earned vacation becomes your property and is protected. However, if your collective bargaining agreement requires that vacation must be requested and taken, failure to do so may put your vacation in jeopardy.

- Classified employees may, with the approval of the district, take vacation at any time during the school year. If a classified employee is not permitted to take his/her full annual vacation, the amount not taken shall accumulate for use in the next year or he/she must be compensated for it or as specified in the collective bargaining agreement.

- Classified employees may be advanced vacation before it is earned. If, however, you separate from the district, the appropriate amount of salary must be deducted from your final paycheck to pay for all unearned days of vacation.

- Permanent classified employees must be compensated in a lump sum for all earned and unused vacation upon separation from service.



Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued.

BENEFITS - Holidays

Classified Employees Are Entitled To Holidays

Government Code Section 6700

California Education Code

K - 12 Districts - 1318, 37220, 37221,
37222, 44579.1, 45203, 45204, 45205,
45206, 45206.5

Community Colleges - 88203, 88204, 88205,
88205.5, 88206

• All classified employees are entitled to twelve paid holidays provided they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday. These holidays are as follows:

January 1, New Years Day

Third Monday in January, Martin Luther King Jr. Day

February 12, Lincoln Day

Third Monday in February, Washington Day

Last Monday in May, Memorial Day

July 4, Independence Day

First Monday in September, Labor Day

September 9, Admissions Day

November 11, Veterans Day

Third Thursday in November, Thanksgiving Day

December 25, Christmas Day

• In addition to the holidays listed, classified employees are entitled to any day declared by the governor or president as a day of public fast, thanksgiving or holiday. Further, classified employees have the ability through the negotiations process to further expand their total number of holidays.

• Holidays for classified employees which fall on a Saturday are taken on the preceding Friday. Holidays which fall on a Sunday are taken on the following Monday.

• Classified employees who are required to work on a any holiday must be paid (or given compensating time off) at the rate of time and one-half their regular rate of pay, in addition to the regular pay received for the holiday.

• Teacher staff development days are sometimes provided to the district via a state grant. If classified employees are not specifically assigned to work on those staff development days, they will not be paid for those days.

• If there are any additional staff development days provided to teachers or classified employees by the district during the year, classified employees must receive their regular pay (whether or not they are required to report for duty). This applies for any school day during which students are not in attendance but for which certificated employees receive their regular pay.

☞ Enforcement: If language is in the collective bargaining agreement – file a grievance, if not, a civil action may be pursued.

☞ Case Law: *California School Employees Assn. v. Azusa Unified School District* (1984) 152 Cal.App.3d 580.

BENEFITS- Sick Leave

Classified Employees Are Entitled To Sick Leave

California Education Code

K - 12 Districts – 45136, 45191, 45202

Community Colleges - 88035, 88191, 88202

- Classified employees are entitled to twelve days leave of absence for illness or injury (sick leave), with full pay, for a fiscal year of service. Classified employees who work less than a full fiscal year are entitled to a prorated portion of twelve days as it relates to the total number of months they work in a fiscal year.

- Compensation for these days must be the same as would normally be received had the employee worked.

- New employees are entitled to six (6) days of sick leave for the first six months of their employment. The district must carry over into the new fiscal year all unused sick leave.

- Sick leave is not a property right. Therefore, upon separation from the district, all accrued sick leave is lost. Accrued sick leave, however, can be transferred from one school district to another, but must be done within one year.



Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued.

BENEFITS- Industrial Accident and Illness

Classified Employees Are Entitled To Leave of Absence for Industrial Accidents and Illness

California Education Code

K - 12 Districts – 45192, 45196

Community Colleges – 88192, 88196

- When an employee has suffered an industrial accident or illness, such employee shall be entitled to a paid leave of absence for not less than sixty working days in any one fiscal year for the same accident or illness.
- When an employee is injured on the job, prompt notice must be reported to the immediate supervisor at the first opportunity. A claim form (DWC-1) must be filed within one year from the date of injury.
- Every employee should predesignate his/her physician prior to any accident or illness. This physician then becomes the “treating physician” for the purpose of the claim. Most decisions relative to the claim are made by that physician.
- Once an employee has utilized their 60 days of industrial accident or illness leave, they are then entitled to use extended sick leave (or differential), vacation, and compensatory time off.
- Once a claim has been approved, the employee will receive temporary disability payments. Payments will then be coordinated with the sick and vacation leaves.
- It is highly recommend that the employee contact the chapter representative and/or Labor Relations Representative to ensure that your rights to an industrial accident or illness leave are protected.



Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued; Workers' Compensation Appeals Board.

BENEFITS- Additional Sick Leave

Classified Employees Are Entitled to Additional Sick Leave

Federal Family and Medical Leave Act; California Family Rights Act; Government Code Section 12945.2

California Education Code

K - 12 Districts – 45196


Community Colleges – 88196

• Classified employees, in accordance with their negotiated contract, are entitled to additional sick leave as follows:

1. For a period of up to five months, which runs concurrently with accrued sick leave. Utilization of sick leave during this period results in a salary deduction equal to an amount paid a substitute employee to fill your position during your absence (in other words, during this leave you receive the difference between your salary and what a substitute is paid).
2. For a period of one hundred days of additional sick leave in lieu of the five months described above. Utilization of sick leave during this period generally results in a salary deduction of not more than fifty percent of a classified employee's regular salary (in other words, you receive fifty percent of your salary during this leave).

• Classified employees may also be entitled to medical leave for a serious health condition as provided by the Federal Family and Medical Leave Act and the California Family Rights Act.

• It is recommended that the employee contact the chapter representative and/or Labor Relations Representative in determining which additional sick leave entitlement benefit is applicable.

 Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued; Department of Fair Employment and Housing; Department of Labor.

BENEFITS- Bereavement Leave

Classified Employees Are Entitled To Bereavement Leave

California Education Code

K - 12 Districts - 45194

Community Colleges - 88194

- Classified employees are entitled to a leave of absence as a result of the death of any member of their immediate family. This leave is restricted to three days, or five days, if out of state travel is required

- A classified employee's immediate family is defined as the mother, father, grandmother, grandfather, or a grandchild of the employee or the spouse of the employee, and the spouse, son, son-in-law, daughter, daughter-in-law, brother, sister, or any relative living in the immediate household of the employee.

- Classified employees may, through the negotiation process, expand the class of relatives listed above as member of the immediate family.



Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued.

BENEFITS- Pregnancy and/or Family Leave

Classified Employees May Be Entitled To Pregnancy and/or Family Care Leave

Federal Family and Medical Leave Act; California Family Rights Act

California Education Code

K - 12 Districts - 45193

Community Colleges - 88193

- Classified employees may be entitled to leaves of absence because of pregnancy or convalescence following childbirth. Leaves of absence for this purpose may or may not be with pay. Classified employees should reference their collective bargaining agreements to determine what specific rights are applicable to them.

- Classified employees may also be entitled to up to twelve weeks in a calendar year of paid or unpaid leave for care associated with the birth of a child, adoption, or placement of a foster child, or to care for a family member who is seriously ill. Health and welfare benefits must be provided during the leave on the same basis as if the employee were actively employed.



Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued.

BENEFITS- Personal Leave

Classified Employees Are Entitled To Personal Leave

California Education Code

K - 12 Districts - 45207

Community Colleges - 88207

• Classified employees can use up to seven days of their sick leave for reasons of personal necessity.

• Personal necessity can be used when:

1. employees require additional bereavement leave due to the death of a member of their immediate family,
2. when they are needed to care for an ill member of the immediate family,
3. when there has been an accident involving them, their property, or a member of their immediate family, or
4. when it is necessary for them to appear in any administrative forum as a litigant, party, or witness under subpoena.
5. Any other reason, as negotiated between the union and the district.



Enforcement: If language is in the collective bargaining agreement—file a grievance; if not, civil action may be pursued.

BENEFITS – Jury Duty

Classified Employees Are Entitled To Jury Duty Leave

California Education Code

K - 12 Districts – 44036, 44037

Community Colleges - 87036

- Classified employees are entitled to leave of absence with pay for the purpose of serving on a jury. The district must pay a classified employee called for jury duty at his/her regular rate of pay and generally requires the employee to turn into the district any juror's fee.

- It is illegal for any district to directly, or indirectly, suggest to any classified employee that they seek exemption from jury duty. It is also illegal for any district to discriminate against any employee with respect to assignment, employment, promotion, or in any other manner because of the employee's service on a jury.



Enforcement: If language is in the collective bargaining agreement—file a grievance; if not, civil action may be pursued.

BENEFITS- Military Leave

Classified Employees Are Entitled To Military Leave

Military Code Section 395.1

- Generally, classified employees who enter the active military service of the United States of America or the state of California during times of national emergency (or certain other circumstances) are entitled to a leave of absence from their duties as a district employee.



- Within six months after being honorably discharged from active duty, the public employee shall have the right to the position they formerly held, provided the active military service does not extend beyond the national emergency. Their rate of pay upon reemployment shall be the current salary for that position.

- Any classified employee who is a member of the reserve corps of the armed forces or National Guard or Naval Militia shall be entitled to a temporary military leave of absence as provided by federal law while engaged in military duty ordered for purposes of active military training, encampment, navel cruises, special exercise of like activity, provided the ordered duty does not exceed 180 calendar days.

- Generally, such classified employee shall have the right to be restored to his/her former position formerly held upon the termination of temporary military duty.

 Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued; US Department of Labor.

Hours of Employment

Classified Employees Workweek and Workday Must Be Set	
California Education Code	
K - 12 Districts – 45127, 45131, 45132, 45133, 45180	Community Colleges – 88026, 88040, 88180
<ul style="list-style-type: none"> • The workweek and workday must be set for all classified employees. The district cannot increase, decrease or in any way alter the workweek or workday without fully negotiating the change with CSEA. A classified employee’s workweek shall normally be no more than forty hours per week, and their workday shall normally be no more than eight hours per day. The district may, however, establish a workweek of less than forty hours or a workday of less than eight hours for all or any of its classified positions. 	
<ul style="list-style-type: none"> • Classified employees are entitled to a duty-free meal period of not less than one-half hour, which shall occur approximately at the midpoint of their shift. 	
<ul style="list-style-type: none"> • Classified employees may negotiate a 10-hour four-day-a-week or 9-hour 80-hour-per-two-week schedule. 	
<ul style="list-style-type: none"> • A district must negotiate with CSEA before reducing the hours of vacant positions if labor costs are the primary basis for the change. 	
<p> Enforcement: If language is in the collective bargaining agreement - file a grievance. If not, civil action may be pursued; U.S. Dept. of Labor, Wage and Hour Division; PERB; Fair Labor Standards Act.</p>	
<p> Case Law: <i>Healdsburg Union High School District (1984) PERB Decision No. 375 [8 PERC 15021]</i>, Reduction of vacant positions – <i>Arcata Elementary School District (1996) PERB Decision No. 1163</i> & <i>East Side Union High School District (1999) PERB Decision No. 1353</i>.</p>	

Collective Bargaining Rights

Classified Employees Have the Right to Negotiate

California Government Code Sections 3540 – 3549.3 (EERA); Sections 3560 – 3599 (HEERA); Sections 3500 – 3510 (MMBA)

- Classified employees have the right to “...form, join and participate in the activities...” of CSEA. It is unlawful for a public school employer to threaten, retaliate, interfere with or coerce classified employees because of their participation in union activities.

- Classified employees have the right to be represented by CSEA in meetings with district management that affect their “hours, wages and working conditions.” This includes grievance meetings (formal and informal); and meetings that could reasonably lead to discipline (including negative or threatening evaluations).

- CSEA has the right to negotiate for unit members regarding their “wages, hours and working conditions...” The Public Employment Relations Board (PERB) has interpreted this language to include nearly all action that affect employee working conditions. This includes, but is not limited to: affirmative action plans • bidding • contracting out of bargaining unit work • discipline • discrimination • early retirement • grievance procedures • health and welfare • holidays • hours of work • job descriptions • layoff • leaves • overtime • personnel files • promotions • reclassification • reductions in hours • release time • safety • seniority • tools and uniforms • training • transfer of bargaining unit work • transfer • work calendar • work load

- An employer cannot negotiate with individual employees and is legally require to negotiate only with designated CSEA representatives.

- CSEA and employees have the right to file Unfair Practice Charges with PERB against employers if rights guaranteed by the government codes have been violated.



Enforcement & Case Law: Generally, violations of the EERA are addressed by the filing of Unfair Practice Charges with PERB. The test case for determining if a subject is negotiable is Anaheim Union High School District (1971) PERB No. 177. The key case describing in detail negotiable matters is Healdsburg Union High School District (1984) PERB No. 375; The key case for determining what constitutes retaliation or discrimination against a union activist is Novato Union School District (1982) PERB No. 210.

SAFETY - Devices

Public Employees Must Be Provided With Safety Devices

Labor Code Sec. 6401 & 6403;

Title 8 California Code of Regulations Section 3380-3390

- In general, the district must provide public employees with safety devices and safeguards which are reasonably adequate to make their jobs safe and healthful.
- Public employees must be provided with eye protection whenever there is a risk of receiving eye injuries such as punctures, abrasions, contusions, or burns as a result of contact with flying particles or hazardous substances or projections, or as a result of injurious light rays.
- Public employees must be provided with appropriate foot or hand protection when conditions require. Foot protection is required if there is potential exposure to foot injuries from falling objects; hot, corrosive, or poisonous substances; or crushing or penetrating action; or when you are working in abnormally wet locations. Hand protection is required for public employees whose work involves unusual or excessive exposure to cuts, burns, or harmful physical, chemical, or radioactive agents.
- Public employees must be provided with head protection such as helmets or hard hats if they are exposed to flying or falling objects.



Enforcement: If language is in the collective bargaining agreement, file a grievance; California Occupational Safety and Health Administration (CAL-OSHA).

SAFETY – Healthful Workplace

Public Employees Are Entitled to a Safe and Healthful Workplace

**Labor Code Section 6300 and
Title 8 California Code of Regulations Section 330-340**

- Public employees have the right to a safe and healthful work environment. The employer must provide the use of safety devices and safeguards to reasonably ensure their health and safety. The employer must also use methods and processes which are reasonably adequate to insure health and safety, and do every other thing reasonable to protect public employees' lives, safety and health.

- The California Occupational Safety and Health Administration (CAL-OSHA) adopts occupational safety and health standards. The employer must comply with these standards. The standards, in addition to specifying certain safe work practices, are also developed to describe hazardous conditions of toxic materials, specific equipment and work practices which must be used to prevent or eliminate those conditions, and to limit worker exposure to dangerous substances.



Enforcement: If language is in the collective bargaining agreement - file a grievance; California Occupational Safety and Health Administration (CAL-OSHA).

SAFETY – Workplace Inspection

Public Employees Have the Right to ask CAL-OSHA to Inspect Their Workplace and Have Their Union Present When The Inspection Occurs

Labor Code Sec. 6309 and 6314

- If a public employee believes that there are unsafe or unhealthy conditions where he/she works, he/she can ask CAL-OSHA to inspect his/her workplace. A public employee's request for an inspection is kept confidential unless otherwise requested.

- CSEA officers or stewards have the right to accompany the CAL-OSHA investigator on his/her inspection. The employer may not elect the employee representative, and must pay the CSEA officer or steward for time spent on the inspection.



Enforcement: If language is in the collective bargaining agreement, file a grievance. California Occupational Safety and Health Administration (CAL-OSHA).

SAFETY – Refusal to Perform Unsafe Work

Public Employees Have the Right to Refuse to Do Unsafe Work Under Certain Conditions

Labor Code Sec. 6311 and 6312

- Public employees can refuse to perform work under certain conditions. The work must violate a CAL-OSHA standard or create a real and apparent hazard. Meaning, a reasonable person would agree that there is a danger, and the danger is to the health or safety of the employee or of another worker, and there is enough time to eliminate the danger through regular complaint channels.

- As a public employee you need to take certain steps before refusing to do any unsafe job so that your rights can be fully protected. These steps should include:

- Telling your supervisor about the hazard and asking that it be fixed;

- Referencing the collective bargaining agreement to determine what safety protections currently exist;

- Making it clear to the supervisor that the only reason you are refusing to do the work is because you believe that your health or safety would be in danger if you did the work;

- Make it clear to your supervisor that you are willing to do the work as soon as the job is made safe. Inform your supervisor that you will do work that is safe in the meantime;

- If you are not sure whether a particular job presents a hazard, talk to your site representative, job steward, chapter officer or Labor Relations Representative;

- If the employer does not immediately eliminate the hazard, call the employer's safety office or nearest office of CAL-OSHA with your complaint.



Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued.



Case Law: *CSEA v. Oakdale Union Elementary School District (1998) PERB Decision No. 1246*; California Occupational Safety and Health Administration (CAL-OSHA).

Layoff and Reemployment

Classified Employees Have the Rights to Notice, Seniority, Displacement,
Reemployment and Retirement

California Education Code

K - 12 Districts – 45101(g);
45115;45117;45298;45308

Community Colleges – 88001(g);
88015;88017;88117;88127

- Classified employees who are subject to layoff have a right to receive notice of the layoff not less than 30 days in advance of the layoff. The notice must also include their “bumping” rights, if any, and their reemployment rights.

- Classified employees are subject to layoff based upon their length of service. “Length of service” is negotiated in the classified contract as either “hours in paid status” or “date of hire”. The classified employee who has been employed the shortest time in the classification shall be laid off first. Time spent in a permanent status in a higher classification is also counted for seniority purposes in lower classifications.

- Classified employees who are subject to layoff may have what are commonly referred to as “bumping rights”. These rights allow a more senior employee to displace or “bump” employees with less seniority in the other classifications. These “bumping” rights are set forth specifically in the provisions of the classified contract and should be reviewed carefully with a CSEA representative to determine specific “bumping” options.

- Classified employees that are laid off are eligible for reemployment for a period of 39 months and must be re-employed in the reverse order of layoff and in preference to new applicants. Classified employees who take a “voluntary reduction of hours” in lieu of layoff have an additional 24 months to be re-employed to their former position.

- Classified employees who are subject to, or laid off may elect a service retirement from the Public Employees Retirement System in lieu of layoff. Classified employees electing to retire retain their re-employment rights.



Case Law: A district's determination of a "lack of work or lack of funds" can be challenged and set aside only if it is "fraudulent, unreasonable or arbitrary..." *Pasadena Unified School District (1977) Cal Court of Appeal*. A reduction of hours is not a layoff for bargaining purposes and requires a negotiated agreement with CSEA to be effected- *North Sacramento USD (1981)*. PERB Decision No. 193.



Enforcement: If language is in the collective bargaining agreement – file a grievance; if not, civil action may be pursued.

Workers' Compensation

Classified Employees Are Covered By Workers' Compensation

Labor Code Sections 3208, 3208.1, 3700, 3208,
4050-4055, 4600, 4601;

Title 8 California Code of Regulations Sections 9784,9785

- Workers' compensation is a statutory system of benefits set up to help employees who are injured on the job. These benefits include medical treatment and related costs, temporary disability, permanent disability, vocational rehabilitation benefits and death benefits.

- A work-related injury is an injury, disease, or other medical condition incurred by an employee in the course of his/her employment, or a pre-existing injury, disease, or condition made worse by the employment.

- There are three types of work-related injuries;

1. Specifically occurring from one accident,
2. Cumulative: caused by repetitive activities over a period of time, and
3. Occupational disease: a disease which occurs because of exposure to hazardous substances or conditions.

- The cost of workers' compensation insurance must be paid entirely by the employer with no contribution from the employee.

- It is a felony for anyone to knowingly file a false or fraudulent workers' compensation claim.




Enforcement: If language is in the collective bargaining agreement, file a grievance. Workers' Compensation Appeals Board.

Workers' Compensation

Classified Employees Must File Workers' Compensation Claims In A Timely Manner and Should Pre designate A Physician

Labor Code Sections 4600.3, 5400-5405;
Title 8 California Code of Regulations Section 9780.1

- A work related injury must be reported by the injured worker to their immediate supervisor at the first opportunity. If the injury develops over a period of time (cumulative), the employer should be notified as soon as the symptoms occur.
 - Verbal notice of the injury may be provided initially to the supervisor, however, written notice of the injury is required within 30 days of the injury. A workers' compensation claim form (DWC-1) must be filed within one year of the injury or accident. Most employers have a specific form for this purpose. If not, your notice should contain:
 1. name and address,
 2. the time and place the injury occurred, and
 3. the nature of the injury.
 - Prior to any injury or illness, classified employees should pre designate their physician. This physician becomes the "treating physician" for the purposes of the claim, and most decisions are then made by that treating physician. If the employee has not pre designated a physician, the employer may send the injured worker to a physician or clinic that it chooses, for up to 30, 90, 180 or 365 days after the injury. The ability to change the treating physician, and when, depends on the particular notice and type of plans available to the injured worker.
 - Psychiatric and post-termination claims filed after layoff or other termination are barred unless the worker had demonstrated existence of the injury prior to the termination notice.
-  Enforcement: Workers' Compensation Appeals Board; collective bargaining agreement.

Discipline and Due Process

Classified Employees Have the Right to Due Process, Including the Right to Receive Written Notice of Charges, the Right to Be Represented & the Right to Informal and Formal Responses

California Education Code & California Government Code

K - 12 Districts – Non-merit systems- 45101, 45113, 45116; merit system districts- 45116, 45302-45307, 45311-45312

Community Colleges- Non-merit systems- 88001, 88013, 88016; merit system districts- 88016, 88121-88124, 88126, 88130

- Permanent classified employees have a “property interest” in their jobs which requires the district to comply with “due process” elements before imposing discipline. These basic rights include: notice of the charges, a right to respond orally and/or in writing and the right to representation.

- Under Education Code Section 45116 (88016), classified employees have the right to be notified in writing of the charges against them. The document must set forth the “cause” for which the action is taken, and “...in ordinary and concise language, the specific acts or omissions upon which the disciplinary action is based...”

- Under Education Code Section 45113 (88013), classified employees can not be subject to acts that occurred while the employee was on probation or that are over two (2) years old. This standard automatically exists in non-merit districts but can be negotiated in merit system districts.

- In a merit system school district, the governing board and its management agents impose discipline and must afford employees what is commonly referred to as a “Skelly” conference. Here the employee has the right to respond orally and/or in writing to the charges. The district’s “Skelly” hearing officer is supposed to be an “objective official” from the district. An employee has the right then to appeal any imposed discipline to the personnel commission (or its hearing officer), whose findings are binding upon the employee and the District.

- In non-merit districts, the governing board’s management agents propose the disciplinary action, providing the employee with written charges and five (5) days to request a hearing. The Governing Board may hear the case or the parties may delegate the hearing to a hearing officer or arbitrator but “... the governing board’s determination of the sufficiency of cause for disciplinary action shall be conclusive.”

☞ Under the provisions of California Government Code section 3543.1(a) classified employees have a right to be represented at all investigative meetings that could reasonably lead to discipline and any meeting to challenge the discipline.

☞ Enforcement & Case Law: If language is in the collective bargaining agreement-file a grievance; if not, civil action may be pursued.

☞ Case Law: Skelly v. State Personnel Board (1975) 15Cal.3d 194, CSEA v. Personnel Commission (1970) 3 Cal.App.3rd 139; for denial of representation: Marin Community College District PERB No. 145 (1980).

Sexual Harassment

Classified Employees Cannot Be Sexually Harassed

Title VII of the Civil Rights Act of 1964; Fair Employment and Housing Act; Government Code Section 12950; California Education Code Sections 212.5, 212.6, 230

• Sexual harassment in the workplace is any unwanted sexual attention which makes a classified employee feel uncomfortable and causes problems on the job. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other continuous verbal or physical conduct of a sexual nature.

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or,
2. submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting such individual; or,
3. such conduct is severe or pervasive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

• Sexual harassment can take many forms including, but not limited to:

1. sexist remarks regarding an employee's body, clothing, or sexual activity;
2. constant leering or ogling;
3. offensive touching, patting, or pinching;
4. repeated and unanswered invitations for dates;
5. explicit demands for sexual activity;
6. poster depicting nude or scarcely clad persons.

• There are several things classified employees should do if they are being harassed, including:

1. Acting quickly. The best defense to harassment is a strong offense. Confront the harasser. Tell he/she that his/her behavior is offensive, and ask him/her to stop.

2. Getting support from co-workers. Make sure co-workers are aware of sexual harassment situations and efforts being made to remedy it.

3. Filing a grievance. If the collective bargaining agreement contains language prohibiting sexual harassment, utilize the grievance procedure to resolve the problem. If not, suggest to the chapter negotiating team that a sexual harassment clause be proposed in the next negotiation proposal. In addition, review the employer's written policy on sexual harassment.

4. Notifying the employer regardless of whether your harasser is a supervisor or co-worker. If the employer is not notified, they can claim ignorance and deny responsibility for the harassing behavior. **Put it in writing, and keep a copy.**

5. Finding other victims. If evidence can be built to show that the harasser has abused other workers, or that the harassment has been condoned by management, your harassment claim will be strengthened.

Note: The laws governing discrimination are extensive. If a classified employee feels he/she has been the victim of a discriminatory practice he/she should contact his/her CSEA Labor Relations Representative, or federal or state agency to determine what actions are appropriate.



Enforcement: If language is in the collective bargaining agreement - file a grievance; if not, civil action may be pursued. Department of Fair Employment and Housing; Equal Employment Opportunity Commission.

Discrimination & Harassment

Classified Employees Cannot Be Denied Employment/Advancement For Discriminatory Reasons

Title VII of the Civil Rights Act of 1964; Fair Employment and Housing Act; Age Discrimination Employment Act of 1967; Rehabilitation Act of 1973; Americans with Disabilities Act; Government Code Section 11135

• Public employers cannot refuse to employ or advance public employees because of their:

- age
- ancestry
- disability
- marital status
- nationality
- national origin
- race
- religion
- sex
- sexual orientation

• Questions regarding these subjects cannot be asked on written job applications or questionnaires. They cannot be asked in personal or telephone interviews with you or your reference. It is illegal for the employer to discipline a public employee for not answering questions regarding the above subjects.

• Note: The laws governing discrimination are extensive. If a classified employee feels he/she has been the victim of a discriminatory practice he/she should contact his/her CSEA Labor Relations Representative, or federal or state agency to determine what actions are appropriate.



Enforcement: If language is in the collective bargaining agreement—file a grievance; if not civil action may be pursued; Department of Fair Employment and Housing; Equal Employment Opportunity Commission.

Unemployment Compensation Insurance

Classified Employees May Be Entitled To Unemployment Compensation When They Are Involuntarily Employed

Unemployment Insurance Code: Employment Development Department Rules and Regulations; California Unemployment Insurance Appeals Board Rules and Regulations

- A person must file an unemployment claim with the Employment Development Department (EDD) upon notice of layoff, asserting a right to benefits. The EDD makes the initial “determination” regarding whether or not a claimant is “eligible” for unemployment compensation benefits.
- In addition to weekly compensation payments, a person is entitled to assistance in finding employment. A person claiming benefits must make reasonable efforts to secure employment on their own behalf.
- If the EDD determines that an unemployed person is not entitled to benefits, the unemployed person is entitled to appeal the EDD’s determination to an Administrative Law Judge, and finally, to the California Unemployment Insurance Appeals Board.
- It should be noted that employees might be entitled to unemployment compensation if they voluntarily become unemployed. If you have questions, contact your CSEA Labor Relations Representative or local EDD office.

 Enforcement: Employment Development Department; California Unemployment Insurance Appeal Board; civil action.

Notes