

Layoffs

College districts may reduce or eliminate services provided by academic employees, and may terminate (lay off) contract and regular academic employees in proportion to the reduction in services. (87443) No regular (tenured) academic employee may be laid off while a less senior academic employee (temporary, contract or regular) is retained to perform a service which the senior tenured employee is competent to perform. (87743) No contract employee may be laid off while a less senior academic employee (temporary or contract) is retained to perform a service which the senior contract employee is competent to perform. (87743)

Academic employees receiving notice of layoff on or before March 15th of the academic year may challenge their termination by requesting a hearing. (87743, 87740) A hearing is conducted by a state-appointed administrative law judge, who receives evidence and argument, and makes a recommended decision concerning existence of legal cause to terminate employees due to the layoff. (87740)

Layoffs generally are by seniority within FSA (faculty service area). Seniority is determined by hire date (date of first paid service in a contract or probationary position). See accompanying handout on FSA's.

Education Code

87743.

No tenured employee shall be deprived of his or her position for causes other than those specified in Sections 87453, 87467, and 87484, and Sections 87732 to 87739, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Section 87740 except in accordance with the provisions of Section 87463 and Sections 87743 to 87762, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of the district it shall have become necessary by reason of either of these conditions to decrease the number of tenured employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the employees of the district, tenured as well as probationary, at the close of the school year. However, the services of no tenured employee may be terminated under this section while any probationary employee, or any other employee with less seniority, is retained to render a service in a faculty service area in which the records of the district maintained pursuant to Section 87743.4 reflect that the tenured employee possesses the minimum qualifications prescribed by the board of governors and is competent to serve under district competency criteria.

Notice of the termination of services either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section

87740 and services of the employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 87413 and 87414. In the event that a tenured or probationary employee is not given the notices and a right to a hearing as provided for in Section 87740, he or she shall be deemed reemployed for the ensuing school year.

The board shall make assignments and reassignments in a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.

87744.

Any regular employee whose services have been terminated, as provided in Section 87743, shall have the following rights:

(a) For the period of 39 months from the date of the termination, any employee who in the meantime has not attained the age of 70 years shall have the preferred right to reappointment, in the order of original employment as determined by the board in accordance with Sections 87405 to 87424, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service. However, no contract or other employee with less seniority shall be employed to render a service for which the employee meets minimum qualifications and is competent to render.

(b) The right to reappointment may be waived by the employee, without prejudice, for not more than one college year, unless the board extends this right, but such a waiver shall not deprive the employee of his or her right to subsequent offers of reappointment.

(c) As to any employee who is reappointed, the period of his or her absence shall be treated as a leave of absence and shall not be considered as a break in the continuity of his or her service, he or she shall retain the classification and order of employment he or she had when his or her services were terminated, and credit for prior service under any state or district retirement system shall not be affected by that termination, but the period of his or her absence shall not count as a part of the service required for retirement.

(d) During the period of his or her preferred right to reappointment, the employee, in the order of original employment, shall be offered prior opportunity for temporary service during the absence of any other employee who has been granted a leave of absence or who is temporarily absent from duty. However, his or her services may be terminated upon the return to duty of the other employee, the compensation he or she receives shall be not less than the amount he or she would receive if he or she were being reappointed, and that the temporary service shall not affect the retention of his or her previous classification and rights.

(e) At any time prior to the completion of one year after his or her return to service, he or she may continue or make up, with interest, his or her own contributions to any state or district retirement system, for the period of his or her absence, but it shall not be obligatory on a district to match these contributions.

(f) If the employee becomes disabled or reaches retirement age at any time before his or her return to service, he or she shall receive, in any state or district retirement system of which he or she was a member, all benefits to which he or she would have been entitled had the event occurred at the time of his or her termination of service, plus any benefits he or she may have qualified for thereafter, as though still employed.

87745.

Any contract employee whose services have been terminated as provided in Section 87743 shall have the following rights:

(a) For the period of 24 months from the date of the termination, any employee who in the meantime has not attained the age of 70 years shall have the preferred right to reappointment, subject to the prior rights to reappointment by all regular employees as set forth in Section 87744, in the order of original employment as determined by the governing board in accordance with Sections 87405 to 87424, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service. However, no contract or temporary employee with less seniority shall be employed to render a service for which the employee meets minimum qualifications and is competent to render.

(b) As to any employee who is reappointed, the period of his or her absence shall be treated as a leave of absence and shall not be considered as a break in the continuity of his or her service, he or she shall retain the classification and order of employment he or she had when his or her services were terminated, and credit for prior service under any state or district retirement system shall not be affected by the termination. However, the period of his or her absence shall not be counted as a part of the service required for attaining regular status in the district or, except as provided in subdivision (c), for retirement purposes.

(c) During the period of his or her preferred right to reappointment, the employee, in the order of original employment and subject to the rights of regular employees as set forth in Section 87744, shall be offered prior opportunity for temporary service during the absence of any other employee who has been granted leave of absence or who is temporarily absent from duty. However, his or her services may be terminated upon a return to duty of the other employee, such temporary service shall not affect the retention of his or her previous classification and rights.

(d) At any time prior to the completion of one year after his or her return to service, an employee reappointed under this section may elect to continue or to reinstate his or her membership and interest in any state or district retirement system and to receive retirement benefits as if no absence from service had occurred. In the event of such an election, the employee shall pay into the retirement system the amount of his or her share of contribution and the district's share of contribution attributable to the period of absence and the amount of any contributions withdrawn, plus interest.

87740.

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

If a contract employee has been in the employ of the district for less than 45 days on March 15, the giving of the notice may be deferred until the 45th day of employment and all time periods and deadline dates prescribed in this subdivision shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However,

the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, this failure to do so shall constitute waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the colleges and the students thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds. The board may adopt, from time to time, rules and procedures not inconsistent with this section that may be necessary to effectuate this section.

(d) The governing board's determination not to reemploy a contract employee for the ensuing college year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the colleges and the students thereof and provided that cause shall include termination of services for the reasons specified in Section 87743. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(e) Notice to the contract employee by the governing board that the employee's service will not be required for the ensuing year shall be given no later than May 15.

(f) If a governing board notifies a contract employee that his or her services will not be required for the ensuing year, the board, within 10 days after delivery to it of the employee's written request, shall provide him or her with a statement of its reasons for not reemploying him

or her for the ensuing college year.

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(h) If the governing board does not give notice provided for in subdivision (e) on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

(i) If, after request for hearing pursuant to subdivision (b), any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivisions (c), (d), (e) and (h) that occur on or after the date of granting the continuance shall be extended for a period of time equal to the continuance.