

LAYOFF/REHIRE

Classified employees shall be subject to layoff for lack of work or lack of funds. (Education Code 45114, 45308)

Order of Layoff; Determination of Seniority

The order of layoff within the class shall be determined by length of service. (Education Code 45114, 45308)

The Superintendent or designee shall maintain a current determination of each employee's seniority in the District.

Length of service shall be determined by the date of appointment in the class and higher classifications. The employee who has been employed the shortest time by the District shall be laid off first.

Length of service credit shall be granted for military leave of absence, including voluntary or involuntary active duty during a period of national emergency or war as a member of the Military Reserve or the National Guard. (Education Code 45297, 45308)

Length of service credit may be granted for time spent on unpaid illness or maternity leave, unpaid family care leave, or unpaid industrial accident leave. Length of service credit shall not be granted for other types of unpaid leaves. (Education Code 45308)

(cf. 4161.8 - Family Care and Medical Leave)

Persons employed under Education Code Section 45105(b) or 45259 in "restricted" positions do not acquire permanent status under Education Code 45113 or 45301 and do not acquire seniority credits for the purpose of layoff for lack of work or lack of funds. After completing six months of satisfactory service, however, persons hired into these positions shall be given the opportunity to take qualifying examinations. If they successfully complete the examination, they shall be entitled to the full rights, benefits and burdens of regular classified employees, and his/her service for layoff purposes shall be counted from the original date of employment in the "restricted" position. (Education Code 45105)

Short-term or substitute employees may be separated at the completion of their assignment without regard to the procedures in this regulation.

(cf. 4121 - Temporary/Substitute Personnel)

Layoff Procedures

Classified employees subject to layoff because of lack of work in the event of a bona fide reduction or elimination of service being performed shall receive notice of the layoff 45 days before the effective date. They shall be informed of their reemployment rights and displacement rights, if any. (Education Code 45117)

In cases where specially funded programs expire at the end of any school year, classified employees subject to layoff for lack of funds shall receive written notice on or before April 29. The notice shall inform them of the layoff effective at the end of the school year and of their displacement and re-employment rights. If the termination date of the specially funded program is other than June 30, the notice shall be given at least 45 days before the effective date of the layoff. (Education Code 45117)

The District is not bound to provide 45 days notice in the event that it is unable to pay the salaries of classified employees due to an actual and existing financial inability, or if layoff is caused by conditions not foreseeable or preventable by the District. The District will provide information about reemployment and displacement rights, if any, to all employees laid off under these conditions. (Education Code 45117)

Voluntary Demotion or Voluntary Reduction of Hours

Employees may sometimes take voluntary demotions or voluntary reductions in assigned time in lieu of layoff or in order to remain in their present position rather than be reclassified or reassigned. Employees who do so shall be granted the same rights as persons laid off. (Education Code 45114, 45298)

Re-employment Eligibility

Classified employees laid off because of lack of work or lack of funds are eligible for reemployment within a period of 39 months and shall be reemployed in preference to new applicants. Persons so laid off also have the right to apply and establish their qualification for vacant promotional positions within the District during the 39-month period. (Education Codes 45114, 45298)

Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of layoff, reclassification or reassignment shall retain eligibility to be considered for reemployment in a position of the previously held class or number of hours for an additional period of time, provided that the same tests of fitness under which they qualified for appointment to the class are still applicable. The length of this additional period of time shall be determined by the Board on a class-by-class basis and shall not exceed 24 months. (Education Code 45114, 45298)

Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of layoff shall have the option of returning to a position in their former class or to positions with increased assignment time as vacancies become available, and without limitation of time. If there is a valid reemployment list they shall be ranked on that list in accordance with their proper seniority. (Education Code 45114, 45298)

Upon rejecting two offers of reemployment, the employee's name will be removed from the reemployment list and he/she will forfeit all rights to which he/she would otherwise be entitled.

When an employee is notified of a vacancy and fails to respond or report to work within time limits specified by District procedures, his/her name will be removed from the re-employment list and he/she will forfeit all rights to which he/she would otherwise be entitled.

Re-employment Procedures

Re-employment shall be in reverse order of layoff. (Education Code 45114, 45298, 45308)

In order to be reinstated, an employee must be fully capable of performing the normal and customary duties of the job. Employees whose physical condition is such that they cannot be reinstated at the time called for reemployment will be kept on the reemployment list until physically capable of returning to work or for a period not to exceed 39 calendar months.

(cf. 4032 - Reasonable Accommodation)

When a vacancy occurs, the senior employee who has held prior permanency in the position will be so notified by certified U.S. mail at his/her last known address and given the opportunity to accept or reject appointment into the vacant position. The employee must advise the District of his/her decision no later than 10 calendar days following notification. If the employee accepts, he/she must report to work no later than two calendar weeks from the vacancy notification date or on a later date specified by the District.

When a laid-off employee is re-employed, all accumulated sick leave credit will be restored.

A laid-off permanent employee will be re-employed with all rights and benefits accorded to him/her at the time of layoff. A laid-off probationary employee will be re-employed as a probationary employee, and the time served toward the completion of the required probationary period will be counted. He/she will also be re-employed with all rights and benefits accorded to him/her at the time of layoff.

A laid-off employee, when re-employed, will be placed on the salary step held at the time of layoff. An employee who bumped into a lower class will, when reinstated to the previous class, be placed on the salary step to which he/she would have progressed had he/she remained there. An adjusted anniversary date will be established for step increment purposes so as to reflect the actual amount of time served in the District.

Legal Reference:

EDUCATION CODE

45101 Definitions

45103 Classified service in Districts not incorporating the merit system

45105 Positions under various acts not requiring certification qualifications; classification

45105.1 CETA positions

45113 Rules and regulations for classified service in Districts not incorporating the merit system

45114 Layoff and reemployment procedures; definitions

45115 Layoff: Reinstatement from service retirement

45117 Notice of layoff due to expiration of specially funded programs or bona fide reduction or elimination of service

45286 Limited term employees

45297 Right to take equivalent examination while employee in military service

45298 Reemployment and promotional examination preference of persons laid off; voluntary demotions or reductions in time

45308 Order of layoff and reemployment; length of service

45309 Reinstatement of permanent noncertified employees after resignation

UNITED STATES CODE, TITLE 38

4301-4307 Veterans' Reemployment Rights

San Mateo City School District v. Public Employment Relations Board (1983) 33 Cal.3d 850, 866