

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Mike Fong, Chair
AB 472 (Wicks) – As Introduced February 6, 2023

SUBJECT: Classified school district and community college employees: compulsory leaves of absence: compensation

SUMMARY: Requires school and community college districts (“district”), as provided, to pay a classified employee upon returning to service to the district for the period of an involuntary leave of absence after the proceedings of a charge of a criminal offense, investigation, or job-related administrative determination are found in favor of the employee, among other provisions. Specifically, **this bill:**

- 1) Requires that, if a district places an employee on an involuntary leave of absence during the period in which the employee is charged with a criminal offense; under investigation; or, waiting due to administrative delay for necessary job-related administrative determinations, to pay the employee the employee’s full compensation for the period of the involuntary leave of absence upon the employee’s return to service for the district, if the conclusion of the proceedings are in favor of the employee.
- 2) Defines for these purposes, “involuntary leave of absence” to include, but not limited to, a compulsory leave of absence or suspension.
- 3) Establishes that these provisions must not reduce any entitlement to paid leave or replace any relevant procedures under any other law.
- 4) Maintains that these provisions must apply to districts that have adopted the merit system in the manner and effect as if it were a part of the merit system, as specified.

EXISTING LAW:

- 1) Provides various voluntary leaves of absence and requirements relating to compensation and the employment status subsequent to returning from such leaves for classified district employees. These leaves of absence include: vacation, illness, injury, pregnancy, parental, bereavement, and industrial and nonindustrial accidents, among other stipulations relating to the various leaves of absence. (Education Code (EDC) Sections 45190 et seq. and 88190 et seq.)
- 2) Establish that the immediately aforementioned forms of leaves of absence apply to districts that have adopted the merit system in the same manner and effect as it were a part of the merit system, as provided. (EDC Sections 45240 et seq. and 88060 et seq.)
- 3) Prohibits, subject to certain specified exceptions, the suspension, demotion, or dismissal without, or reduction in, pay of a permanent classified employee employed by a district who timely requests a hearing on charges against the employee and before a decision is rendered on the matter, among other provisions. (EDC Sections 45113 and 88013)

- 4) Prohibits, subject to certain specified exceptions, the suspension, demotion, or dismissal without, or reduction in, pay of a permanent classified employee employed by a district who timely requests a hearing on charges against the employee and before a decision is rendered on the matter, among other provisions. (EDC Sections 45122.1 and 88013)
- 5) Provides that, in addition to any other prohibition or provision, a person who has been convicted of a violent or serious felony must not be employed by a school district, as provided, and a school district must not retain a classified employee who is under these circumstances in employment who is a temporary, substitute, or probationary employee who has not attained permanent status, among other provisions, including that a person must not be denied of, or terminated from, employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court, by clear and convincing evidence, that they have been rehabilitated for school employment for at least one year. (EDC Sections 45123 and 45124)
- 6) Prohibits a person from being employed by a district if they have been convicted of a sex offense, as defined, or determined to be a sexual psychopath, as provided. (EDC Section 45125.5 and 88023)
- 7) Authorizes a school district or county office of education (COE) to request a local law enforcement agency to conduct an automated records check of a prospective noncertificated employee to ascertain whether the prospective noncertificated employee has a criminal record, among other provisions. (EDC Section 45304)

FISCAL EFFECT: Unknown.

COMMENTS: *Double-referral.* AB 472 (Wicks) was heard in the Assembly Committee on Public Employment and Retirement, where it passed with 6-0 vote on March 22, 2023. Issues germane to the Public Employment and Retirement Committee jurisdiction are referenced in that Committee's analysis.

Purpose. According to the author, "addressing this disparity is a fairness issue for classified employees in non-merit districts. In these circumstances, this right to be compensated is already afforded to classified employees in merit districts. Additionally, classified employees in both merit and non-merit districts are not now but should be paid for time missed in all other cases where charges are not brought, dismissed, or the employee is acquitted. AB 472 will clarify that if a school district places an employee on an involuntary leave of absence during the period an employee is charged with a criminal offense, is under investigation, or is waiting due to administrative delay for necessary job-related administrative determinations, then upon the conclusion of the proceedings in favor of the employee and the employee's return to service in the school district, the school district shall pay the employee's total compensation for the period of the involuntary leave of absence."

The author also notes that "this bill is a true fairness issue addressing classified employees, many of whom make less than \$30,000 a year and work only part-time without benefits. This bill would ensure that these classified employees are given full compensation in cases of dismissal or acquittal of charges or upon resolution of administrative delays."

Brief History of the Establishment of Merit Systems in California Public Schools

“Merit systems,” also commonly referred to as district “civil service systems” relating to public education in California are independent of the school or community college district’s governing board where the Personnel Commission of a “merit system” district is responsible for administering the hiring and retention of classified school employees through a statutory framework pursuant to the Education Code. In California, there approximately 100 of these systems that currently exist.

Merit systems derive from the late 19th and early 20th century civil service movement that sought to curtail the “spoils” resulting from political patronage in the system whereby elected political candidates rewarded their supporters with government positions. These systems arose out of a particularly egregious school board decision to discharge over 700 classified employees in the 1930s upon the new board’s election.

This history strongly suggests that the Legislature intended the merit system framework as a means to protect classified employees from local political mistreatment at a time prior to public sector collective bargaining, and in which such systems continue to presently exist.

Generally, in the public education employment arena, districts that have not formally adopted the merit system are referred to as “nonmerit” districts. For such districts, employee disciplinary and termination matters are not addressed by a personnel commission. Although this bill proposes to amend existing law, it maintains provisions in existing law such that, “[it must] apply to districts that have adopted the merit system in the manner and effect as if it were a part of the [merit system].”

Comments from the Education Committee. According to the Assembly Education Committee, both K-12 certificated and classified employees who are charged with specific criminal offenses delineated in Education Code Section 44940 are entitled to back pay when placed on a compulsory leave of absence, and charges are dropped or the employee is acquitted, pursuant to Education Code Section 44940.5. Further, K-12 classified employees are entitled to continue to be paid until the conclusion of a dismissal hearing pursuant to Education Code Section 45113.

This bill establishes additional instances where K-12 classified employees would be entitled to back pay when placed on an involuntary leave of absence including instances where the employee is charged with any criminal offense, and when an employee is under internal investigation by the school district for any reason, including investigation for misconduct. *The committee should consider whether it is appropriate for employees to be entitled to back pay while they are under investigation for misconduct, particularly if the misconduct is of a sexual nature. In some cases, inappropriate conduct may not rise to the level of dismissal, but the investigation may find that there was wrongdoing by the employee. Because the bill states that employees will be paid if the conclusion of the investigation is in favor of the employee, and that term is undefined, it is unclear how this situation would be handled.*

Because the bill expands the types of criminal offenses that entitle a classified employee to back pay, and entitles a classified employee to receive back pay during an internal investigation, it appears this bill may provide K-12 classified employees the right to back pay in instances where K-12 certificated employees (including probationary employees) are not currently entitled to back pay, in statute. *The committee should consider whether K-12 classified and certificated employees should have parity with regard to the instances in which employees are entitled to*

back pay when they are placed on a compulsory leave of absence during internal investigations and for all criminal charges.

Arguments in support. The California School Employees Association, the sponsor of AB 472 (Wicks), writes that “over half of California’s classified school employees earn less than \$30,000 per year, and most cannot afford to be on unpaid leave without the possibility of receiving their lost wages. Under current law, only merit school districts must pay a classified employee their full compensation for a period of involuntary leave of absence upon the employee’s return following the acquittal or dismissal of certain charges (Ed Code sections 45304, 44940.5). Due to a 1968 court ruling, if a non-merit school district places an employee on an involuntary leave of absence for the same offense, it is unconstitutional to compensate employees upon their return to service absent a preexisting rule adopted by the school board or statutory authorization.”

“Addressing this disparity is a fairness issue for classified employees in non-merit districts. This right to be compensated in these circumstances is already afforded to classified employees in merit districts. Additionally, classified employees in both merit and non-merit districts should be compensated for time missed in all other cases where charges are not brought, dismissed or the employee is acquitted. Classified employees are also often not compensated for time missed due to administrative delays that are at no fault of the employee and prevents them from having the required certification or paperwork to perform their duties.”

The Faculty Association of the California Community Colleges also wrote in support, stating that “employees of school districts and community colleges often live on the margins of economic stability due to the conditions of our higher education system. Any disruption in their streams of income could be the thing that entirely destabilizes their environments, making it difficult to pay rent or put food on the table. While we recognize the importance of accountability for classified employees and the importance of pursuing criminal charges, investigations, and administrative matters for the well-being of the educational environment, however, if such proceedings have been dismissed, employees should not incur monetary penalties.”

REGISTERED SUPPORT / OPPOSITION:

Support

AFSCME
California Labor Federation, AFL-CIO
California School Employees Association
California State Council of Service Employees International Union
California Teachers Association
Faculty Association of California Community Colleges

Opposition

None on file

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