

Know Your Rights



Know Your Rights- Para Edition 2024

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[Home](#) / [Events & Training](#) / [Know Your Rights Training](#)

Do you know what your basic rights are?

As classified employees, we are afforded many basic rights by law or through collective bargaining. Learn about your rights on the job and what you can do to protect yourself if your rights are violated. The emphasis of CSEA's Know Your Rights training workshop is to assist members in detecting violations of the law and their collective bargaining agreements.

The following subjects may be discussed:

- Personnel Files
- Safety
- Leaves
- Layoffs
- Benefits
- Hours of Employment
- Right to Representation
- Disciplinary Action

Find upcoming Know Your Rights Training events near you.

[VIEW EVENTS](#)

Know Your Rights

Publication 311

MEMBER EDUCATION PROGRAM

Today's Objectives

Basic Overview of Classified Employee Legal Rights

Basic Overview of Your Rights as a Union Member

Rights Specific to Paraprofessionals

Your Safety on the Job

Classified Employee Legal Rights

Where do your rights come from?

- California Education Code;
- Government Code (Educational-Employment Relations Act);
- Locally negotiated Collective Bargaining Agreements
- School Board Policies and Personnel Commission Rules
- Fair Labor Standards Act and Labor Code;
- *Case law



California Education Code

- Establishes the “floor” on a broad area of classified employee rights.
- K-12 and County Office of Education 45000’s.
- Community Colleges, 88000’s.



The screenshot displays the California Legislative Information website. At the top left is the California State Capitol dome logo. To its right, the word "California" is written in a large, orange, cursive font, with "LEGISLATIVE INFORMATION" in a smaller, black, sans-serif font below it. A navigation bar contains five buttons: "Home", "Bill Information", "California Law", "Publications", and "Other Resources". Below the navigation bar, a breadcrumb trail reads "California Law >> Code Search >> EDC". Underneath, there are two buttons: "Code Search" (which is highlighted) and "Text Search". The main content area shows the heading "Education Code - EDC" followed by three links: "[TITLE 1. GENERAL EDUCATION CODE PROVISIONS \[1 - 32527\]](#)", "[TITLE 2. ELEMENTARY AND SECONDARY EDUCATION \[33000 - 65001\]](#)", and "[TITLE 3. POSTSECONDARY EDUCATION \[66000 - 101149.5\]](#)".

Classified Rights in Education Code

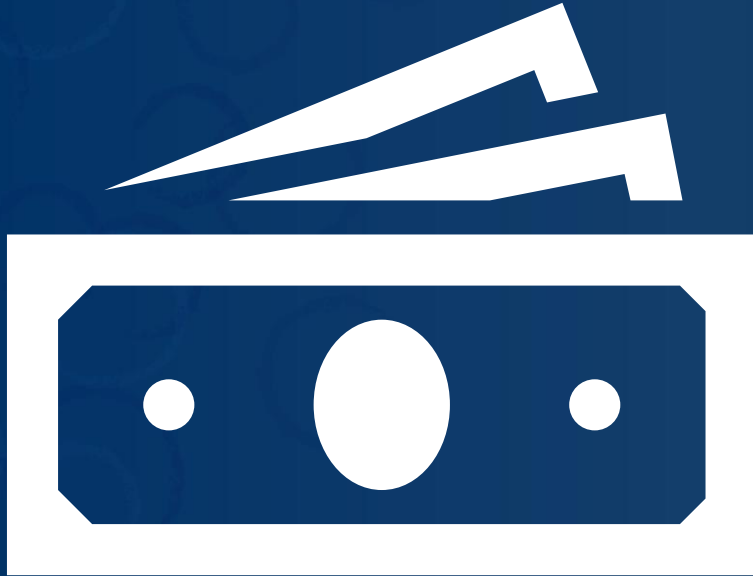
- Personnel Files
- Wages
- Duties (fixed)
- Hours
- Work week
- Causes for discipline
- Probation Period
- Lunch period
- Vacation
- Bereavement
- Sick
- Accident Leave
- PN Days
- Military
- Jury Duty
- Maternity Leave
- Reclassification
- Jury Duty
- Holidays
- Classified School Employee Week
- Comp. Time
- Rules for Contracting
- Layoff Rules
- Evaluations

Personnel Files (Ed. Code 44031/87031)

- School Employer must maintain a personnel file
- Classified have the right to see their file
- Right to respond to negative material in file
- Employee has a right to a copy of file



Wages



- Wages are a property right
- Must be paid at least once per month
- Payroll errors corrected in 5 days
- Must receive overtime pay for all hours over 8 in day/ 40 in week
- Compensatory time given at overtime accrual rate

Layoff and Reemployment

California Education Code
45117/ 88017

- Lack of work
- Lack of funds



Layoff and Reemployment

Layoff Rights

- Parity with teachers' rights
- Must receive notice by March 15
- 60-day notice (specially funded programs)
- Layoff is by seniority in classification (plus higher classification)

Reemployment Rights

- Eligible for reemployment for 39 months
- 63 months for voluntary reduction of hours or demotion
- Reemployed in preference to outside candidates in position you qualify for

Benefits

Vacation

- Every Classified entitled to vacation
- Vacation is a property right
- Paid out upon separation

Holidays

- 11 Paid Holidays
- Must work the day before or after
- Additional 1.5 x's pay for working

Sick Leave

- 12 days with full pay (prorated)
- All unused sick leave carries over
- NOT a property right

Extended Sick Leave

- 5 months at substitute differential pay
- 100 days at $\frac{1}{2}$ pay
- Seek Assistance

Industrial Accident Leave

- 60 working days of paid leave
- Commences on first day of absence
- Entitled to use other accrued leaves after 60 days

Benefits

Bereavement

- 5 days. 3 paid if in state.
- Member of immediate family (as defined in ed code)

Personal Necessity (PN)

- 7 days of accrued sick leave
- Can only be used for specific purposes

Jury Duty

- Entitled to leave with pay
- Illegal for employer to directly/indirectly suggest you seek exemption

Hours

- Hours must be set
- No more than 40 hours per week/ 8 hours per day

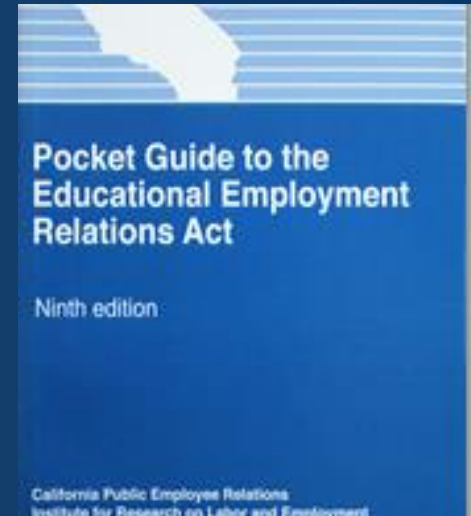
Discipline

- Permanent employees can only be dismissed for cause
- Must be notified in writing of any charges
- Right to a hearing in front of Governing Board or Arbitrator

Your Rights as a Union Member

Educational Employment Relations Act

- Government Code 3540-3549.3
- Signed into law in 1975
- Meeting and negotiating in public education employment
- Pre-K- Community College
- Enforced by Public Employment Relations Board (PERB)



Educational Employment Relations Act

Employees have the right to:

- Join
- Participate
- Hold Union Office
- Seek Representation
- File Grievances on their own behalf

CSEA has the right to:

- Negotiate hours, wages, working conditions
- Represent members
- File grievances
- Access sites where members work

Educational Employment Relations Act

It is unlawful for a public-school employer to threaten, retaliate, interfere with or coerce classified employees because of their participation in union activities.

Right to Representation



- Weingarten Rights
- 1975- United States Supreme Court in the case of NLRB v. J. Weingarten
- PERB adopted (Marin CCD)
- Must request
- This extends to writing of statements

Locally Negotiated Contracts

Locally Negotiated Contracts

- Raises
 - Stipends
 - Health care contributions
 - Enhanced PN Days
 - Extra Holidays
 - Layoff “Bumping” rights
 - Grievance Procedure
- Length of Duty-Free Lunches
 - Reclassification
 - Extra Break Time
 - Extra Holidays
 - Professional growth
 - Progressive Discipline and Due Process

Locally Negotiated Contracts

What does this mean?

- No two contracts in the State look the same
- Each Chapter negotiates on its members behalf
- All negotiated agreements are sent to members for approval
(ratification)

Other State and Federal Legislation

CRD/ EEOC



Civil Rights
Department

STATE OF CALIFORNIA



EEOC

U.S. Equal Employment Opportunity Commission

FMLA/CFRA

- Family Medical Leave Act



- California Family Rights Act



Family Schools Partnership Act

Labor Code 230.8 (1995)

Full time employees get up to 40 hours per year for attending activities at child's school or licensed daycare facility.

- Parents
- Grandparents
- Legal Guardians



Your Rights as a Paraprofessional

Paraprofessional Definition

Ed. Code 45330.

- *(a) As used in this section, a paraprofessional means a person who assists classroom teachers and other certificated personnel in instructing reading, writing, and mathematics. A paraprofessional includes an instructional aide as defined in subdivision (a) of Section 45343 and a teacher aide as described in Section 45360.*

Ed. Code 45330 (b)

Does not include assigning grades
to students



(b) A paraprofessional shall perform only duties that, in the judgment of the certificated personnel to whom the instructional aide is assigned, may be performed by a person not licensed as a classroom teacher. These duties shall not include assignment of grades to pupils.

Instructional Aide

- (a) As used in this article, “instructional aide” means a person employed to assist classroom teachers and other certificated personnel in the performance of their duties and in the supervision of pupils and in instructional tasks which, in the judgment of the certificated personnel to whom the instructional aide is assigned, may be performed by a person not licensed as a classroom teacher.
- (b) “Any school district” means a school district or a county superintendent of schools who employs classroom teachers in the public schools.

45344 (a)

- *An instructional aide need not perform such duties in the physical presence of the teacher but the teacher shall retain his responsibility for the instruction and supervision of the pupils in his charge.*

Ed. Code 45345

- Sharing student information is cause for discipline

Notwithstanding the provisions of Section 48950, no instructional aide shall give out any personal information concerning any pupil who is not his own child or ward, except under judicial process, to any person other than a teacher or administrator in the school which the pupil attends. A violation of this section may be a cause for disciplinary action, including dismissal.

Teacher Assistants

45350-45356

- (a) To enhance the teaching of reading, language arts, mathematics, social science, science, and other basic academic subjects to general education pupils
- Pupils Grades 1 to 6
- (b) To begin to reduce the impact of large classes in grades 1 to 6, inclusive, through the use of trained teacher assistants, operating within the classroom of a certificated teacher under the direction of that teacher.

Teacher Aides

Ed. Code 45360-45367 (1976)

- Must be proficient in reading, writing, mathematics
- Grant funded
- Teacher aide projects
- Grant money must be used for teacher aide salaries

Medication Administration

Anti-Seizure (Diastat)

- Ed. Code 49468-49468.5
- Must Volunteer
- Must be trained
- No Intimidation

Insulin

- Business and Professions Code
- Unlicensed personnel cannot legally give injections unless properly trained
- CDE Website

Epinephrine auto-injectors (Epi Pens)

- Ed. Code 49414
- Volunteer
- Be trained
- Believed to be suffering from anaphylaxis

Specialized physical health care services

- Catheterization
- Gastric Tube Feeding
- Suctioning
- Other services that require medical training



- Ed. Code 49423.5 (d)
- *"Specialized physical health care services" as used in this section include catheterization, gastric tube feeding, suctioning, or other services that require medically related training."*

Specialized physical health care services

Ed. Code 49423.5 (a)(2)(A-D)

The procedure must:

- Be routine for the pupil,
- Pose little potential harm for the pupil,
- Be performed with predictable outcomes, as defined in the individualized education program of the pupil,
- Not require a nursing assessment, interpretation, or decision-making by the designated school personnel.

Professional Development

Ed. Code 44391

California Classified School Employee Teacher Credentialing Program (SB 828, June 27, 2016)

Additional Assignments

Ed. Code 45102

- Summer school or additional assignments
 - Same pay and benefits
 - Assigned based on qualifications

Ed. Code 45103

- Substitute means someone brought in to temporarily replace absent classified employee
- Substitute-no more than 60 days in vacant position

Distasteful duty pay

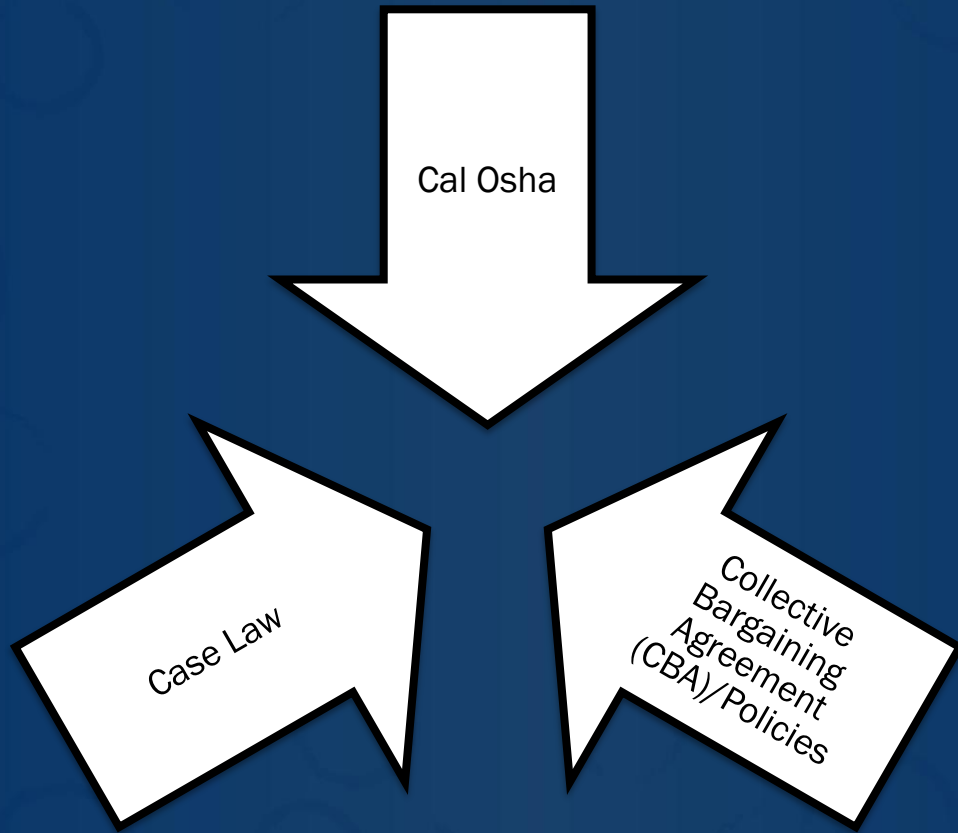
Ed. Code 45182



The governing board of any school district may provide differential compensation to those classified employees who perform duties of a distasteful, dangerous, or unique nature when, in the opinion of the board, such compensation is reasonably justified.

Safety on the Job

Where do your safety rights come from?



Cal/OSHA

Occupational Safety and Health Administration

- Employees are entitled to a safe and healthful workplace.
- Anyone can report a safety violation/ concern
- Anonymous
- Union can be a part of OSHA inspection at the site
- Employer must have an Injury and Illness Prevention Program (IIPP).
- No retaliation

Labor Code Section 6300

Title 8 California Code of Regulations Section 330-340

Safety Equipment

- Provide safety devices and safeguards which are reasonable to make employee's job safe and healthful.
- Provide eye protection whenever risk of eye injury is possible.
- Provide appropriate foot or hand protection when work conditions require.



How to contact Cal/OSHA

- Call the FREE Worker Information Helpline – (833) 579-0927
- Forms on Cal/OSHA website

- File a workplace safety complaint



[Cal/OSHA - Division of Occupational Safety and Health - Home Page](#)

- File a workplace retaliation complaint

Contract and Board Policy



SAFETY ARTICLE



BOARD POLICIES



ADMINISTRATIVE
REGULATIONS

Case Law

- Integra Health Management (2019)
- Federal occupational safety appeals commission holds employer violated duty to maintain safe working conditions by not taking adequate action to prevent a mentally-ill client from injuring an employee.
- **Takeaway:** employer needs to take reasonable action to protect employees when violent tendencies are known

Interactive Accommodations Meetings

- Americans with Disabilities Act/
- Civil Rights Department
- Case Law



- Entitled to representation during interactive process
- Employer must “interact” with employee to determine essential functions
- Employer must provide a reasonable accommodation

Price v. Victor Valley HSD (2022)

- Paraeducator too disabled to run after students may be entitled to accommodation.
- Court holds that running after students may not be an essential function for an Instructional Assistant



DWC FORM 9783

- Pre-designation of personal physician
- California Department of Industrial Relations (DIR), Department of Workers Compensation (DWC)
- Employer sometimes has own form

PRINT CLEAR

PREDESIGNATION OF PERSONAL PHYSICIAN

In the event you sustain an injury or illness related to your employment, you may be treated for such injury or illness by your personal medical doctor (M.D.), doctor of osteopathic medicine (D.O.) or medical group if:

- on the date of your work injury you have health care coverage for injuries or illnesses that are not work related;
- the doctor is your regular physician, who shall be either a physician who has limited his or her practice of medicine to general practice or who is a board-certified or board-eligible internist, pediatrician, obstetrician-gynecologist, or family practitioner, and has previously directed your medical treatment, and retains your medical records;
- your "personal physician" may be a medical group if it is a single corporation or partnership composed of licensed doctors of medicine or osteopathy, which operates an integrated multispecialty medical group providing comprehensive medical services predominantly for nonoccupational illnesses and injuries;
- prior to the injury your doctor agrees to treat you for work injuries or illnesses;
- prior to the injury you provided your employer the following in writing: (1) notice that you want your personal doctor to treat you for a work-related injury or illness, and (2) your personal doctor's name and business address.

You may use this form to notify your employer if you wish to have your personal medical doctor or a doctor of osteopathic medicine treat you for a work-related injury or illness and the above requirements are met.

NOTICE OF PREDESIGNATION OF PERSONAL PHYSICIAN

Employee: Complete this section.

To: _____ (name of employer) If I have a work-related injury or illness, I choose to be treated by:

(name of doctor)(M.D., D.O., or medical group)

(street address, city, state, ZIP)

(telephone number)

Employee Name (please print): _____

Employee's Address: _____

Name of Insurance Company, Plan, or Fund providing health coverage for nonoccupational injuries or illnesses: _____

Employee's Signature _____ Date: _____

Physician: I agree to this Predesignation:

Signature: _____ Date: _____
(Physician or Designated Employee of the Physician or Medical Group)

The physician is not required to sign this form, however, if the physician or designated employee of the physician or medical group does not sign, other documentation of the physician's agreement to be predesignated will be required pursuant to Title 8, California Code of Regulations, section 9780.1(a)(3).

Title 8, California Code of Regulations, section 9783.

Final Thoughts

Protect Yourself

- Know your rights
- Enforce your rights
- Empower others

Questions

