

Know Your Rights

Publication 311

MEMBER EDUCATION PROGRAM



AFL-CIO

California School
Employees Association

*Our mission: To improve the lives of our
members, students and community.*

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NOTES

Personnel Files

Classified employees have the right to review their personnel file and to have their responses to any derogatory statement or information entered into the file.

Source: *Cal. Education Code Section 44031 (K-12 Districts)*

Source: *Cal. Education Code Section 87031 (Community College Districts)*

Source: *Cal. Labor Code Section 1198.5*

- The school employer must maintain classified employees' personnel records. These records form the basis for any decisions affecting the employees' employment. Personnel files kept by supervisors are not the official personnel file.
- Classified employees have the right to see their official personnel file, at a time when they are not required to provide services to their employer. Classified employees can review all materials in their file except pre-employment records, examination committee records, or promotional examination records. Classified employees do have the right of access to their numerical scores obtained as the result of a written examination.
- Information of a derogatory nature shall not be placed in the employees' personnel file unless and until they have been given notice and an opportunity to review and comment on the information. They have the right to enter, and to have attached to any derogatory statement, their own comments which will be placed in their file. This review shall take place during normal business hours, and the employee shall be released from duty for this purpose without salary reduction.
- The employee has the right to a copy of his or her personnel records, at a cost not to exceed the actual cost of reproduction.

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

Case Law: *Miller v. Chico Unified School District (1979) 24 Cal.3d 703.*

Wages

Classified employees' earned wages are their property.

Source: Cal. Education Code Sections 45166, 45167, 45169 (K-12 Districts)

Source: Cal. Education Code Sections 88165, 88166, 88168 (Community College Districts)

Source: Cal. Code of Civil Proc. Sections 487.020(c); 706.020

- Classified employees' earned wages are their property. Once they have earned their wages, they are entitled to receive them in full. They must be compensated for all hours that they work. This includes all time that they are on duty, whether or not they are performing the specific functions of their job.
- Classified employees must receive their pay at least once during each calendar month. Such pay must generally be made on the last working day of the month in which the employer is open for business. However, there are some alternate procedures applying to some employers where payment may be made a few days later. 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 a supplemental payment shall be made from any available funds, within five work days following the determination of the error.
- Employers can claw back wage overpayments, but they must first give employees due process. After giving due process, employers can deduct wage overpayments in installment payments of no more than 25% of the net earnings in the paycheck. If the employer claims an overpayment is owed and the employee disagrees, CSEA believes that due process requires employers to prove the money is owed in front of a neutral decisionmaker such as a court. However, the law on this point is not completely clear, so seek advice from your LRR.
- Classified employees must receive upon initial employment or change in classification, a copy of the following information: job description, salary data, assignment or work location, work hours and work week. The salary data must include the annual, monthly or pay period, daily hourly, overtime and differential rate of compensation, whichever are applicable.

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

Overtime Pay

Classified employees have a right to overtime pay.

Source: Cal. Education Code Sections 45128, 45129, 45131 (K-12 Districts)

Source: Cal. Education Code Sections 88027, 88028, 88030 (Community College Districts)

Source: Fair Labor Standards Act (29 U.S.C. §§ 302(g); 207(o))

- 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 40 hours per week.
- If the employer has established a workday of less than eight hours but seven hours or more and a workweek of less than 40 hours but 35 hours or more, all time worked in excess of the established workday or workweek must be paid at the overtime rate.
- 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 workweek. 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.
- 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 when authorized, including pursuant to a collective bargaining agreement. Compensatory time can accumulate to a maximum of 240 hours and can be used at any time up to twelve months after the month 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.

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

BENEFITS — Vacation

Classified employees are entitled to vacation.

Source: Cal. Education Code Sections 45190, 45197 (K-12 Districts)

Source: Cal. Education Code Sections 88190, 88197 (Community College Districts)

- Every school district must grant all classified 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 for more than $\frac{1}{2}$ of the working days of the month. The school district must provide pro rata vacation leave for classified employees working less than eight hours per day or 40 hours per week.
- After the initial six months of employment, vacation becomes a vested right for classified employees. As a vested right, earned vacation becomes the employee's property and is protected.
- 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 in a particular year, the amount not taken shall accumulate for use in the next year or he/she must be compensated for it.
- Classified employees may be advanced vacation before it is earned. If, however, they separate from the district, the appropriate amount of salary must be deducted from their final paycheck to pay for all unearned days of vacation.
- Classified employees must be compensated in a lump sum for all earned and unused vested vacation leave upon separation from service.

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

BENEFITS — Holidays

NOTES

Classified employees are entitled to holidays.

Source: Cal. Education Code Sections 1318, 37220, 37221, 37222, 45203, 45204, 45205, 45206, 45206.5 (K-12 Districts)

Source: Cal. Education Code Sections 88203, 88204, 88205, 88205.5, 88206 (Community College Districts)

Source: Cal. Government Code Section 6700

- All classified employees are entitled to eleven 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
- June 19, Juneteenth*
* CSEA is in litigation over the issue of whether this holiday should have been provided in 2021-22, but it is clearly required for 2023 forward.
- First Monday in September, Labor Day
- September 9, Admissions Day
- November 11, Veterans Day
- That Thursday in November declared as Thanksgiving Day (normally the fourth Thursday)
- December 25, Christmas Day
- Districts may substitute or designate other days for Lincoln Day, Washington Day, Memorial Day, Admission Day and Veterans Day, provided that the designated days constitute a three-day weekend.
- In addition to the holidays listed, classified employees are entitled to any day appointed by the Governor or President as a day of public fast, thanksgiving or holiday. Further, classified employees have the ability through negotiations between their exclusive representative and the employer to further expand their total number of holidays.

NOTES

- 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 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.

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

BENEFITS — Sick Leave

Classified employees are entitled to sick leave.

Source: Cal. Education Code Sections 45136, 45191, 45202 (K-12 Districts)

Source: Cal. Education Code Sections 88035, 88191, 88202 (Community College Districts)

- 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.
- Classified employees are credited with the twelve days leave at the beginning of the fiscal year. However, new employees are entitled to take only six days of sick leave for the first six months of their employment.
- Compensation for these days must be the same as would normally be received had the employee worked.
- The district must carry over all unused sick leave into subsequent fiscal years.
- Sick leave is not a property right. Therefore, upon separation from the district, all accrued sick leave is lost. If an employee terminates employment with one district and begins employment with another district, the employee's accrued sick leave can be transferred to the new district, if the new employment begins within one year of the previous employment, provided that the employee was not terminated for cause.
- For PERS eligible employees, any unused sick leave the employee has at the time of retirement will automatically be converted to additional service credit. (25 eight-hour days equal one additional month of service credit.) The employee may be asked to have the employer verify the unused sick leave on the employee's application at the time of retirement.

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

BENEFITS — Additional Sick Leave

Classified employees are entitled to additional sick leave.

Source: *Cal. Education Code Section 45196 (K-12 Districts)*

Source: *Cal. Education Code Section 88196 (Community College Districts)*

- In addition to their regular accrued sick leave, classified employees are entitled to extended paid sick leave, in one of the following forms, depending upon what the employer chooses or what is in the collective bargaining agreement:
 1. For a period of up to five months which runs concurrently with the employee's regular accrued sick leave. After the accrued sick leave, where the employee receives full pay, is exhausted, use of this extended sick leave during the remainder of the five-month period entitles the employee to paid sick leave which is the difference between the employee's salary and what a substitute is paid, if the district hires a substitute. Another classified employee performing the absent employee's duties is not considered a substitute: the absent employee therefore receives his or her full salary if no substitute is hired. This leave does not accumulate from year to year.
 2. For a period of one hundred (100) days of additional sick leave in lieu of the five months described above, which runs concurrently with the employee's regular accrued sick leave. This leave is credited to the employee once a year. The employee receives 50% of his or her regular salary during this leave, whether or not the district hires a substitute. This leave does not accumulate from year to year.
- 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, a civil action may be pursued.

Case Law: *California School Employees Association v. Tustin Unified School District* (2007) 148 Cal.App.4th 510

BENEFITS — Industrial Accident & Illness Leave

Classified employees are entitled to a leave of absence for industrial accidents and illness.

Source: Cal. Education Code Sections 45192, 45196 (K-12 Districts)

Source: Cal. Education Code Sections 88192, 88196 (Community College Districts)

- When a classified employee has suffered an industrial accident or illness, such employee shall be entitled to a paid leave of absence for up to sixty working days in any one fiscal year for the same accident or illness.
- Industrial accident and illness leave commences on the first day of absence.
- Allowable leave does not accumulate from year to year. If the accident or illness occurs at a time when the full 60 days overlaps into the next fiscal year, the employee is entitled to only that amount remaining at the end of the fiscal year for the same illness or injury.
- This leave will be reduced by one day for each day of the authorized absence regardless of the workers compensation award, if any, made under California's workers compensation laws.
- When an employee is injured on the job, prompt notice of the injury, usually within 24 hours, must be provided to the immediate supervisor at the first opportunity. A workers compensation claim form (DWC-1) must be filed within one year from the date of injury.
- Every employee should pre-designate 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 the 60 days of industrial accident or illness leave, the employee is then entitled to use his or her accrued regular sick leave, extended sick leave (substitute differential or 50% pay), vacation, and compensatory time off.
- Once a workers compensation claim has been approved, the employee will receive temporary disability payments. Payments will then be coordinated with the sick and vacation leaves.

- If an employee exhausts all available leaves of absence, paid or unpaid, and is not medically able to return to work and if the employee is not placed in a different position, the employee shall be placed on a reemployment list for a period of 39 months. Once the employee is able to return to work, the employee shall be employed in the next vacant position in the class of the person's previous assignment over all other available candidates, except where there is a reemployment list established for layoff due to lack of work or funds, in which case the employee is listed according to seniority.
- It is highly recommended that the employee contact the chapter representative and/or Labor Relations Representative to ensure that his or her rights to an industrial accident or illness leaves are protected.

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

BENEFITS — Pregnancy Disability Leave

Classified employees are entitled to pregnancy disability leave.

Source: Cal. Govt. Code Section 12945

Source: Cal. Regulations (2 CCR §§ 11035-11051)

Source: Cal. Education Code Section 45193 (K-12 Districts)

Source: Cal. Education Code Section 88193 (Community College Districts)

- Classified employees are entitled to an unpaid leave of absence if they are disabled by pregnancy, childbirth, or a related medical condition for a reasonable period up to four months. Classified employees may use their paid vacation leave during this period. They may also be able to access their paid sick leaves. (See “Paid Parental Leave,” p. 12)
- The district must continue to pay health care coverage to the employee under a group health plan for the duration of the period at the level and under the conditions that coverage would have been provided if the employee continued to work.
- The district must provide reasonable accommodation to an employee for a condition related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider.
- There are no eligibility requirements, such as number of hours worked or length of employment with the district, for the employee to meet in order to take pregnancy disability leave.
- The employee’s right to this pregnancy disability leave is separate and apart from the employee’s right to leave for reason of the birth of her child, i.e., bonding, under the California Family Rights Act, which provides for an additional 12 workweeks for such bonding. (See “Family and Medical Leave, California Family Rights Act,” p. 26)

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

BENEFITS — Paid Parental Leave

Classified employees are entitled to use their paid sick leave for parental leave.

Source: Cal. Education Code Section 45196.1 (K-12 Districts)

Source: Cal. Education Code Section 88196.1 (Community College Districts)

- Classified employees who have completed 12 months of employment with the district are entitled to use their regular accrued sick leave and their differential sick leave pay for up to 12 workweeks for parental leave. Parental leave is leave to bond with the employees' newborn babies, foster children, and adopted children. Classified employees are already entitled to *unpaid* parental leave under the California Family Rights Act (CFRA) and the federal Family & Medical Leave Act (FMLA): they can receive *paid* parental leave by accessing their sick leave banks.
- This paid parental leave is available to part-time employees, as well as full-time employees: there is no requirement that the employee work 1,250 hours in the past 12 months, which is an eligibility requirement under CFRA and FMLA.
- This paid parental leave runs concurrently with unpaid parental leave under CFRA and FMLA for a total of 12 workweeks during any 12-month period.
- If an employee does not want to use up his or her paid sick leave and differential sick leave pay for parental leave, the employee can choose to use unpaid parental leave.
- If both parents work for the same school district, the parents have a combined 12-workweek period for this paid parental leave: they can decide how to share this leave.

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

BENEFITS — Leaves for Caring for Sick Children or Dealing with Childcare Emergencies

NOTES

Classified employees are entitled to use their paid sick leave for caring for a sick family member or other designated person. They are also entitled to unpaid leave to deal with childcare issues.

Source: Cal. Labor Code sections 230.8, 233, 245-248.5

- Employees are entitled to use up to half their paid sick leave to care for any of the following if they are sick: their child, spouse, parent, sibling, grandchild, grandparent or any other designated person. An employee must wait 12 months after initially designating a person under this law before they designate someone new.
- Employees are entitled to take off unpaid time up to 40 hours per year for participating in activities of the school or licensed childcare provider of a child, or to address a childcare provider or school emergency. Also, up to 8 of the 40 hours may be used to find, enroll, or re-enroll a child in a new school or childcare program.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, a charge may be filed with the state Labor Commissioner or a civil action may be pursued.

BENEFITS — Paid Leave for Military Veterans' Medical Treatment

Classified employees who are military veterans are entitled to leave for medical treatment of military disabilities in the first year of employment.

Source: Cal. Education Code Section 45191.5 (K-12 Districts)

- Classified employees who are military veterans with a military service-connected disability rated at 30% or more are entitled to 12 days of paid leave to undergo medical treatment for their military service-connected disability in the first 12 months of their employment.
- A classified employee who is employed less than five days a week or less than a full fiscal year is entitled to a pro rata amount of the 12 days of paid leave.
- This leave is in addition to all other forms of paid sick leave under the Education Code.

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

BENEFITS — Bereavement Leave

NOTES

Classified employees are entitled to bereavement leave.

Source: Cal. Education Code Section 45194 (K-12 Districts)

Source: Cal. Education Code Section 88194 (Community College Districts)

Source: California Family Rights Act, Gov. Code 12945.

- Classified employees are entitled to a 5-day leave of absence as a result of the death of any member of their immediate family. The paid portion of this leave is restricted to three days if the funeral is in-state, unless the employee has additional personal necessity leave available (see page 16).
- A classified employee's immediate family is defined as the mother, father, grandmother, grandfather, or a grandchild of the employee or of 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 have the ability, through negotiations between the exclusive representative and the district, to expand the class of relatives listed above as members of the immediate family.

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

BENEFITS — Personal Necessity Leave

Classified employees are entitled to personal necessity leave.

Source: Cal. Education Code Section 45207 (K-12 Districts)

Source: Cal. Education Code Section 88207 (Community College Districts)

- Classified employees can use up to seven days of their accrued regular sick leave for reasons of personal necessity. The exclusive representative and district may negotiate for a greater number of days to use for personal necessity purposes.
- Personal necessity leave can be used when:
 1. Employees require additional bereavement leave due to the death of a member of their immediate family.
 2. When there has been an accident involving them or their property, or the person or property of a member of their immediate family.
 3. When it is necessary for them to appear in any court or administrative forum as a litigant, party, or witness under subpoena.
 4. Other reasons prescribed by the district.

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

BENEFITS — Jury Duty

Classified employees are entitled to jury duty leave.

Source: Cal. Education Code Section 44037 (K-12 Districts)

Source: Cal. Education Code Section 87036 (Community College Districts)

- Classified employees are entitled to a leave of absence with pay for the purpose of serving on a jury. The district must pay a classified employee called for jury duty the difference between the employee's regular salary and the amount the employee receives as juror's fees.
- 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, a civil action may be pursued.

BENEFITS — Military Leave

Classified employees are entitled to military leave.

Source: *Uniformed Services Empl. & Reempl. Rights Act (USERRA) (38 USC §§ 4301-4335)*

Source: *Gov. Code 12945.2; Unemployment Insurance Code 3302.2*

Source: *Cal. Military & Veterans Code Sections 394.5 – 395.10*

- Generally, classified employees who enter the active military of the U.S. or State of California during times of declared wars or national emergency or when U.S. armed forces are serving at the UN's request, 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 while engaged in military duty ordered for purposes of active military training, encampment, naval cruises, special exercise or like activity, provided the ordered duty does not exceed 180 calendar days.
- Public employees are entitled by Military & Veterans Code sections 395.01-.02 to be paid by their employer for the first 30 days of their military leaves.
- Generally, such classified employees shall have the right to be fully restored to their former positions upon the end of temporary military duty, including no loss of seniority they would have accrued if working for purposes of vacation, sick leave, promotion and layoff.
- Employees with more than 1250 hours of service are entitled under CFRA and FMLA to take up to 12 weeks unpaid leave to prepare for active military duty of themselves, their spouses, or children, such as obtaining new childcare or providing childcare on an urgent basis.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, these state laws may be enforced by civil action, while the federal laws may be enforced via complaints to the U.S. Attorney General or the federal Department of Labor.

Hours of Employment

Classified employees' workweek and workday must be set.

Source: *Cal. Education Code Sections 45127, 45131, 45132, 45133 (K-12 Districts)*

Source: *Cal. Education Code Sections 88026, 88040 (Community College Districts)*

- The workweek and workday must be set for all classified employees.
- 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.
- The exclusive representative may negotiate a 10-hour, four-days-a-week or a 9-hour, 80-hours-per two-week schedule.
- The district cannot increase, decrease or alter the workweek or workday without negotiating the change with the exclusive representative. The district cannot reduce the hours of vacant or occupied positions without negotiating with the exclusive representative.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, a civil action may be pursued. For failures to negotiate changes with the union, an unfair practice charge can be filed by the exclusive representative with the Public Employment Relations Board

Case Law: *Healdsburg Union High School District (1984) PERB Decision No. 375 (reduction of hours is negotiable).*

Huntington Beach Union High School District (2003) PERB Decision No. 1525 (reduction of hours of occupied or vacant positions is negotiable).

Discipline and Due Process

Permanent classified employees have the right to due process, including the right to receive written notice of disciplinary charges, the right to be represented, the right to respond to the charges before action is taken, and the right to appeal the disciplinary action.

Source: Cal. Education Code Sections 45101, 45113, 45116 (Non-merit System K-12 Districts)

Source: Cal. Education Code Sections 45116, 45302-45307, 45311-45312 (Merit System K-12 Districts)

Source: Cal. Education Code Sections 88001, 88013, 88016 (Non-merit System Community College Districts)

Source: Cal. Education Code Sections 88016, 88121-88124, 88126, 88130 (Merit System Community College Districts)

- Permanent classified employees cannot be disciplined or dismissed unless there is just cause for the action.
- Permanent classified employees have a “property interest” in their employment under the California Constitution which requires the district to comply with due process rights before imposing discipline. These basic rights, which are often called “Skelly” rights, include: notice of the action and the reasons for the discipline, a copy of the charges and materials on which the charges are based, a right to respond orally and/or in writing, and the right to representation.
- Classified employees also have the right under the Education Code 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.”
- Classified employees in non-merit districts cannot be disciplined for acts that occurred more than two years previously or while the employee was probationary. This standard can be negotiated in merit system districts.
- Before a district can impose discipline, the district must hold a “Skelly” hearing, where an “objective” district official who was not involved in bringing the charges, listens to the employee’s response and issues a “Skelly” decision, upholding, modifying, or rejecting the proposed disciplinary action.
- In a merit system district, if the disciplinary action is upheld and imposed, the employee has the right to appeal the discipline to the personnel commission. The personnel commission or a designated hearing officer will hold an evidentiary hearing and issue the decision.

- In a non-merit district, if the disciplinary action is upheld, the employee has the right to appeal the discipline to the governing board. The governing board will hold an evidentiary hearing and issue its decision. The board can also use a hearing officer to hold the evidentiary hearing, and then can accept, reject, or modify the hearing officer's recommended decision. The governing board's "determination of the sufficiency of the cause for disciplinary action shall be conclusive." However, the union and the district may negotiate a contract provision where the district may delegate "its authority to determine whether sufficient cause exists for disciplinary action" to an impartial third party hearing officer: the district then has extremely limited review of the hearing officer's decision and virtually no authority to reject or modify the decision.
- Under the Educational Employment Relations Act (Govt. Code § 3540 et seq.), classified employees have a right to union representation in investigative interviews that could reasonably lead to discipline and in Skelly meetings.

Enforcement: 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) 15 Cal.3d 194 (constitutional pre-removal rights to notice of charges and right to respond)

Case Law: *Capistrano Unified School District* (2015) PERB Decision No. 2440 (employee right to union representation in investigatory interviews)

Layoff and Reemployment

Classified employees have rights to notice of layoff, and displacement and reemployment based on seniority.

Source: Cal. Education Code Sections 45101(g), 45114, 45115, 45117, 45298, 45308 (K-12 Districts)

Source: Cal. Education Code Sections 88001(g), 88014, 88015, 88017, 88117, 88127 (Community College Districts)

- Classified employees who are subject to layoff have a right to receive notice of the layoff after January 1, 2022 by March 15th of each year, unless their program is specially-funded and has lost funding, and then notice must be provided not less than 60 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 seniority in classification (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 same classification. These “bumping” rights may be set forth in the provisions of the classified contract and should be reviewed carefully with a CSEA representative to determine specific “bumping” options.
- If an employee has reason to believe they are being laid off in violation of their seniority rights or due to bad faith conduct on the District’s part (i.e, they are being targeted due to protected activity or for disciplinary reasons), they are entitled to a hearing before a state Administrative Law Judge (ALJ) at no expense to them. The ALJ’s ruling is advisory to the district’s governing board (not binding), so is not a good substitute for filing a grievance or a claim before other administrative bodies. And districts have a lot of discretion to lay off for lack of work or lack of funds, so CSEA advocacy for classified workers before a board makes a layoff decision is essential. Classified employees who are laid off are eligible for reemployment for a period of 39 months and must be reemployed in the reverse order of layoff, by seniority in classification.

- Classified employees who are laid off must also be reemployed in preference to new outside applicants in any classification in which they meet the qualifications, even where the classified employee has not previously held the classification.
- Classified employees who take a voluntary demotion or voluntary reduction in assigned time in lieu of layoff receive an additional 24 months of reemployment eligibility for a total of 63 months.
- Classified employees who are subject to being, or were in fact, laid off for lack of work or lack of funds may elect a service retirement from the Public Employees' Retirement System and be placed on a reemployment list. They thereby retain their reemployment rights.

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 Association v. Pasadena Unified School District* (1977) 71 Cal App.3d 315, 322 (A district's determination of a "lack of work or lack of funds" can be set aside only if it is "fraudulent or so unreasonable and arbitrary as to indicate an abuse of discretion").

Case Law: *North Sacramento School District* (1981) PERB Decision No. 193 (A reduction of hours is not a layoff for bargaining purposes and the employer must negotiate with CSEA over the decision to reduce hours).

Case Law: *Tucker v. Grossmont Union High School District* (2008) 168 Cal. App.4th 640 (A classified employee who has been laid off has a right to reemployment over outside applicants in any classification for which the employee is qualified).

Unemployment Compensation Insurance

Classified employees may be entitled to unemployment compensation when they are involuntarily discharged or laid off.

Source: Cal. Unemployment Insurance Code Sections 100-4751

Source: Cal. Employment Development Dept. Regulations, 22 CCR §§ 125-1 – 2113-1

- To receive unemployment benefits, an employee must file an unemployment claim with the Employment Development Department (EDD) upon involuntary discharge or layoff, asserting a right to benefits. The EDD makes the initial determination regarding whether or not a claimant is eligible for unemployment compensation benefits.
- Benefits are not paid for an initial one-week waiting period except in exceptional circumstances such as disasters.
- 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.
- Employees are technically not entitled to unemployment if fired for willful misconduct. However, many employers do not raise this objection to claims filed.
- School employees are not entitled to benefits for being out of work during the summer unless their district either (1) failed to give them the usual written reassurance of reemployment, or (2) is running a summer program so robust as to resemble its regular-term offerings but failed to rehire them for the summer. See *United Educators of S.F. v. CUIAB* (2020) 8 Cal. 5th 805 (also ruling that UI benefits are unavailable during summer for workers promised rehire by their district for summer but this didn't pan out – their remedy is against their district, as federal law prohibits UI system from paying school employees for times in between periods of regular instruction).
- Employees might be entitled to unemployment compensation when they quit if they did so due to certain exigent circumstances such as the need to accompany a spouse moving to another location. Employees with questions should contact their CSEA Labor Relations Representative or local EDD office.
- 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.

Enforcement: File a claim with the Employment Development Department, with appeals to the California Unemployment Insurance Appeal Board.

Collective Bargaining Rights

Classified employees have the right to engage in union activities and classified employee organizations have the right to represent their members and to negotiate with public school employers.

*Source: Educational Employment Relations Act (EERA)
(Cal. Govt. Code §§ 3540–3549.3)*

- 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 engage in a broad range of protected activities including, but are not limited to, the following:
 - Joining an organization.
 - Involvement in a union organizing campaign.
 - Holding union office.
 - Reporting safety concerns to the employer or union representative.
 - Serving as a chapter president or unions steward or taking leave to participate in union activities.
 - Serving or attempting to serve as an employee representative during a termination hearing.
 - Acts done in furtherance of union interests.
 - Involvement in political activities related to organizational interests.
 - Seeking assistance of the union.
 - Participating in or raising concerns about contract negotiations.
 - Distributing information to bargaining unit members related to employer-employee relationship.
 - Participating as a witness or otherwise supporting a grievance against the employer.
 - And more.”

- Classified employees have the right to be represented by CSEA in meetings with district management that affect their wages, hours, and working conditions. This includes, but is not limited to, grievance meetings (formal and informal) and meetings that could reasonably lead to discipline.
- CSEA has the right to negotiate for unit members regarding their “wages, hours of employment, and other terms and conditions of employment.” The Public Employment Relations Board (PERB) has interpreted this language to include nearly all actions that affect employees’ working conditions. These include, but are not limited to:
 - Affirmative action plans
 - Bidding (for routes or assignments)
 - Contracting out
 - 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
 - Wages
 - Work calendar
 - Work load
- An employer cannot negotiate with individual employees. The employer has a duty to bargain only with designated CSEA representatives.
- The employer’s duty to bargain means that the employer cannot make unilateral changes without first giving the union notice and a reasonable opportunity to negotiate, and then negotiating until exhaustion of the PERB impasse procedure. The union is entitled to obtain necessary and relevant bargaining information from the employer.
- “CSEA and its representatives have the right to access worksites at reasonable times to areas in which classified employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by EERA. In general, because these statutory rights are measured by a “reasonableness standard,” clarification in the collective bargaining agreement usually promotes clarity and reduces conflict in these areas.”

- “A reasonable number of classified employee representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances. The statute is driven by the use of the term “reasonable periods of released time.” What is reasonable is in the eye of the beholder; therefore most collective bargaining agreements contain detailed release time provisions. Release time is a mandatory subject under the terms of the EERA.”
- CSEA and employees have the right to file unfair practice charges with PERB against employers if their EERA rights have been violated. The charge must be filed within six months of the violation.

Enforcement: If EERA rights are violated, file an unfair practice charge with PERB.

Case Law: *Anaheim Union High School District (1981) PERB Decision No. 177 (the standard for negotiability of subjects).*

Case Law: *Healdsburg Union High School District (1984) PERB Decision No. 375 (enumerating specific negotiable subjects).*

Case Law: *Novato Union School District (1982) PERB Decision No. 210 (retaliation or discrimination against an employee for union activities).*

Case Law: *Modesto City Schools (1983) PERB Decision No. 291; Oakdale Union Elementary School District (1988) PERB Decision No. 1246; Oakland Unified School District (2008) PERB Decision No. 1965; Santa Paula School District (1985) PERB Decision No. 505; Alvord Unified School District (2009) PERB Decision No. 2021; Mount San Antonio Community College District (1982) PERB Decision No. 224; City of Commerce (2018) PERB Decision No. 2602-M (detailing the broad range of protected employee activities).*

Case Law: *Jefferson School District (1980) PERB Decision No. 133; Desert Community College District (2007) PERB Decision No. 1921 (employee organization access rights).*

Case Law: *Anaheim Union High School District (1981) PERB Decision No. 177 (right to release time and negotiability).*

Family and Medical Leave Act California Family Rights Act Leave

Classified employees are entitled to leave under the Family and Medical Leave Act ("FMLA") and the California Family Rights Act ("CFRA").

Source: Family Medical Leave Act (29 USC §§ 2601-2654)

Source: Dept. of Labor Regulations (29 CFR §§ 825.10-825.803)

Source: California Family Rights Act (Govt. Code Section 12945.2)

Source: Cal. Regulations (2 CCR §§ 11088-11098)

- FMLA provides 12 workweeks of unpaid leave during any 12-month period. The leave may be taken (1) for the classified employee's own serious health condition, (2) to care for an immediate family member with a serious health condition, or (3) for the birth and care of a newborn child of the employee, or the placement with the employee of a child for adoption or foster care. CFRA has similar provisions but has broader coverage: for example, the employee may have leave not only to care for their sick spouse, child or parent (FMLA's scope), but also a grandchild, grandparent, or sibling of the employee or their spouse, or any other person designated by the employee as being in the equivalent of a family relationship (for example, a live-in boyfriend or girlfriend). Employees may not change their designated person until 12 months after first designating someone. Such designation is done at the time leave is requested.
- A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:
 - Inpatient care in a hospital, hospice or residential medical care facility or subsequent treatment in connection with that inpatient care;
 - Continuing treatment by a health care provider through either two or more visits to a health care provider or one visit to a health care provider with a continuing regimen of treatment such as prescription medication or physical therapy.
 - Continuing treatment by a health provider also includes the following situations:
 - Pregnancy or prenatal care for any period of incapacity. (CFRA does not provide for pregnancy disability leave; however, Cal. Govt. Code section 12945 does provide for such leave. See "BENEFITS – Pregnancy Disability Leave," p. 11)
 - A chronic serious health condition that requires at least two visits to a health care provider per year for any period of incapacity or treatment.

- Permanent or long-term conditions for which treatment may not be effective—only supervision by a health care provider is required rather than active treatment.
 - Conditions requiring multiple treatments for restorative surgery or conditions that would likely result in a period of incapacity of more than three days if not treated.
- In order to be eligible for this leave, the employee must have worked 1,250 hours over the past 12 months for his or her current employer and the employer must have 50 or more employees (FMLA) or 5 or more employees (CFRA).
- The employer may run unpaid FMLA leave concurrently with other paid leaves such as sick leave and vacation.
- For family bonding leave for the birth and care of a newborn child of the employee, or the placement with the employee of a child for adoption or foster care, the employee is also entitled to access to his or her paid sick leave under the Education Code. (See “Paid Parental Leave,” p. 12)
- The employer is required to maintain the employee’s medical health insurance while the employee is on FMLA leave.
- Under certain circumstances, the employee may use FMLA leave intermittently.
- An employee must give 30 days advance notice of the need to take FMLA leave when the need for leave is foreseeable. If the leave is foreseeable less than 30 days in advance, the employee must give notice as soon as possible. When the need for leave is not foreseeable, the employee must give notice as soon as facts and circumstances permit. The employee must comply with the employer’s usual and customary notice and procedural requirements for requesting leave, such as calling in.
- The employee need not request FMLA leave by name the first time he or she is requesting such leave, but must provide the employer with sufficient information to determine that the leave is FMLA eligible. Subsequent requests for FMLA leave for the same situation require the employee to reference FMLA leave.
- After an employee requests FMLA leave or the employer learns that the employee may be eligible for FMLA leave, the employer must provide the employee with a notice of eligibility for FMLA leave and the employee’s rights under the FMLA. When the employer has sufficient information to designate the leave as FMLA leave, it must inform the employee that the leave is being designated FMLA leave.
- Employers may require that an employee’s leave be supported by a certification from a health care provider. The employer may require second and third medical opinions at the employer’s expense and periodic recertification of a serious health condition.

- An employer may have a policy of requiring certification that an employee is able to resume work if it has such a policy for those returning from non-FMLA leave.
- Upon return from FMLA leave, the employee is entitled to be restored to the employee's original job or an equivalent position with equivalent pay, benefits, and other terms and conditions of employment.

Military-related leaves under FMLA/CFRA

- Employees are entitled to up to 26 weeks of FMLA leave to care for a family member who is a service member injured in the line of duty with a serious injury or illness.
- An employer must grant an employee a total of 12 workweeks of unpaid leave over 12 months to an employee for qualified exigencies arising out of the fact that the employee's son, daughter, or parent is on active duty or has been notified of an impending call to active duty to support a contingency operation.
- A qualified exigency includes the following:
 - Issues arising from the military member's deployment when the notice provided is seven days or less; military events and related activities; certain child care related activities such as arranging for alternative child care or providing childcare on an urgent basis; making financial and legal arrangements to address the military member's absence; attending counseling provided by someone other than a health care provider for oneself, the military member, or the child of the military member; taking up to five days of leave to spend with a military member who is on short term rest and recuperation during deployment; and post-deployment activities within 90 days of the end of active duty including issues arising from the death of the military member.
- FMLA leave may be taken intermittently when medically necessary to care for a service member with a serious injury or illness or for qualifying exigencies.
- The notice and certification requirements are the same for military FMLA leave as for regular FMLA leave.
- Employees requesting military FMLA leave may be required to support their request by providing the employer with a copy of the military member's active duty orders and certification of the relevant facts. When the leave is to care for a service member, the employer may require a certification completed by a health provider or a copy of a Travel Order or Travel Authorization issued to any member of the service member's family.
- Second and third medical opinions are not permitted for a service member's serious medical condition.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, a charge may be filed with the U.S. Department of Labor or Department of Fair Employment & Housing or a civil action may be filed.

SAFETY — Devices

Public employees must be provided with safety devices.

Source: Cal. Labor Code Sections 6400, 6401, 6403

Source: Title 8. Cal. Code of Regulations Sections 3380 – 3390

- In general, the district must provide school employees with a safe and healthful environment. The district must provide employees with safety devices and safeguards which are reasonably adequate to make their jobs safe and healthful.
- Employees must be provided with eye protection whenever there is a risk of receiving eye injuries as a result of contact with flying particles or hazardous substances or projections, or as a result of injurious light rays.
- Employees must be provided with appropriate foot protection if there is significant potential exposure to foot injuries (e.g., falling objects; hot, corrosive, or poisonous substances; crushing or penetrating machinery; or abnormally wet worksites). 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. If not, a complaint must be filed with the California Occupational Safety and Health Administration (CAL-OSHA); if it does not remedy the problem, a lawsuit may be filed under the Labor Code Private Attorneys General Act (Labor Code sections 2698-2699.5).

SAFETY — Healthful Workplace

Public employees are entitled to a safe and healthful workplace.

Source: Cal. Labor Code Sections 6400, 6401.5

Source: Health & Safety Code section 113693

Source: Title 8. Cal. Code of Regulations Sections 330 – 340

- Public employees have the right to a safe and healthful work environment. Their employer must provide safety devices and safeguards to reasonably ensure their health and safety. The employer must also use methods and processes 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, also describe unlawfully hazardous equipment and work practices, including exposures to COVID-19, excessive heat, wildfire smoke and toxic materials.
- Each district must have a written Injury Prevention Plan identifying its system for identifying unsafe conditions and correcting these. The employer must keep certain records of its steps to implement its plan, including documenting inspections and completion of training.
- Foodservice employees are entitled under the Health & Safety Code to handwashing breaks at least every 30 minutes.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, complaints may be filed with CAL-OSHA or civil action pursued under the Labor Code Private Attorneys General Act (Labor Code sections 2698-2699.5).

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.

Source: Cal. Labor Code Sections 6309, 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 select the employee representative, and must pay the CSEA officer or steward for time spent on the inspection.
- It is unlawful for an employer to retaliate against an employee for complaining to OSHA.

Enforcement: If language is in the collective bargaining agreement, file a grievance. If not, file a complaint with Cal-OSHA or pursue a civil action under the Labor Code Private Attorneys General Act (Labor Code sections 2698-2699.5).

SAFETY — Refusal to Perform Unsafe Work

Public employees have the right to refuse to do unsafe work under certain conditions.

Source: *Cal. Labor Code Sections 6311 and 6312*

- Public employees can refuse to perform work under certain conditions without getting fired. The work must violate a CAL-OSHA standard AND 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 not enough time to eliminate the danger through regular complaint channels).
- Public employees need to take certain steps before refusing to do any unsafe job so that their rights can be fully protected. These steps should include:
 1. Tell your supervisor about the hazard and ask that it be fixed;
 2. Reference the collective bargaining agreement to determine what safety protections currently exist there;
 3. Make it clear to the supervisor that the only reason you are refusing to do the work is because you believe that the conditions violate OSHA and your health or safety would be in danger if you did the work;
 4. 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;
 5. 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;
 6. 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, a complaint for unlawful discharge may be filed with the California Labor Commissioner or a civil action may be filed under the Labor Code Private Attorneys General Act (Labor Code sections 2698-2699.5).

Case Law: *Oakdale Union Elementary School District (1998) PERB Decision No. 1246* (employee's reports of safety concerns to a safety inspector is protected activity under EERA)

Sexual Harassment & Other Unlawful Harassment

Classified Employees Cannot Be Sexually Harassed or Harassed Based on Another Protected Status

Source: Title VII of the Civil Rights Act of 1964 (42 USC § 2000e)

Source: Fair Employment and Housing Act (Cal. Govt. Code § 12940)

Source: Cal. Education Code Sections 212.5, 230, 231.5

- Unlawful sexual harassment in the workplace is either (1) “quid pro quo” harassment (pressure on an employee to engage in sexual behavior in order to stay employed or as the basis for employment decisions such as promotion), or (2) hostile work environment, where adverse comments or actions are so severe or pervasive as to create an unreasonably uncomfortable environment and which are either explicitly sexual, or motivated by the victim’s sex.
- It is also unlawful for an employer to permit a hostile work environment for employees due to their race, religion, ethnicity, disability, or other protected status (see “Employment Discrimination,” p. 35).
- Hostile environment harassment can take many forms, including:
 1. sexist remarks regarding an employee’s body, clothing, or sexual activity, or reflecting disrespect for all females (or males);
 2. constant leering or ogling;
 3. offensive touching, patting, or pinching, or invasion of personal space;
 4. postings of nude or scantily-clad persons.
- Ordinary work criticism does not amount to unlawful harassment unless it is motivated by the target’s sex, race, age, etc. AND is so extreme or repeated that a reasonable person would find them so offensive as to fundamentally alter working conditions.
- There are several things classified employees should do if they are being unlawfully harassed, including:
 1. **Act quickly.** The best defense to harassment is a strong offense. Confront the harasser. Tell him/her that his/her behavior is offensive, and ask him/her to stop.
 2. **Document it.** Save offensive emails and texts. Keep a diary where entries are in ink and dated. This avoids any allegation later that these entries were created long after the fact.

3. **Get support from co-workers.** Make sure co-workers are aware of harassment situations and efforts being made to remedy it.
 4. **File a grievance.** If the collective bargaining agreement contains language prohibiting sexual harassment, utilize the grievance procedure to resolve the problem. In addition, review the employer's written policy on sexual harassment.
 5. **Notify the employer regardless of whether your harasser is a supervisor or co-worker.** If the employer is not notified, it is not liable for harassment by co-workers (only supervisors). Put it in writing, and keep a copy.
 6. **Find other victims.** If evidence can be found 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 might have been the victim of a discriminatory practice, he/she should contact his/her CSEA Labor Relations Representative, or the federal or state agency to determine what actions are appropriate.

Enforcement: A charge may be filed over violations of state laws with the state Department of Fair Employment and Housing, or over violations of federal laws with the federal Equal Employment Opportunity Commission.

Employment Discrimination

Classified employees cannot be denied employment/advancement for discriminatory reasons.

Source: Title VII of the Civil Rights Act of 1964 (42 USC § 2000e)

Source: Fair Employment and Housing Act (Cal. Govt. Code § 12940)

Source: Age Discrimination Employment Act of 1967 (29 USC § 621-34)

Source: Americans with Disabilities Act (42 USC § 12101-12213)

Source: Federal Civil Rights Act of 1871 (42 USC § 1983) (protecting political affiliation and certain speech)

Source: Cal. Elections Code Section 14000 (voting)

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
 - Taking 2 hours off to vote
 - Speech on matters of public interest in public forum; political affiliation
- Questions regarding these subjects cannot be asked on written job applications or questionnaires. They cannot be asked in personal or telephone interviews with the employee or the employee's references. It is illegal for the employer to discipline a public employee for not answering questions regarding the above subjects.
 - Disabled employees are entitled to have their employer initiate an interactive process with them and provide a reasonable accommodation for their disability. Employees are entitled to union representation in the interactive process. In situations where the employee's disability is expected to end within a reasonable amount of time which can be reasonably predicted, at minimum a reasonable accommodation would be an unpaid leave of absence after expiration of FMLA/CRFA leave, unless the employee's position is one where using a substitute is impractical and the employer instead needs to hire a regular employee.

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 agencies to determine what actions are appropriate.

Enforcement: A charge may be filed over violations of state laws with the state Department of Fair Employment and Housing, or over violations of federal laws with the federal Equal Employment Opportunity Commission.

Brown Act (Open Public Meetings)

Members of the public have the right to observe district governing board deliberations on budget and layoffs, but not labor negotiations nor disciplinary decisions (unless the disciplined employee requests their issue be taken up in open session)

Source: *Cal. Gov. Code 54950 et seq.*

- Public agency boards cannot render decisions except on matters placed on the public meeting agenda posted for the public at least 72 hours prior to the meeting, absent an emergency.
- A quorum of agency board members cannot confer privately about an upcoming board decision, but rather are required to conduct their deliberations at the public meeting.
- All board decisions must be made in open public session unless a statutory exception applies.
- Layoff decisions probably cannot be made in closed session. Discipline decisions may be made in closed session unless employee requests issue be taken up in open session.
- Closed session can be used for boards to confer with their labor negotiator, or (if litigation is threatened or pending) with their attorney.

Enforcement: Within 90 days of violation (or 30 days if violation was agenda defect), send district a demand letter for cure. If not cured within 30 days, a civil action may be pursued if filed within 15 days of claim denial or expiration of cure period. (CSEA Legal Department may assist without extra charge to the chapter if it believes the claim meritorious, as the district is liable for legal fees if it loses).

Case Law: *CSEA v. Redwoods Comm. College Dist.* (Humboldt Sup. Ct. 2021) Case No. CV2000666 (layoffs); *Santa Clara Fed'n of Teachers v. Gov'ng Bd.* (1981) 116 CA3d 831, 846 (board decisions other than dismissal); *ILWU v. LAXT* (1999) 69 CA4th 287 (legal fees for union counsel).

