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GOVERNMENT CODE - GOV

TITLE 8. THE ORGANIZATION AND GOVERNMENT OF COURTS [68070 - 77655] (Title 8 added by Stats. 1953, Ch. 206.)

CHAPTER 7. Trial Court Employment Protection and Governance Act [71600 - 71675] (Chapter 7 added by Stats. 2000, Ch. 1010, Sec. 14.)

ARTICLE 5. Employment Protection System [71650 - 71658] (Article 5 added by Stats. 2000, Ch. 1010, Sec. 14.)

71650. (a) As of the implementation date of this article, as provided in Section 71658, each trial court shall establish a trial court employment protection system that shall become the minimum employment protection system for all trial court employees and shall become part of the sole trial court employee personnel system. The trial court employment protection system shall replace any county employment protection systems applying to trial court employees prior to the implementation date provided in Section 71658, except as otherwise specified in this article. This article establishes minimum standards, and each trial court employment protection system shall, at a minimum, conform to the requirements of this article.

(b) Nothing in this article shall preclude the establishment of enhanced employment protection systems pursuant to trial court personnel policies, procedures, or plans subject to meet and confer in good faith.

(c) Nothing in this article shall be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract either express or implied arising out of a termination of employment.

(d) Except as specified in subdivisions (b) and (c), this article shall not apply to either of the following categories of trial court employees:

(1) Subordinate judicial officers.

(2) Managerial, confidential, temporary, limited term, and probationary employees, unless included within the trial court employment protection system in accordance with trial court personnel policies, procedures, or plans subject to meet and confer in good faith.

(Amended by Stats. 2001, Ch. 270, Sec. 10. Effective January 1, 2002.)

71651. (a) The trial court employment protection system in each trial court shall include progressive discipline, as defined by each trial court's personnel policies, procedures, or plans, subject to meet and confer in good faith. Except for layoffs for organizational necessity as provided for in Section 71652, discipline, up to and including termination of employment, shall be for cause.

(b) For purposes of this section, "for cause" means a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.

(Added by Stats. 2000, Ch. 1010, Sec. 14. Effective January 1, 2001.)

71651.1. (a) Consistent with federal and California labor law, a trial court shall not retaliate against an official reporter or official reporter pro tempore who notifies the judicial officer that technology or audibility issues are interfering with the creation of the verbatim record for a remote proceeding pursuant to subdivisions (f) and (g) of Section 977 of the Penal Code.

(b) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

(Amended by Stats. 2024, Ch. 51, Sec. 9. (AB 170) Effective July 2, 2024. Repealed as of January 1, 2027, by its own provisions.)

71652. (a) A trial court employee may be laid off based on the organizational necessity of the court. Each trial court shall develop, subject to meet and confer in good faith, personnel rules regarding procedures for layoffs for organizational necessity. Employees shall be laid off on the basis of seniority of the employees in the class of layoff, in the absence of a mutual agreement between the trial court and a recognized employee organization providing for a different order of layoff.

(b) For purposes of this section, a "layoff for organizational necessity" means a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

(Amended by Stats. 2002, Ch. 905, Sec. 9. Effective January 1, 2003.)

71653. Subject to meet and confer in good faith, each trial court shall establish in its personnel rules a process for conducting an evidentiary due process hearing to review disciplinary decisions that by law require an evidentiary due process hearing, which shall include, at a minimum, all of the following elements:

(a) A procedure for appointment of an impartial hearing officer who shall not be a trial court employee or judge of the employing court.

(b) The hearing shall result in an appropriate record with a written report that has findings of fact and conclusions that reference the evidence.

(c) The employee and trial court shall have the right to call witnesses and present evidence. The trial court shall be required to release trial court employees to testify at the hearing.

(d) The hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence as provided in Section 1282.6 of the Code of Civil Procedure.

(e) The employee shall have the right to representation, including legal counsel, if provided by the employee.

(f) If the hearing officer disagrees with the trial court's disciplinary decision, the trial court shall furnish a certified copy of the record of proceedings before the hearing officer to the employee or, if the employee is represented by a recognized employee organization or counsel, to that representative, without cost.

(Added by Stats. 2000, Ch. 1010, Sec. 14. Effective January 1, 2001.)

71654. Subject to meet and confer in good faith, each trial court shall establish in its personnel rules a process for the trial court to review a hearing officer's report and recommendation made pursuant to Section 71653 that provides, at a minimum, that the decision of the hearing officer shall be subject to review, as follows:

(a) A trial court shall have 30 calendar days from receipt of the hearing officer's report or receipt of the record of the hearing, whichever is later, to issue a written decision accepting, rejecting or modifying the hearing officer's report or recommendation unless the trial court and employee mutually agree to a different timeframe.

(b) In making its decision under subdivision (a), the trial court shall be bound by the factual findings of the hearing officer, except factual findings that are not supported by substantial evidence, and the trial court shall give substantial deference to the recommended disposition of the hearing officer.

(c) If the trial court rejects or modifies the hearing officer's recommendation, the trial court shall specify the reason or reasons why the recommended disposition is rejected in a written statement which shall have direct reference to the facts found and shall specify whether the material factual findings are supported by substantial evidence. The trial court may reject or modify the recommendation of the hearing officer only if the material factual findings are not supported by substantial evidence, or for any of the following reasons or reasons of substantially similar gravity or significance:

(1) The recommendation places an employee or the public at an unacceptable risk of physical harm from an objective point of view.

(2) The recommendation requires an act contrary to law.

(3) The recommendation obstructs the court from performing its constitutional or statutory function from an objective point of view.

(4) The recommendation disagrees with the trial court's penalty determination, but the hearing officer has not identified material, substantial evidence in the record that provides the basis for that disagreement.

(5) The recommendation is contrary to past practices in similar situations presented to the hearing officer that the hearing officer has failed to consider or distinguish.

(6) From an objective point of view, and applied by the trial court in a good faith manner, the recommendation exposes the trial court to present or future legal liability other than the financial liability of the actual remedy proposed by the hearing officer.

(d) If a trial court's review results in rejection or substantial modification of the hearing officer's recommendation, then the final review shall be conducted by an individual other than the disciplining officer. If the disciplining officer is a judge of the trial court, the review shall be made by another judge of the court, a judicial committee, an individual, or panel as specified in the trial court's personnel rules. However, in a trial court with two or fewer judges, if the trial court has no other judge than the disciplining judge or judges, the

judge or judges may conduct the review; and, as a minimum requirement, in a trial court with 10 or more judges, the review shall be by a panel of three judges, whose decision shall be by a majority vote, which shall be selected as follows:

- (1) One judge shall be selected by the presiding judge or his or her designee.
- (2) One judge shall be selected by the employee or, if the employee is represented, by his or her bargaining representative.
- (3) The two appointed judges shall select a third judge.

On panels in a trial court with 10 or more judges, no judge may be selected to serve without his or her consent; the term of office of the panel shall be defined by local personnel policies, procedures, or plans subject to the obligation to meet and confer in good faith; and no judge shall serve on the panel in a case in which he or she has imposed discipline.

(Added by Stats. 2000, Ch. 1010, Sec. 14. Effective January 1, 2001.)

71655. (a) An employee may challenge the decision of the disciplining trial court, made pursuant to Section 71654, rejecting or modifying the hearing officer's recommendation by filing a writ of mandamus pursuant to Section 1094.5 of the Code of Civil Procedure in the appropriate court, and such review by that court shall be based on the entire record. If required by the writ procedure and if not previously provided to the disciplined employee, the disciplining court shall furnish a certified copy of the record of the proceeding before the hearing officer to the disciplined employee or, if the employee is represented, to the bargaining representative without charge. In reviewing the disciplining trial court's rejection or modification of the hearing officer's recommendation, the reviewing court shall be bound by the hearing officer's material factual findings that are supported by substantial evidence.

(b) The denial of due process or the imposition of a disciplinary decision that by law requires a due process hearing without holding the required hearing may be challenged by a petition for a writ of mandate.

(Added by Stats. 2000, Ch. 1010, Sec. 14. Effective January 1, 2001.)

71656. Notwithstanding any other provision of this article, in a county of the first class as defined in Section 28022 as of January 1, 2001:

(a) As of the implementation date provided in Section 71658, a trial court employee who was a member of a county civil service system shall remain in that system for the sole purposes of evidentiary due process hearings before the county civil service commission as an alternative to the due process hearings provided for in Sections 71653, 71654, and 71655, unless the employee elects, pursuant to subdivision (c), to be subject to the trial court employment protection system provided in this article.

(b) One year after the implementation date provided in Section 71658, a trial court employee who was a member of a county civil service system shall be deemed to have elected, pursuant to subdivision (c), to be subject to the trial court employment protection system provided in this article unless the employee has, during that year, submitted to the trial court a signed writing expressly electing the county civil service commission solely for the purposes of evidentiary due process hearings in lieu of the hearings provided for in Sections 71653, 71654, and 71656. However, no election may be made after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. The one-year period in which to elect the county civil service commission shall be tolled during the period of time when a trial court employee is disabled from making an election because of pending disciplinary action or proceedings.

(c) A trial court employee who is subject to the county civil service system may elect at any time to be subject to the trial court employment protection system provided in this article, except that no election may be made after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. An election to be subject to the trial court employment protection system may not be revoked.

(d) A trial court employee who elects to remain in the county civil service system and who later is promoted or transferred into a position that is comparable to a position that is classified as exempt from the county civil service system shall be subject to the trial court employment protection system for all purposes.

(e) Trial court employees in a county of the first class eligible for making an election pursuant to subdivisions (a) and (b) shall be deemed county employees for purposes of remaining eligible for evidentiary due process hearings before the county civil service commission.

(f) A trial court shall adopt procedures, subject to meet and confer in good faith, that establish a process for election pursuant to this section.

(Added by Stats. 2000, Ch. 1010, Sec. 14. Effective January 1, 2001.)

71657. (a) Disciplinary action served on a trial court employee prior to the implementation date of this chapter shall remain in effect in accordance with the procedures established under the trial court's predecessor personnel system.

(b) Appeals of disciplinary action served on a trial court employee prior to the implementation date of this chapter shall be made in accordance with the procedures established under the trial court's predecessor personnel system. Appeals of disciplinary action served on a trial court employee after the implementation date of this chapter shall be made in accordance with the procedures established pursuant to this article. The consequences of past discipline under the trial court's new employment protection system pursuant to this article shall be subject to meet and confer in good faith.

(Amended by Stats. 2001, Ch. 270, Sec. 11. Effective January 1, 2002.)

71658. (a) Except as provided in subdivision (b), the implementation date of this article is the effective date of this chapter.

(b) Representatives of a trial court and representatives of recognized employee organizations may mutually agree to an implementation date of this article different from that specified in subdivision (a). However, if any provisions of this chapter are governed by an existing memorandum of understanding or agreement covering trial court employees, as to those provisions, the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

(Added by Stats. 2000, Ch. 1010, Sec. 14. Effective January 1, 2001.)