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AB-438 School employees: classified employees: layoff notice and hearing. (2021-2022)

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Assembly Bill No. 438

CHAPTER 665

An act to amend Sections 45117 and 88017 of the Education Code, and to amend Sections 11503 and 11505 of the Government Code, relating to school employees.

[Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 438, Reyes. School employees: classified employees: layoff notice and hearing.

Under existing law, classified employees of school districts and community college districts subject to layoff as a result of the expiration of a specially funded program at the end of a school year are required to be given written notice on or before April 29 informing them of certain rights. Existing law also requires that notice be given not less than 60 days before the effective layoff date if the termination date of a specially funded program is other than June 30, or if classified employees are subject to layoff as a result of a bona fide reduction or elimination of a service performed by a department.

This bill instead would revise and recast provisions relating to the layoff of classified employees of school districts and community college districts to require certain notices and opportunities for a hearing when a permanent classified employee's services will not be required for the ensuing year due to lack of work or lack of funds. The bill would, for the purposes of specified notice and hearing rights, define "permanent classified employee" to include both an employee who was permanent at the time the notice or right to a hearing was required and an employee who became permanent after the date of the required notice. The bill would express the intent of the Legislature in enacting the bill to provide permanent classified school employees and those who become permanent classified school employees with the same rights to notice and hearing with respect to layoffs as are provided to certificated employees of school districts, including teachers and administrators, and academic employees of community college districts. If classified positions must be eliminated as a result of the expiration of a specially funded program, the bill would require written notice of the layoff date and certain rights be given to the classified employees not less than 60 days before the effective layoff date. If, after January 1, 2021, the Legislature provides certificated or academic employees with any additional rights to notice or hearing as to layoffs, the bill would require the respective permanent classified employees, as described, to be afforded the same rights by the school district or community college district, as applicable. To the extent school districts and community college districts are required to perform additional duties, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in enacting this act to provide permanent classified school employees and those who become permanent classified school employees with the same rights to notice and hearing with respect to layoffs as are provided to certificated and academic employees, including teachers and administrators, and academic employees of community college districts.

SEC. 2. Section 45117 of the Education Code is amended to read:

45117. (a) (1) No later than March 15 and before a classified employee is given notice by the governing board of a school district that the employee's services will not be required for the ensuing year due to lack of work or lack of funds, the governing board of the school district and the employee shall be given written notice by the superintendent of the school district or the superintendent's designee, or, in the case of a school district that has no superintendent, by the clerk or secretary of the governing board of the school district, that it has been recommended that the notice be given to the employee, stating the reasons that the employee's services will not be required for the ensuing year, and informing the employee of the employee's displacement rights, if any, and reemployment rights.

(2) Until the classified employee has requested a hearing as provided in subdivision (b) or has waived their right to a hearing, the notice and the reasons for the notice shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, a violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of a hearing conducted pursuant to this section.

(b) A classified employee may request a hearing to determine if there is cause for not reemploying the employee for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice, on or before a date specified in subdivision (a), which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, the employee's failure to do so shall constitute a waiver of the employee's right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) If a hearing is requested by a classified employee under subdivision (b), the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the governing board of a school district shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file their notice of participation, if any, within five days after service upon the respondent of the District Statement of Reduction in Force and the respondent shall be notified of this five-day period for filing in the District Statement of Reduction in Force.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if a request is made for discovery within 15 days after service of the District Statement of Reduction in Force, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) (A) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils of the schools. The proposed decision shall be prepared for the governing board of the school district and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board of the school district shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board of the school district. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board of the school district and to the classified employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board of the school district from school district funds. Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid, and addressed to the last known address of the employee. Notice of termination shall be given to the employee before May 15. If a continuance was granted after a request for hearing was made, the deadlines described in this section shall be extended for the number of days of that continuance.

(B) For purposes of this section, "cause" for layoff includes school district compliance with the seniority requirements of this code, including Section 45308.

(d) (1) Notwithstanding subdivisions (a) to (c), inclusive, or any other law, during the time period between five days after the enactment of an annual Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total local control funding formula apportionment per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if the governing board of a school district determines it is therefore necessary to decrease the number of classified employees of the school district due to lack of work or lack of funds, the governing board of the school district may issue a District Statement of Reduction in Force to those employees in accordance with a schedule of notice and hearing to be adopted by the governing board of the school district.

(2) Paragraph (1) shall be inoperative during any period that Section 44955.5 is inoperative as it applies to certificated employees.

(e) (1) If a permanent classified employee is not given the notices and a right to a hearing as provided for in this section, the employee shall be deemed reemployed for the ensuing school year, except that nothing in this section shall be construed to interfere with the right of a district to release probationary employees who never become permanent without notice or hearing.

(2) For purposes of this subdivision, "permanent employee" includes an employee who was permanent at the time the notice or right to a hearing was required and an employee who became permanent after the date of the required notice.

(f) (1) A classified employee shall not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. This subdivision does not create a layoff notice requirement for any individual hired as a short-term employee, as defined in Section 45103, for a period not exceeding 60 days.

(2) This subdivision does not apply to the retention of a short-term employee, as defined in Section 45103, who is hired for a period not exceeding 60 days after which the short-term service may not be extended or renewed.

(g) Notwithstanding the other requirements of this code respecting layoff of permanent classified employees, when classified positions must be eliminated as a result of the expiration of a specially funded program, the employees to be laid off shall be given written notice not less than 60 days prior to the effective date of their layoff informing them of their layoff date and their displacement rights, if any, and reemployment rights.

(h) If, after January 1, 2021, the Legislature provides certificated employees with any additional rights to notice or hearing as to layoffs, then permanent classified employees and those who become permanent classified employees shall be afforded the same rights by the school district.

(i) The governing board of the school district may adopt from time to time rules and procedures not inconsistent with this section as may be necessary to effectuate this section.

(j) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

SEC. 3. Section 88017 of the Education Code is amended to read:

88017. (a) (1) No later than March 15 and before a classified employee is given notice by the governing board of the community college district that the classified employee's services will not be required for the ensuing year, the governing board of the community college district and the employee shall be given written notice by the superintendent of the community college district or the superintendent's designee, or, in the case of a community college district that has no superintendent, by the clerk or secretary of the governing board of the community college district, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

(2) Until the classified employee has requested a hearing as provided in subdivision (b) or has waived their right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) A classified employee may request a hearing to determine if there is cause for not reemploying the employee for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice, on or before a date specified in subdivision (a), which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, this failure to do so shall constitute waiver of the employee's right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) If a hearing is requested by a classified employee under subdivision (b), the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code

and the governing board of a community college district shall have all the powers granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file their notice of defense, if any, within five days after service upon the respondent of the accusation and the respondent shall be notified of this five-day period for filing the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if a request is made for discovery within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the colleges and the students thereof. The proposed decision shall be prepared for the governing board of the community college and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board of the community college shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board of the community college or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board of the community college and to the classified employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board of the community college from community college district funds.

(d) (1) The determination of the governing board of a community college district to not reemploy a classified employee for the ensuing college year shall be for cause only. The determination of the governing board of the community college district as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the colleges and the students thereof and provided that cause is a bona fide lack of funds or reduction in services. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(2) For purposes of this section, "cause" for layoff includes community college district compliance with the seniority requirements of this code, including Section 88127.

(e) Notice of termination to the classified employee by the governing board of the community college district that the employee's service will not be required for the ensuing year shall be given no later than May 15.

(f) If the governing board of a community college district notifies a classified employee that the employee's services will not be required for the ensuing year, the governing board of the community college district, within 10 days after receipt of the employee's written request, shall provide the employee with a statement of its reasons for not reemploying the employee for the ensuing college year.

(g) Any notice or request under this section shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid, and addressed to the last known address of the employee.

(h) (1) If the governing board of a community college district does not give notice provided for in subdivision (e) on or before May 15, a permanent employee shall be deemed reemployed for the ensuing college year, except that this section shall not be construed to interfere with the right of a district to release probationary employees who never become permanent without notice or hearing.

(2) For purposes of this subdivision, "permanent employee" includes an employee who was permanent at the time the notice or right to a hearing was required and an employee who became permanent after the date of the required notice.

(i) If, after request for hearing pursuant to subdivision (b), any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivisions (c), (d), (e), and (h) that occur on or after the date of granting the continuance shall be extended for a period of time equal to the continuance.

(j) (1) A classified employee shall not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. This subdivision does not create a layoff notice requirement for any individual hired as a short-term employee, as defined in Section 88003, for a period not exceeding 60 days.

(2) This subdivision does not apply to the retention of a short-term employee, as defined in Section 88003, who is hired for a period not exceeding 60 days after which the short-term service may not be extended or renewed.

(k) Notwithstanding the other requirements of this code respecting layoff of permanent classified employees, when classified positions must be eliminated as a result of the expiration of a specially funded program, the employees to be laid off shall be

given written notice not less than 60 days prior to the effective date of their layoff informing them of their layoff date and their displacement rights, if any, and reemployment rights.

(l) If, after January 1, 2021, the Legislature provides academic employees with any additional rights to notice or hearing as to layoffs, then permanent classified employees and those who become permanent classified employees shall be afforded the same rights by the community college district.

(m) The governing board of a community college district may adopt, from time to time, rules and procedures not inconsistent with this section that may be necessary to effectuate this section.

(n) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

SEC. 4. Section 11503 of the Government Code is amended to read:

11503. (a) A hearing to determine whether a right, authority, license, or privilege should be revoked, suspended, limited, or conditioned shall be initiated by filing an accusation or District Statement of Reduction in Force. The accusation or District Statement of Reduction in Force shall be a written statement of charges that shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare their defense. It shall specify the statutes and rules that the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of those statutes and rules. The accusation or District Statement of Reduction in Force shall be verified unless made by a public officer acting in their official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

(b) In a hearing involving a reduction in force that is conducted pursuant to Section 44949, 45117, or 88017 of the Education Code, the hearing shall be initiated by filing a "District Statement of Reduction in Force." For purposes of this chapter, a "District Statement of Reduction in Force" shall have the same meaning as an "accusation." Respondent's responsive pleading shall be entitled "Notice of Participation in Reduction in Force Hearing."

SEC. 5. Section 11505 of the Government Code is amended to read:

11505. (a) Upon the filing of the accusation or District Statement of Reduction in Force the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation or District Statement of Reduction in Force any information that it deems appropriate, but it shall include a postcard or other form entitled Notice of Defense, or, as applicable, Notice of Participation, that, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation or District Statement of Reduction in Force and constitute a notice of defense, or, as applicable, notice of participation, under Section 11506. The copy of the accusation or District Statement of Reduction in Force shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense, or, as applicable, notice of participation, as provided in Section 11506 within 15 days after service upon the respondent of the accusation or District Statement of Reduction in Force, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7.

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation or District Statement of Reduction in Force is delivered or mailed to the agency within 15 days after the accusation or District Statement of Reduction in Force was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation or District Statement of Reduction in Force without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or, as applicable, Notice of Participation, or by delivering or mailing a notice of defense, or, as applicable, notice of participation, as provided by Section 11506 of the Government Code to: (here insert name and address of agency). You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody, or control of the agency, you may contact: (here insert name and address of appropriate person).

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

(c) The accusation or District Statement of Reduction in Force and all accompanying information may be sent to the respondent by any means selected by the agency, but no order adversely affecting the rights of the respondent shall be made by the agency

in any case unless the respondent has been served personally or by registered mail as provided herein, or has filed a notice of defense, or, as applicable, notice of participation, or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires the respondent to file the respondent's address with the agency and to notify the agency of any change, and if a registered letter containing the accusation or District Statement of Reduction in Force and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency.

(d) For purposes of this chapter, for hearings involving a reduction in force that are conducted pursuant to Section 44949, 45117, or 88017 of the Education Code, a "Notice of Participation" shall have the same meaning as a "Notice of Defense."

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.