

Legislation Roundup: Pre-Hearing Adverse Actions Against Classified Employees, and Recovery of Wage Overpayments

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New Limitations on Pre-Hearing Disciplinary Action Against Classified Employees

On September 30, 2022, Governor Newsom signed into law Assembly Bill (AB) AB 2413, limiting the ability of school districts and community college districts to immediately impose adverse actions against classified employees who request a hearing on their pending discipline.

Effective January 1, 2023, Education Code sections 45113 and 88013 will prohibit a school or community college district from dismissing, suspending without pay, or demoting with a reduction in pay, permanent classified employees while their disciplinary hearing is pending, provided the employees have timely requested a hearing.

The new law provides *two exceptions* to this prohibition, as follows:

1. If the governing board, or the third party hearing officer selected to preside over the hearing pursuant to a collective bargaining agreement, finds that the District showed, by a preponderance of the evidence at the conclusion of the Skelly hearing, that the employee engaged in criminal misconduct; misconduct that presents a risk of harm to pupils, staff, or property; or committed habitual violations of the district's policies or regulations, a permanent classified employee may be disciplined following the Skelly hearing and prior to the discipline hearing. Disciplinary actions may include: (1) suspension without pay; (2) suspension with a reduction in pay; (3) demotion with a reduction in pay; or (4) dismissal.
2. If a hearing on the charge will be conducted by an impartial third-party hearing officer or the governing board pursuant to subdivision (e) [of Education Code sections 45113 and 88013], the school or community college district may stop paying a permanent classified employee before a decision is rendered after 30 calendar days from the date the hearing is requested.

If either of these exceptions conflicts with a collective bargaining agreement that was in place as of January 1, 2023, the collective bargaining agreement will control until its expiration or renewal.

Takeaway

Many school and community college districts have policies in place or collective bargaining agreements that permit a classified employee's pay to be suspended prior to a disciplinary hearing for certain enumerated reasons usually related to allegations of serious misconduct or if the employee poses a threat to the safety of students, staff, or property. Districts will need to review these policies and agreements to determine whether any updates are needed.

Recovery of Wage Overpayments Is Now Easier for School Employers

AB 185 is an education trailer bill that became *effective immediately* upon signature by the Governor on September 28, 2022.

Among other things, AB 185 created Education Code section 44042.5, which sets forth a procedure for school employers to recover wage overpayments from an overpaid employee, subject to certain limitations. The new law requires school employers, which includes school districts, county offices of education, and charter schools, to notify the employee of a wage overpayment and afford them an opportunity to respond before initiating the recoupment process.

Recoupment Methods. Reimbursement may be mutually agreed to by both parties using one of the following methods:

- Cash payment or cash installment payments;
- Installment payments through payroll deduction; or
- Adjustment of leave credits or compensatory time if the overpayment involves the accrual of leave credits; errors in sick leave balances shall only be adjusted with sick leave credits.

Absent mutual agreement, the default recoupment method is installment payments through payroll deduction(s).

25 Percent Limit on Installments Recovered Through Payroll Deductions. The new law limits the installment amount to no more than 25% of the employee's net disposable earnings for each paycheck. If the overpayment occurred over several pay periods, the number of installments must be spread over at least the same number of pay periods. However, if the overpayment occurred for more than one year, the employer may require full repayment from the employee through payroll deductions over the period of one year.

Right to Withhold Money Owed. After a school employee separates from employment, the school employer is authorized to recoup any remaining overpayment amount by withholding the money owed from any compensation owed to the employee at the time of separation, as well as exercising any and all other legal means to recover the balance owed.

Lastly, administrative recoupment under section 44042.5 is unavailable if the overpayment is over three years old.

Takeaway

This is a welcome change for school districts that often face challenges recovering wage overpayments. Prior to AB 185, a school employee had to voluntarily consent to the repayment, otherwise the district had to initiate legal action to obtain a court order requiring repayment by the overpaid employee. School districts



are encouraged to consult with their attorneys in the event these provisions conflict with a collective bargaining agreement, because further analysis will be needed to determine whether the agreement will control.

Overall Takeaways

Given the significant changes described above, school employers should review their policies and collective bargaining agreements to determine whether any updates are needed.

If you have any questions about classified employee disciplinary procedures, or about wage overpayments, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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