

CLIENT NEWS BRIEF

Court of Appeal Narrowly Construes the Education Code Requirements for Counting “Days” to Become a Permanent Certificated Employee

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A recently published California appellate opinion provided school districts with needed direction on determining when a probationary employee has attained permanent status. The case concerned Education Code section 44908, which provides that “a complete school year” for a probationary certificated employee is “at least 75 percent of the number of days” for that year. In order for a certificated employee to move from probationary to permanent status, they must complete two complete consecutive school years. In *Cox v. Los Angeles Unified School District* (July 23, 2013) __ Cal.App.4th __ 2013 WL 4477843, the court of appeal addressed how to calculate workdays and a complete school year for the purpose of a probationary employee attaining permanent status.

In *Cox*, a school district hired Erica Cox, a high school counselor, as a probationary certificated employee. Following her hire, Ms. Cox completed one school year that counted towards establishing permanent status. However, she left for two months of maternity leave during her second year of employment. As a result, she only worked 135 days of the 136.5 days that she was required to work to meet the 75% threshold for serving a complete school year, and thus failed to serve the two complete consecutive school years necessary to attain permanent status. During her third school year, the district informed Ms. Cox that it was not going to retain her as an employee.

Ms. Cox opposed the district’s decision, arguing that the district had not properly determined her employment status when it classified her as a probationary employee for her third school year. She argued that she had worked two complete consecutive school years and attained permanent status. Ms. Cox predicated this argument on two alternative bases: (1) she worked thirty hours during her maternity leave, which amounted to an additional five days of employment; and (2) she worked a partial day of “3.5 hours” during her full-time employment period that would elevate the percentage of days she completed up to 74.7%, which she argued should be rounded up to the “complete school year” requisite of 75%. An appellate court rejected both of Ms. Cox’s arguments.

Education Code section 44975 expressly states that time during which a leave of absence is taken by a probationary certificated employee shall not be considered employment within the meaning of a “complete school year.” The *Cox* court interpreted this section to also encompass time spent working on school district business. Furthermore, the court determined that the Education Code phrase “75 percent of the number of days” refers to the term “days” literally. The court held that a district or employee is not permitted to substitute “hours” for “days” or round up percentages when determining employment status.

If you have any questions regarding the *Cox* decision, or other questions regarding determining an employee’s status, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).



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