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The Next Chapter in Temporary Teacher Classification Laws

[Editor's Note: Much appreciation goes to Karen Rezendes, Attorney and Shareholder at Lozano Smith in the Walnut Creek Office, for joining us in reporting on the evolution of temporary teacher status laws.]

It doesn't seem so long ago that school districts and county offices of education (COEs) were issuing layoff notices and now here we are looking squarely in the face of another school year. Despite the funding uncertainty that schools face, there comes a time when staffing and hiring decisions have to be made. Hiring decisions have never been more challenging and the risk of overstaffing never greater.

The law relating to temporary teacher classification continues to be challenged and redefined by the courts, adding a new layer of complexity to the already intricate certificated employee classification system. The chart below summarizes two recent precedential court of appeal decisions that reflect the next chapter in the dynamic evolution of temporary teacher status laws.

Case	Classification Implications	Employment Rights
<p><i>Stockton Teachers Association CTA/NEA v. Stockton Unified School District</i> (2012)</p> <p>(Categorical Temporary)</p>	<p>Under Education Code Section (E.C.) 44909, a district may classify a teacher working in a categorically funded position as temporary only if they are: (1) hired for the term of a categorically funded project or a program or project conducted under a contract with a public or private agency; and (2) terminated at the expiration of the contract, project or program for which they were hired.</p> <p>(Otherwise, categorical employees must be treated as probationary, with the same seniority and layoff rights afforded other probationary employees.)</p> <p>A district may not hire a person for more or less than the term of the categorical contract, program or project, and treat such a person as a temporary employee.</p>	<p>A categorical employee may be terminated as a temporary employee "at the termination of the categorically funded program or at the end of the contract with the public or private agency." If the employee is terminated before or independently from the expiration of the agency contract or the categorical funds, then the employee must be treated as a probationary employee and terminated through a probationary nonreelection process or a "for cause" process consistent with the Education Code.</p>
<p><i>McIntyre v. Sonoma Valley Unified School District</i> (2012)</p> <p>(Leave Replacement)</p>	<p>A district may hire teachers to backfill a vacancy created by a teacher on a leave of absence and classify them as temporary.</p> <p>A district must ensure that temporary employees are provided with written notice of the temporary classification on or before</p>	<p>A temporary employee is not entitled to credit toward tenure unless they are reemployed as a probationary employee in a vacant position the subsequent school year. E.C. 44917 does not compel probationary status for an employee based solely on the</p>

Temporary)	the first day of service of each school year. Also, districts must ensure that the number of temporary employees does not exceed the number of probationary and permanent employees on leave.	fact that the employee served as a temporary employee for two consecutive years.
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Despite the staggering number of layoff notices issued over the last few years, districts and COEs will be hiring certificated employees for the 2012-13 school year. With any hope, they will be reemploying many of their permanent and probationary teachers currently on the reemployment list. Most districts and COEs will find themselves in need of temporary teachers for categorical positions or to replace teachers on leave. Now is the time to work closely with your labor attorney to update your temporary teacher contracts to be consistent with these two new cases, which we discuss in more detail below, and ask any classification determination questions you may have prior to the start of the 2012-13 school year.

Stockton Teachers Association CTA/NEA v. Stockton Unified School District (March 1, 2012) 203 Cal.App.4th 1552 (2012 WL 663158)

The Stockton decision clarified when a school district may designate a certificated employee as a temporary categorical employee under E.C. 44909 (see "[New Appellate Case Impacts Classification and Release of Employees Hired Into Categorical Programs](#)" in the March 16, 2012, *Fiscal Report*).

Earlier this year, the Third District Court of Appeal published its Stockton decision which limited a district's ability to rely upon E.C. 44909 to justify a temporary, rather than a probationary classification for certificated categorical employees. The Court held that a temporary classification was allowed under E.C. 44909 only if the employee is: (a) hired for the term of a categorically funded project or a program or project conducted under a contract with a public or private agency; and (b) terminated at the expiration of the contract, project, or program for which they were hired. Additionally, the Court confirmed that temporary teachers hired to backfill for permanent teachers assigned to categorically funded positions can continue to be classified as temporary backfill teachers.

Previously, school districts commonly applied E.C. 44909 to allow the hiring of categorically-funded temporary employees who could be released at the end of the year pursuant to E.C. 44954. The Court recognized that E.C. 44909 does allow a district to release such employees under E.C. 44954, but only if the employee is terminated "at the expiration of the contract or specially funded project." The Court held that if the contract, project, or program is not expiring, a district must treat the employee as a probationary employee for purposes of release (e.g., nonreelection, layoff, or dismissal for cause).

Notwithstanding the Stockton decision, the service of these employees still "shall not be included in computing the service required" to obtain permanent status unless: (1) the person serves at least 75% of the school year; and (2) the person is subsequently employed as a probationary employee in a regular certificated position.

The California Supreme Court's recent denial of review of the Stockton decision establishes the Third District Court of Appeal's decision as a binding and precedential interpretation of E.C. 44909. This will affect a district's hiring, release, dismissal, and layoff of certificated employees who are employed to work in categorically funded positions and those employed under private or public agency contracts. Districts should review their current staffing for such projects and programs to determine whether certificated employees in categorically-funded projects or programs pursuant to contracts with public or private agencies, are properly classified.

While the Stockton case addresses some of the temporary classification of categorical employee issues related to termination, it still leaves some unanswered questions. For example, how to handle categorical programs that expire each year, but are then renewed.

McIntyre v. Sonoma Valley Unified School District (May 1, 2012) 206 Cal.App.4th 170, (2012 WL 1858959)

This next case affirms school district discretion in hiring leave replacement temporary certificated employees. The Sonoma decision held that certificated employees may be classified as leave replacement temporary employees for multiple school years and affirmed prior court decisions holding that school districts are not required to "match" employees on leave of absence with any specific temporary employee.

California courts have "repeatedly held that a district's ability to use E.C. 44920's temporary classification is not dependent on a one-to-one match of an employee on leave to a temporary teacher. Rather, all that is required under E.C. 44920 is that the 'number of temporary teachers not exceed the total number of probationary and permanent employees on leave at any one time.'"

The Court rejected the argument that a teacher could not be employed as a temporary employee for multiple school years. The Court held that "there is nothing in the Education Code that precludes a school district from hiring temporary teachers to replace teachers on leave on a year-to-year basis without elevating them to probationary status."

Finally, the Court clarified the relationship between several provisions of the Education Code that address temporary employee status. The Court held that E.C. 44918 and 44920, which were enacted after E.C. 44917, prevail over any conflicting language in E.C. 44917. In clarifying the statutory provisions governing temporary employment status for certificated employees, the Court held that E.C. 44917 does not compel probationary status for an employee based solely on the fact that the employee served as a temporary employee for two consecutive years.

—*Suzanne Speck and Karen Rezendez, Shareholder in Lozano Smith*

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