

E d i t i o n

2009

CALIFORNIA TEACHERS ASSOCIATION

Legal Department

A Layoff Survival Guide

CALIFORNIA TEACHERS ASSOCIATION ♦ DEPARTMENT OF LEGAL SERVICES

A Layoff Survival Guide

© California Teachers Association
1705 Murchison Drive • P.O. Box 921
Burlingame, CA 94011-0921
www.cta.org • Phone 650.697.1400

The CTA Legal Department compiled this guide. Please send suggestions, updates, and additions regarding this publication to CTA Legal Department to Alice O'Brien's attention at aobrien@cta.org

California Teachers Association — Department of Legal Services

Chief Counsel

Alice O'Brien

Assistant Chief Counsel

Priscilla Winslow

Staff Counsel — Burlingame Office

Joseph R. Colton

Ballinger Kemp

Ramon E. Romero

Staff Counsel — Santa Fe Springs Office

Michael D. Hersh

John F. Kohn

Robert E. Lindquist

Brenda E. Sutton-Wills

Rosalind Wolf

**No portion of this book may be reproduced in any form
or by any means, without permission from the author.**

Dear Colleague:

The situation you currently face is without a doubt one of the most discouraging anyone can experience. It is an emotionally devastating experience to be told that you are losing your job through no fault of your own.

This booklet has been prepared by the Legal Department of the California Teachers Association to help you through this difficult time by letting you know the legal framework that governs layoffs and non-disciplinary terminations under California law. In addition, this booklet provides an overview of your rights to rehire and unemployment as well as your rights under the so-called federal "COBRA" law to maintain your current health coverage following your termination. Of course, the information in this booklet is necessarily presented in summary form. For more detailed information applicable to your particular situation, please contact your CTA chapter or CTA representative.

Be assured that while you are coping with this difficult situation, CTA will continue to fight for you. We will work tirelessly to restore budget cuts made to schools and we will continue our fight for the adequate funding necessary so that our schools can provide the top quality education that our students deserve.

We hope that you weather this storm quickly and that, with the help of this information, you will soon be on your way back into a classroom or school site in California. We look forward to the day when you and the other dedicated professionals who have fallen victim to these trying economic times return. In the meantime, know that CTA and your local union will continue to do our part to assure that result.

Sincerely,

*David Sanchez
CTA President*

*Dean Vogel
CTA Vice President*

*Dan Vaughn
CTA Secretary-Treasurer*

CHAPTER I – WHEN CAN A SCHOOL OR COMMUNITY COLLEGE DISTRICT LAY YOU OFF?

Certificated Employees 1

- 1. Permanent & Probationary Teachers 1
- 2. Teachers Employed in a Categorical Program 2
- 3. Temporary Teachers 2
- 4. Substitute Teachers 3

Classified Employees – ESP (non-teachers) 3

Community College Employees 4

CHAPTER II – WHAT SHOULD YOU DO IF YOU RECEIVE A LAYOFF NOTICE?

Certificated Employees 5

Classified Employees – ESP (non-teachers) 6

Community College Employees (Regular or Tenured and Contract Employees) 7

CHAPTER III – WHAT IS THE MARCH 15TH LAYOFF PROCEDURE?

The Key Dates in the March 15th Lay off Process 8

The Issues that Must be Resolved in the RIF Process 9

- 1. “Skipping” and “Bumping” Issues for Certificated Employees 9
- 2. “Bumping” Rights for Tenured and Contract Community Colleges Employees 10
- 3. “Bumping” Rights for ESP (non-teachers) 10

CHAPTER IV – WHAT ARE YOUR REHIRE AND OTHER RIGHTS IF YOU ARE LAID-OFF?

Permanent Teachers – Rehire, Substitute & Leave Transfer Rights 11

- 1. Rehire Right 11
- 2. Substitute Right 12
- 3. Leave Transfer Right 12

Probationary Teachers – Rehire, Substitute & Leave Transfer Rights 12

- 1. Rehire Right 12

TABLE OF CONTENTS

2. Substitute Right..... 12

3. Leave Transfer Right 12

Classified Employees 13

1. Rehire Right..... 13

2. Voluntary Demotion or Reduction in Hours 13

Community College Employees 14

1. Regular Employees..... 14

(a) Rehire Rights 14

(b) Right to Temporary Positions 14

2. Contract Employees..... 15

(a) Rehire Rights 15

(b) Right to Temporary Positions 15

CHAPTER V – HOW DO YOU GET UNEMPLOYMENT BENEFITS AND MAINTAIN YOUR HEALTH INSURANCE AND MEMBERSHIP IF YOU ARE LAID OFF?

Unemployment Insurance Benefits..... 16

1. Eligibility 16

2. How to file for a claim for Unemployment Insurance benefits 16

3. What information is needed to file a claim? 16

4. What happens after the claim is filed? 17

5. Benefit amount & the Limited Federal Tax Exemption..... 17

Maintaining your Health Insurance..... 18

1. Notice of, and Nature of, COBRA Rights..... 18

2. Premium Amounts following Involuntary Terminations..... 18

3. Premium Amounts following Voluntary Terminations..... 19

4. When, and to Whom, Must the Premium be Paid?..... 19

Maintaining Your CTA Membership..... 19

APPENDIX OF RIF FORMS

Request for Hearing (CTA Form #1) 21

Notice of Defense (CTA Form #2)..... 22

CTA RIF Data Form & Questionnaire (CTA Form #3)..... 23

WHEN CAN A SCHOOL OR COMMUNITY COLLEGE DISTRICT LAY YOU OFF?

IT'S NOT YOUR FAULT. Through no fault of your own, you are suddenly facing possible unemployment. Knowing there wasn't enough state money to go around does not make it any easier when you and your family's finances are at stake. There is help out there; you will have a job again and the economy will rebound. But right now you have to take action to ensure that you do everything possible to ease the fear and burden of unemployment. Take a deep breath, and we'll walk you through how the layoff and termination process works under California law and explain the rights that you enjoy to rehire, unemployment, and health insurance coverage, should worse come to worse and you lose your job. Because certificated employees, education support professionals and community college faculty members have different rights under California law in the layoff and termination process, the following summarizes the law applicable to each different group of educational employees.

Certificated Employees.

1. Permanent and Probationary Teachers.

If you are a permanent or probationary teacher, you can be laid off if the school board determines that economic circumstances require decreasing the number of permanent employees. The board can identify a particular kind of service (such as a course or program) that will be reduced or discontinued, or base the layoffs on either a drop in the district's average daily attendance ("ADA") or a state law modifying the curriculum. You must be either personally given, or sent by registered mail, written notice that you are on the district's proposed layoff list by March 15th, 2009. Educ. Code Sec. 44955(b).

IMPORTANT NOTE – if you are a probationary employee and the district is terminating you due to economic circumstances, it must give you the notice described above and follow the full March 15th layoff procedure described at page 8; it cannot simply give you a notice of non-re-election. *Cousins v. Weaverville Elementary SD* (1994) 24 Cal.App.4th 1846, 30 Cal.Rptr.2d 310. The district can, however, give you a layoff notice and then, subsequently, give you a notice of non-re-election for reasons unrelated to the economic circumstances on which the layoff was based. *CTA v. Mendocino USD* (2001) 92 Cal.App.4th 522, 111 Cal.Rptr.2d 879.

A district can also lay off permanent and probationary teachers during the time period after the state legislature approves the budget and August 15th, if the board determines that its total revenue limit per unit of ADA has not increased by at least 2% and that it is necessary to decrease the number of permanent employees. Educ. Code Sec. 44955.5. CTA does not believe that a district may avoid the specific March 15th layoff procedure by waiting until after March 15th to notice teachers for layoff on the ground that the legislature's approval of the budget on February 19, 2009 allows the district to layoff permanent and probationary teachers any time up until August 15th.

2. Teachers Employed in a Categorical Program.

If you work in a categorically funded program and neither funding for the program nor the contract for the program has been terminated, you must be laid off through the March 15th RIF procedure that applies to permanent and probationary teachers including the notice described above and the hearing described below at page 8. In addition, if you were classified as a permanent or probationary teacher before being assigned to a categorically funded program, you must be transferred to another position or laid off pursuant to the March 15th RIF procedure regardless of whether or not categorical funding or the contract has been terminated.

3. Temporary Teachers.

If you are a temporary teacher, you may be dismissed at any time prior to serving 75% of the school year. Educ. Code Sec. 44954. After that point, a school district may release you only by providing you a release notice by the end of the school year indicating that you will not be reemployed for the next school year. Educ. Code Sec. 44954(b). Temporary teachers are not entitled by statute to a hearing when they are terminated.

Many districts misclassify teachers as temporary employees. As a general rule, you should only be classified as a temporary employee if you have been hired for one of the following reasons:

- to replace a permanent or probationary teacher on long term leave. Educ. Code Sec. 44920;
- to teach a class or perform duties that will not last for more than the first three months of any school term, Educ. Code Sec. 44919(a);
- to teach special adult classes or in a school for migrant populations for no more than four months of the school term, *Id.*;
- to serve in limited coaching assignments, Educ. Code Sec. 44919(b);
- to teach one semester only in anticipation of a reduction in student enrollment, Educ. Code Sec. 44921; or

- to teach for no more than 20 days due to an emergency, Educ. Code Sec. 44919(c).

If you are employed in one of these specific assignments for more than the specific time period described above, you are automatically reclassified by law as a probationary employee and your prior “temporary” service must count as probationary service. Educ. Code Secs. 44919(a), 44921. If you are employed in another assignment you cannot be classified as a “temporary” employee even if you do not yet have a “preliminary” or “clear” credential because, for example, you are working under an emergency permit, waiver, intern credentials, etc.

IMPORTANT NOTE – if you are hired for one of these temporary assignments and the District does not provide you with a written notification that your employment is temporary on or before your first date of paid services, and in July of every year thereafter, you are automatically classified by law as a probationary employee. Educ. Code Sec. 44916.

4. Substitute Teachers.

If you are a substitute teacher, you may be released at any time by the school board. Educ. Code Sec. 44953. Substitutes are not entitled by statute to a hearing when they are terminated.

Classified Employees – Education Support Professionals (non-teachers).

If you are a classified employee, who is not a substitute or short time employee, you may be laid off in the following circumstances:

1. You work in a specially funded program, which has expired. Educ. Code Sec. 45117(a). If the program is terminating at the end of the school year (on June 30th), you must be given written notice on or before April 29th that you will be laid off at the end of the school year. *Id.* If the program is terminating at any other time, you must be given written notice at least 45 days before the effective date of the layoff. *Id.* The written layoff notice must advise you of your rights to displace or “bump” other current employees as well as of your rehire rights. *Id.*
2. You work in a department that is being reduced or eliminated. Educ. Code Sec. 45117(b). You must be given written notice at least 45 days before the effective date of the layoff. *Id.* The written layoff notice must advise you of your rights to displace or “bump” other current employees as well as of your rehire rights. *Id.*

- (a) The school district has “an actual and existing financial inability to pay the salaries of classified employees.” Educ. Code Sec. 45117(d). No advance notice is required under the Education Code.
- (b) The school district needs to layoff classified employees due to a “lack of work resulting from causes not foreseeable or preventable by the governing board.” Educ. Code Sec. 45117(d). No advance notice is required under the Education Code.

IMPORTANT NOTE – these last two reasons are worded very narrowly and will NOT apply in most circumstances.

NOTE – Substitute and short-term employees, who are employed and paid for less than 75% of a school year, are not subject to these layoff procedures and may be terminated at any time.

Community College Employees.

If you are a tenured or probationary full time employee of a community college, you may be laid off if the governing board determines to reduce or discontinue a particular kind of service (e.g., a course or program) or determines that a reduction in tenured employees is necessary due to a decline in ADA over the first six months of the year below the level in either of the prior two years. Educ. Code Sec. 87743. You must be either personally given, or sent by registered mail, written notice that you are on the district’s proposed layoff list by March 15th, 2009. Educ. Code Sec. 87740.



WHAT SHOULD YOU DO IF YOU RECEIVE A LAYOFF NOTICE?

If you have received a layoff notice, and haven't yet done so, contact your CTA chapter right away. If you are a member they will be able to advise you regarding the steps you should take to ensure that your rights are protected during the layoff process.

In addition, because layoffs must be in reverse seniority order, below are some steps you can take to help with your representation in the layoff process.

Certificated Employees.

1. **Figure out your seniority date** and collect the documents you need to prove up that date if need be. The general rule is that your seniority date is your first day of paid service as a probationary employee ("PROB"). There are three important exceptions:

- (a) Your prior year of service as a temporary or substitute teacher will count as your first year of service as a PROB if you served as a temporary or substitute teacher for at least 75% of the school year and you were reelected to fill a vacant position the next year. Educ. Code Sec. 44917, 44918(a). For example, if you worked 75% of the 2007-08 school year as a temporary or substitute teacher, and were reelected to fill a vacant position this year, your prior year of service counts as your first year as a PROB and your seniority date would be your first day of paid service in the 2007-08 school year.
- (b) Your prior year of service in a categorical position will count as your first year of service as a PROB if you served in the categorical position for at least 75% of the school year and were subsequently employed by the district as a PROB in a position requiring certification. Educ. Code Sec. 44909. So, if you worked 75% of the 2007-08 school year in a categorical position, and were employed this year by the district as a PROB, your seniority date would be your first day of paid service in the 2007-08 school year.

(c) Remember that your first day of paid service may NOT be the first day of school. If you were paid to attend an in-service day before school, that day may count as your first paid day of service. Conversely, if you did not start work until after school started, your first paid day of service will be the day you actually started working for pay, not the day that school started.

2. Make sure that ALL of your credentials and certifications are on file with the school district especially certifications to teach English language learners. If you hold a credential or certification, but it is not on file with the district by March 15th, you will not be credited with that credential or certification in the RIF hearing. Some districts try to argue that an even earlier date serves as the cutoff point, so it is important to get your credentials and certifications on file as soon as you can. If you need to check on your credentials, look them up on the CTC website at <http://www.ctc.ca.gov/lookup.html>.

3. Fill out the attached questionnaire (in Appendix, CTA form # 3) regarding your prior service credentials and certifications to facilitate your representation in the RIF process.

4. If you receive a layoff notice, contact your CTA Chapter right away. In addition, fill out and hand in to the District a request for hearing. A sample of such a request is appended at the end of this booklet but check with your CTA representative before you use it in case he or she is advising members to use a different form. The hearing request form must be received by the District within 7 days of the date of your layoff notice unless the layoff notice specifies a later date. Make sure to keep a filestamped copy of the notice for your records.

Classified Employees - Education Support Professionals (non-teachers)

1. Check with your CTA representative to find out how your district defines your length of service in your class – by hire date or by hours of work (excluding overtime). Educ. Code Sec. 45308. Once you know how seniority is measured, figure out your hire date or hours of work so that you can make sure you are not being laid off before less senior employees in your class.

2. Check to make sure your personnel file accurately reflects all positions you have held with the district and the dates when you held those positions. Also make sure that the file contains any documents that show you are competent to hold your current position or positions outside your class, such as a nursing certification.

3. If you receive a layoff notice that you believe is based upon inaccurate information about your seniority or competency to perform work in a different class, make a written request, keeping a copy, for a pre-termination meeting with a fair administrator with authority to rescind or recommend rescinding the layoff notice. The purpose of this meeting is to correct the district's errors. Request CTA representation in the meeting, and advise CTA staff if the request to meet is denied or if the administrator refuses to correct the district's errors.

Community College Employees (Regular or Tenured & Contract Employees).

1. Figure out your seniority date and collect the documents you need to prove up that date if need be. The general rule is that your seniority date is your first day of paid service as a full time contract employee (meaning you worked 75% or more of the academic days of the year).
2. Make sure that the district records reflect all of your qualifications to instruct in different faculty service areas.



WHAT IS THE MARCH 15TH LAYOFF PROCEDURE?

The Key Dates in the March 15th Lay off Process.

If you are a permanent or probationary certificated employee of a school district, or a tenured or contract employee of a community college, and you receive a notice this spring that you are on the list of employees subject to layoff, the following procedure and timeline will govern the layoff process.

<i>Event</i>	<i>Date</i>	<i>Explanation</i>
Layoff Notice	March 15th	You will receive an individual notice stating that the District intends to lay you off. The notice must be written and either personally given to you or mailed to you by registered mail by March 15th
Request for a Hearing	Must be served on the District within 7 Days After Receiving Layoff Notice or Another (Later) Date Specified in Layoff Notice	The layoff notice will ask if you want a hearing. You DO! To get one fill out the attached Request for a Hearing form or the form provided by your CTA representative and hand it in to the District within 7 days of receiving your layoff notice (unless a later date is specified in the layoff notice). Take two copies with you when you hand the form in and ask the District to file stamp one of them for you to keep for your records.
Notice of Accusation	You will receive this after you request a hearing.	After you serve your request for hearing, the district will respond by serving you with a document called a “Notice of Accusation.” Don’t worry – this is just legal babble – it does not mean you have done anything wrong. This document may either be given or sent to you.

<i>Event</i>	<i>Date</i>	<i>Explanation</i>
Notice of Defense	Within 5 days of Service of Notice of Accusation	As soon as you receive the Notice of Accusation, fill out the attached Notice of Defense and give it to the District (again, making sure that you keep a filestamped copy for yourself). Your chapter or representative may ask you to fill out a different Notice of Defense form instead, in which case you should follow their instructions. Do make sure though that the Notice of Defense is received by the district within 5 days of your receipt of the Notice of Accusation.
Time and Place of Hearing	N/A	A trial type hearing will be held before an administrative law judge (“ALJ”) over the district’s proposed layoff list. Your CTA representative will tell you when and where the hearing will be.
ALJ Proposed Decision	No Later than May 7th	The ALJ who presided over the trial must give his proposed decision to the governing board and employees by May 7th.
Notice of Final Decision by Board	No Later than May 15 th	The governing board has until May 15 th to review the ALJ decision and issue its final decision including its final layoff notices to employees. The final layoff notices can be served personally or by registered mail.
Subsequent Court Review		In rare instances, the governing board’s decision can be challenged in court by way of a Petition for Writ of Administrative Mandate.

The Issues that Must be Resolved in the RIF Process.

As a general rule, layoffs must be in reverse order of seniority – “last hired, first fired.” One of the key issues that must be resolved in the March 15th RIF process is whether or not the district layoff list is in the correct order. That is why it is so important for you to figure out your seniority date so you can make sure that the district has the correct date.

1. “Skipping” and “Bumping” Issues for Certificated Employees.

You have the right to “bump” any junior employee who is retained to render a service that you are both “certificated and competent” to provide. Educ. Code Sec. 44955. If you seek to teach a subject that you have not previously taught and for which you are not credentialed or which was not your major area of post-secondary study, the school district will require you to pass a subject matter competency test before assigning you to teach that subject. *Id.*

If you have the same seniority date as another employee, the school district will decide how to rank you on the layoff list based on criteria it chooses reflecting “the needs of the district and the students thereof.” Educ. Code Sec. 44955(c). The district must provide you or your representative, upon request, with the criteria it is using for this purpose and its application in ranking you among other employees with the same seniority date.

The district may also deviate from the order of seniority if the district demonstrates “a specific need for personnel to teach a specific course or course of study” and that the more junior employee “has special training and experience necessary to teach that course or course of study.” Educ. Code Sec. 44955(d). That is why it is so important that you carefully and completely fill out the RIF questionnaire (attached in Appendix 1) so that your representative in the RIF process can determine, if the district attempts to skip you on this basis, whether or not the district’s “skip” is vulnerable to a strong challenge.

2. “Bumping” Rights for Tenured and Contract Community College Employees.

If you are a tenured employee you have the right to “bump” any junior employee (tenured or contract) who teaches a faculty service area that the district records reflect you possess the minimum qualifications to teach. Educ. Code Sec. 87743.

3. “Bumping” Rights for Education Support Professionals (non-teachers)

If you are a permanent education support professional, although you do not have a right by statute to a hearing on your layoff, you do have the right to “bump” any junior employee who performs the same class of service as you or who performs another class of service that the district records reflect you are qualified to perform. If you believe you should be allowed to bump, contact your CTA representative about the issue.

WHAT ARE YOUR REHIRE AND OTHER RIGHTS IF YOU ARE LAID OFF?

Permanent Teachers – Rehire, Substitute & Leave Transfer Rights.

1. **Rehire Right** – You have the right to be rehired in order of seniority if, at any time within 39 months of the layoff, the number of employees is increased or the service that was discontinued leading to your layoff is re-established. Educ. Code Sec. 44956(a). If you seek to teach a subject you have not previously taught, and for which you do not have a teaching credential or in which you did not major, you must pass a subject matter competency test in the appropriate subject. Educ. Code. Sec. 44956(a)(1).

- The district may refuse to rehire in seniority order if it demonstrates a specific need for personnel to teach a specific course or course of study, and shows that the more junior employee has special training and experience necessary to teach that course or course of study, which the more senior employee does not possess. Educ. Code. Sec. 44956(a)(3)(A).
- If you are rehired, the period of the layoff will not be considered a break in service, but neither shall it count towards STRS credit. Educ. Code. Sec. 44956(a)(4). At any time prior to the completion of your first year of service after rehire, you can continue, or make up, your contributions to STRS for the period during which you were laid-off but neither the state or district is obliged to match those contributions. Educ. Code. Sec. 44956(a)(7). If you reach retirement age or become disabled before you are rehired, you are entitled to receive all retirement or disability benefits that you would have received while employed. Educ. Code. Sec. 44956(a)(8).
- You may waive your rehire rights for a period of up to a year (meaning that you can ask to be passed over when the district makes rehire offers) without losing the right to subsequent offers of rehire. Educ. Code. Sec. 44956(a)(2).

2. **Substitute Right** – You have the right to temporary and substitute positions, again in order of seniority, while you are waiting to be rehired into a permanent position. Educ. Code. Sec. 44956(a)(5). If you substitute teach 21 days or more in a 60 day period, your pay shall be no less than if you had been reappointed to a permanent position. Educ. Code. Sec. 44956(a)(5).

3. **Leave Transfer Right** – If you obtain employment in another school district, you can transfer your accrued sick leave from your prior district by providing your current district with written notice that you would like to transfer your accrued sick leave together with the name and address of your former district. Educ. Code. Sec. 44979.

Probationary Teachers – Rehire, Substitute and Leave Transfer Rights.

1. **Rehire Right** – You have the right to be rehired in order of seniority if, at any time within 24 months of the layoff, the number of employees is increased or the service that was discontinued leading to your layoff is re-established. Educ. Code Sec. 44957(a). If you seek to teach a subject you have not previously taught, and for which you do not have a teaching credential or in which you did not major, you must pass a subject matter competency test in the appropriate subject. Educ. Code. Sec. 44957(a).

- The district may refuse to rehire in seniority order if it demonstrates a specific need for personnel to teach a specific course or course of study, and shows that the more junior employee has special training and experience necessary to teach that course or course of study, which the more senior employee does not possess. Educ. Code. Sec. 44957(b)(1).
- If you are rehired the period of the layoff will not be considered a break in service, but neither shall it count towards STRS credit. Educ. Code. Sec. 44957(c). At any time prior to the completion of your first year of service after rehire, you can continue, or make up, your own and the district's contributions to STRS for the period during which you were laid-off. Educ. Code. Sec. 44957(e).

2. **Substitute Right** – You have the right to temporary and substitute positions, again in order of seniority, while you are waiting to be rehired into a permanent position. Educ. Code. Sec. 44957(d).

3. **Leave Transfer Right** – If you obtain employment in another school district, you can transfer your accrued sick leave from your prior district by providing your current district with written notice that you would like to do so together with the name and address of your former district. Educ. Code. Sec. 44979.

Classified Employees.

1. **Rehire right** –You are eligible for reemployment for 39 months and have the right to be reemployed in preference to new applicants. Educ. Code Sec. 45298. You also have the right to participate in promotional exams in the district for a prior of 39 months. Educ. Code Sec. 45298.

Reemployment is determined in the reverse order of layoff, which is usually determined by hours of paid service in your classification in your district unless your collective bargaining agreement defines the phrase “length of service” differently. Educ. Code Sec. 45308. In the past, districts have rehired employees only into the classification that the employee originally held. A recent Court of Appeal decision, however, holds that the rehire right provided under Educ. Code Sec. 45298 requires a district to give preference to a laid-off employee for any position for which he was qualified. Because the case as of this writing is on appeal to the California Supreme Court, you should contact your chapter for further guidance if you believe that you are qualified to be rehired into a particular position and the district refuses to rehire you.

- Note hours of service includes hours in paid status, whether during the school year, a holiday, recess, or during any period that a school is in session or closed, but does not include overtime hours or hours served prior to entering into probationary or permanent status except for service in certain restricted positions. Educ. Code Sec. 45308. A district may also, but is not required, to grant “length of service” credit for time spent on unpaid illness leave, unpaid maternity leave, unpaid family care leave, or unpaid industrial accident leave. Educ. Code Sec. 45308. Length of service credit is granted for military leave. Educ. Code Sec. 45297.
- Note for districts with an ADA of more than 400,000 after January 1, 1986, "length of service" is determined by the date of hire. Educ. Code Sec. 45308.

2. **Voluntary Demotion or Reduction in Hours** – If you take a demotion or a reduction in hours in lieu of a layoff, you are entitled to the same rehire rights as laid-off employees. Educ. Code Sec. 45289. As vacancies become available, voluntarily reduced/demoted employees have a right to return to a position in their former class or to positions with increased assigned time. If there is a valid reemployment list, you will be ranked on the reemployment list in seniority order according to your length of service. Educ. Code Sec. 45308.

The Personnel Commission may, but is not required, to grant you an additional period of rehire rights up to a maximum of 24 months beyond the original 39 months, if the fitness test for the employee’s classification has not changed. Educ. Code Sec. 45289.

Community College Employees

1. Regular employees.

(a) **Rehire Rights** – You have a 39-month rehire right unless you retire in the meantime. Regular employees stand before contract employees in the right to rehire. Educ. Code Sec. 87744(a). The rehire right extends to all positions that you are qualified and competent to render.

- For one college year after the layoff, you may waive the right to reappointment to any particular positions without waiving the right to appointment to the next position. The board can extend the right to waive reappointment beyond one year. Educ. Code Sec. 87744(b).
- If you are rehired, the period of the layoff will be treated as a leave of absence, and not as a break in service. You will retain the classification and order of employment you had when you were terminated.
- The fact that you have been laid off does not affect qualifications for retirement under state and local retirement systems. However, the time away from service does not count as part of the computation of credit toward retirement. Educ. Code Sec. 87744(b).
- Upon reappointment, you may continue to make up, with interest your own contributions to the state or district retirement system. These make-up contributions can be made for up to one year after reinstatement. The district does not have any matching obligation. Educ. Code Sec. 87744(e).
- If you reach mandatory retirement age or become disabled prior to your return to service, you are entitled to all of the benefits you would have received if the retirement occurred before the layoff. You will also receive any benefits that he or she would have qualified for if he or she had been employed. Educ. Code Sec. 87744(f).

(b) **Right to Temporary Positions** – During the 39-month rehire period, you are entitled to temporary positions in seniority order. Your temporary services can be terminated upon the return to duty of the absent employee. You would receive the same rate of pay you would receive if you had been reappointed. Taking a temporary position will have no affect on your classification and rights. Educ. Code Sec. 87744 (d).

2. Contract Employees.

(a) **Rehire Rights** – Unless you retire in the meantime, as a contract employee you have a 24-month right to be rehired in order of seniority. Contract employees stand behind regular employees in the right to rehire. Educ. Code Sec. 87744(a). This rehire right extends to all positions for which you are qualified and competent to render. Educ. Code Sec. 87745(a).

- Upon reappointment, the period of your absence shall not constitute a break in service. You retain the classification and order of employment that you had at the time of the layoff. The time of your layoff will not be computed toward service required for attaining regular status. Educ. Code Sec. 87745(b)
- Upon reappointment, you may continue to make up with interest your own contributions to the state or district retirement system. These make-up contributions can be made for up to one year after your reinstatement. If you elect to make this contribution, you shall pay into the system your share and the district share, and the amount of any contributions withdrawn, plus interest. Educ. Code Sec. 87745(d).

(b) **Right to Temporary Positions** – During the 39-month rehire period, you are entitled to temporary positions in seniority order, behind regular employees. Your temporary services can be terminated upon the return to duty of the absent employee. You would receive the same rate of pay you would receive if you had been reappointed. Taking a temporary position will have no affect on your classification and rights. Educ. Code Sec. 87745(c).

HOW DO YOU GET UNEMPLOYMENT BENEFITS AND MAINTAIN YOUR HEALTH INSURANCE AND MEMBERSHIP IF YOU ARE LAID OFF?

Unemployment Insurance Benefits.

1. Eligibility.

Employees who are laid off or who are not re-elected are eligible to receive unemployment insurance benefits. In addition, a probationary employee who resigns effective the end of the school year after being given the choice to resign or be non-re-elected, is also eligible to receive unemployment insurance benefits.

2. How to file for a Claim for Unemployment Insurance Benefits.

File for UI benefits immediately after your last day of work. There is a one week, unpaid waiting period. The fastest and most convenient way to file a claim is online at <http://eapply4ui.edd.ca.gov> Or, print out the online application, hand write your answers, and fax or mail to the California Employment Development Department (at EDD, 800 Capitol Mall, MIC 83, Sacramento, California 95814, 1-800-300-5616 (English), 1-800-326-8937 (Spanish)).

Due to the current recession and the resulting increase in the number of claims, you may experience a long wait on telephone lines.

3. What information is needed to file a claim?

- Your name, address, phone number and social security number.
- School District Office address and phone number.
- Specific reason you are no longer working. If you were laid off, state you were laid off and have no reasonable assurance of reemployment the

following school year. If you resigned in lieu of being non-reelected, state that you resigned after the employer informed you that you would be dismissed for reasons other than misconduct.

- Last day of work.
- Citizenship status, and if applicable, alien registration number.
- Driver's license number or state ID number.
- Report all wages earned whether or not you have already received them.
- Complete the form fully and accurately. Unanswered questions may delay processing. Use blue or black ink.

4. What happens after the claim is filed?

Within 10 days of filing your claim, you should receive by mail either claim materials or notice that a telephone interview has been scheduled, if further information is needed. If you do not receive notification in the mail after 10 days, contact EDD. Your first UI benefit check should arrive within about three (3) weeks after filing.

5. Benefit Amount & the Limited Federal Tax Exemption.

You can receive a regular benefit up to a maximum of \$450 a week depending on your past earnings, plus \$25 a week in federal stimulus payment. If you file in May or June, 2009, your benefit amount will be calculated on the highest quarter in the base period of the twelve months ending December 31, 2008.

You may receive these benefits for a maximum of 59 weeks if you remain unemployed for that long. Twenty-six of these weeks are regular benefits, and you may be eligible for an additional 33 weeks due to the federal extension of unemployment insurance benefits. You must re-apply for the federal extension in the same manner as your original application.

NOTE – Your first \$2,400 in state unemployment benefits are not subject to federal taxes. Any benefits you receive above \$2,400 are subject to federal taxes.

Maintaining Your Health Insurance

As a general rule, if you are laid off, your health insurance coverage will continue through August 31st if you worked the entire school year. You should check, however, with your CTA chapter to confirm the date that your health insurance coverage will terminate. After that date, if your school district has more than 20 employees, you can choose to continue your health insurance coverage for up to 18 months under the federal COBRA Act. If your school district has fewer than 20 employees, you may be able to continue your health insurance under California's mini-COBRA Act.

1. Notice of, and Nature of, COBRA Rights.

Within 90 days of your termination from employment or of a reduction in hours of employment resulting in you losing employer paid health coverage, the District must notify you of your right to continue your health coverage under COBRA. Your right is to continue the same health insurance coverage that you had as an employee, including any coverage you carried for your spouse or dependents. You are obligated, however, to pay for some (in the case of involuntary terminations) or all (in the case of voluntary terminations) of the premiums to maintain coverage. Even if you choose not to continue your health coverage, you may elect to continue health care coverage for your children and/or your spouse may elect to continue coverage.

2. Premium Amounts following Involuntary Terminations.

Under the American Recovery and Reinvestment Act that President Obama recently signed into law, employees who are involuntarily terminated between September 1, 2008 and December 31, 2009 and who are not eligible for health insurance through another plan (e.g., through your spouse's plan), may maintain their health insurance coverage for nine months by paying 35% of the applicable premium. The remaining 65% of the premium must be paid by the district, which can seek reimbursement of that amount from the federal government. The applicable premium is set forth in your health plan's summary documents and cannot exceed 102% of the premium the plan pays for non-COBRA participants.

After the first nine months of COBRA coverage, you can continue to maintain your health insurance coverage for another nine months by paying the full premium set forth in your health plan's summary documents. Again, that premium cannot exceed 102% of the premium the plan pays for non-COBRA participants.

Important NOTE – CTA has been working with NEA to ensure that employees who are forced to resign in lieu of non-reelection or termination are eligible for the federal subsidy, which covers 65% of your premium costs for the first 9 months of COBRA coverage. On March 31, 2009, the federal Internal Revenue Service issued guidance confirming that employees remain eligible for the subsidy even though they resign so long as they do so in lieu of termination. Accordingly, teachers who resign in lieu of non-reelection are eligible to receive the federal COBRA subsidy.

3. Premium Amounts following Voluntary Terminations.

If you are voluntarily terminated, you may choose to maintain your health insurance coverage for up to 18 months by paying the full premium due (which may be no more than 102% of the premium the plan pays for non-COBRA participants).

4. When, and to Whom, Must the Premium Be Paid?

You must pay the premium to the plan. Check with your CTA chapter to find out where the premium must be sent. Your first premium payment must be received by the plan within 45 days of your election of COBRA benefits. Your subsequent payments must be received within 30 days of the due dates set by the plan for premium payments. Make sure to make your premium payments on time. A plan can terminate your COBRA coverage if your payments are not received before the end of the 30 day grace period.

Maintaining Your CTA Membership

CTA members who are laid off can maintain their membership, and thereby continue to enjoy all the benefits of CTA representation including legal representation through the Group Legal Services program and the benefits you receive through the CTA endorsed credit union, insurance and discount programs, by paying Category 3A dues, which are approximately one quarter of the dues paid by full time members. In 2008-09, for example, Category 3A dues for teachers are \$164.75 for CTA, \$47.25 for NEA, and the amount of local dues determined by your local.

To maintain your membership, contact your CTA Chapter to find out the local dues amount and how, and when, you should pay your dues. You can also contact CTA Membership for information at 650-552-5278 or membership@cta.org. As a general rule, dues are paid for the full year and must be received by your chapter by October 31st. You may maintain your membership in CTA for the entire duration of your rehire rights or three years time, whichever is longer. Please note that if you work 25% or more as a substitute or temporary, your dues status will change and you should contact your local and/or CTA to make any necessary adjustments in your dues payments.

APPENDIX OF IMPORTANT RIF FORMS

INDEX OF RIF FORMS

REQUEST FOR HEARING (CTA FORM #1)

NOTICE OF DEFENSE (CTA FORM #2)

CTA – RIF DATA FORM & QUESTIONNAIRE (CTA FORM #3)

REQUEST FOR HEARING

Dear _____:

I hereby request a hearing to determine whether there is cause to not re-employ me for the 2009-2010 school year.

Signature

Printed Name

Address

Date

NOTICE OF DEFENSE

TO: Governing Board
 _____ School District

Address: _____

In response to your accusation, dated _____, 2009, I _____,

1. Request a hearing.
2. Object to the accusation upon the ground that it does not state acts or omissions upon which you may proceed.
3. Object to the form of the accusation on the ground that it is so indefinite or uncertain that I cannot identify the transaction or prepare my defense.

This constitutes my notice of defense pursuant to Government Code Section 11506.

Signature

Printed Name

Address

Date

CALIFORNIA TEACHERS ASSOCIATION RIF DATA FORM

NOTE: You must complete the entire questionnaire. If you are unsure about past training or experience, check your personnel file. Please type or print legibly.

1. Last Name _____
2. First Name _____
3. Home Address _____
4. Home Phone _____ Cell Phone _____

Personal Email Address _____

6. School/Campus _____
7. School/Campus address _____
8. School Phone Number _____
9. Current employment status _____
(K-12: Probationary 1, 2 or Permanent) (CC: Contract 1, 2 or Regular)
10. Seniority date according to district (if incorrect, explain)

11. Seniority Number _____
12. First Date of Paid Service _____
13. Credentials and Certificates Held (Include the date the District was notified of each)

14. District employment history. State teaching assignments (subjects and grade levels), classification and hours worked per week if less than full-time. List your current assignment first.

Dates	Teaching Assignment	Classification	Hours Per Week (If Not Full-Time)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

15. If any employment listed above is other than probationary (contract) or permanent (regular), please explain the basis for your classification.

16. Degrees Held (w/Major & Minor): _____

17. Degrees Anticipated (w/Major & Minor): _____

18. Post Bachelor's Degree Units: _____

19. Please explain any breaks in your service with the district. _____

20. Identify every district certificated employee you know of who resigned, was dismissed or otherwise terminated, retired or announced his or her intention to terminate employment during the previous or current school year.

21. Identify every district certificated employee who you think may retire or resign effective next school year who has not yet done so.

22. If you know of any person in the district with less seniority than yourself who is being retained to perform services that you are credentialed to perform (be sure to check a seniority list that indicates persons not served with layoff notices) state the name of that individual, his or her current position, and the position he or she will hold next year.

23. Do you know why any individual listed in paragraph 22 is being retained? If so, explain why as to each such individual:

24. List all positions held on committees, advisory groups and appointed or elected positions within the district.

25. Please provide any other relevant information regarding your qualifications for service. _____

26. State any other information you think is important to your case.
