



August Certificated Layoff Window

Due to the deteriorating state budget situation, there is renewed interest in use of the August certificated layoff window. Pursuant to Education Code section 44955.5 “between five days after the enactment of the state budget and August 15 of the fiscal year to which that budget act applies” the board may terminate permanent and probationary certificated employees, including employees in positions requiring an administrative or supervisory credential, if (1) the board determines that its total revenue limit per ADA has not increased by at least 2% over the prior year and (2) the board is of the opinion the layoffs are necessary.

This section of the law has rarely been used because the state budget is rarely adopted in time for the procedure to be implemented. The process in section 44955.5 was tested once in 1991, but there is no precedential court analysis on the issue. Boards considering using this authority should proceed very cautiously and work closely with district legal counsel.

Is the Second Layoff Window Operative?

At this time, yes. The 2009-10 budget was enacted in February of this year and provided for a net revenue limit decrease of 1.27%, thus districts have the authority under section 44955.5 to layoff certificated employees before August 15.

However, with the failure of the May ballot initiatives, it is likely that the Legislature will need to reexamine the 2009-10 budget deficit. Depending on how the Legislature addresses the issue, it is possible that the 2009-10 budget will be reopened or, like it did in 2002, the Legislature could pass legislation specifically making the section inoperative.

Whether the board recognizes that additional layoffs are needed or the need for layoffs is newly recognized, districts should, after consulting with legal counsel, begin moving forward now with the termination (layoff) process authorized by section 44955.5. Clearly, absent further legislative relief, this is the last opportunity to trim certificated costs for 2009-10 through a layoff process.

What are the requirements for an August 15 layoff?

Education Code section 44955.5 requires the governing board to adopt resolutions upon a determination of reduced funding and the need for staff reduction and an abbreviated schedule of notice and hearing for the layoffs so that the terminations (layoffs) are completed before August 15. The layoff will generally proceed like the regular layoffs in March, albeit on the schedule of notice and hearing adopted by the board to fit these circumstances.

Therefore, districts will need to act quickly to adopt the resolutions, send a preliminary notice (like the March 15 notice), hold the hearing, adopt a final decision, and issue employees a final notice of termination (like the May 15 notice). Legal requirements regarding seniority and bumping still apply. For further detail about these requirements, see CSBA’s advisory [Certificated Layoffs](#), available on CSBA’s Web site.

Note also that as a result of the adoption of the American Recovery and Reinvestment Act (ARRA), eligible workers who have been involuntarily terminated may be entitled to a COBRA subsidy for a period of up to nine months.

Final caution:

This document is not intended as legal advice, and it is strongly recommended that districts and COEs considering certificated staff layoffs consult with legal counsel immediately. The legal issues surrounding layoffs are incredibly complex, and each district and COE will have unique circumstances due to questions about seniority lists, employee classification, services to be reduced or eliminated, and “bumping” rights. Legal counsel should be consulted in order to ensure that district, COE and employee rights are protected.

If you have any questions about this document, please contact Dick Hamilton at CSBA’s Educational Legal Alliance at 800-266-3382 or dhamilton@csba.org.