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Part-Time Playground Positions Now Part of the Classified Service

On October 2, 2017, Governor Jerry Brown signed Assembly Bill ("AB") 670, amending Education Code section 45103 to provide that employees in part-time playground positions (or "noon duty aides") must be included in the classified service, regardless of whether the employee serves in another classified position elsewhere within the district. This change will go into effect on January 1, 2018, and, due to what may have been a legislative oversight, will apply only to non-merit system school districts. The impacts of this bill could be significant for many non-merit system school districts, including those that have already incorporated noon duty aides into their classified employee unions and collective bargaining agreements.

Prior to the enactment of AB 670, employees in part-time playground positions were expressly excluded from the classified service, unless they also served in another classified position in the same district. As a result, those employees were not entitled to the same rights provided to classified employees under the Education Code. In recent years, however, noon duty aide rights have increased. In 2012, the Legislature amended the Educational Employment Relations Act ("EERA") to permit noon duty aides to join classified employee unions, despite the fact that they were not considered part of the classified service. As a result, many school districts added noon duty aides to their classified employee unions, but negotiated rights for them that were more limited than those afforded to other classified employees, because noon duty aides were still excluded from the classified service.

AB 670 now effectively places noon duty aides on the same level as all other classified employees in non-merit system school districts. As a result, noon duty aides in those school districts will now be entitled to **all** benefits and protections afforded to other classified employees under the Education Code. Some of those new rights will include:

- The right to serve a probationary period and attain permanency.
- The right to accrue sick leave, vacation time, and other leaves guaranteed by the Education Code.
- The right to due process if terminated for cause while in permanent status.
- The right to notice and reemployment rights if a noon duty aide position will be laid off or reduced.

These new entitlements will have financial impacts on school districts who use noon duty aides to supervise students, which may factor into their decision to hire noon duty aides going forward. For those school districts that have already incorporated noon duty aides into their classified employee unions, they may need to review and reopen their collective bargaining agreements to ensure that noon duty aides receive the same rights that other classified employees receive. School districts that have not incorporated noon duty aides into their classified employees unions should anticipate receiving unit modification petitions in the near future.

If you have any questions regarding this matter or to seek additional information on how your school district should approach collective bargaining or employment decisions related to noon duty aides, please call one of our six offices.

F3 NewsFlash® Written by:

Joshua Stevens, partner and Katy McCully, associate

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