

Leave Does Not Count Towards 75%

Published by Carol Laird on June 30, 2008 in Personnel

In order to attain permanent status, a credentialed teacher must serve the district for two complete consecutive school years. Education Code 44908 tells us that a complete year means 75% of the number of days that school is in session. If a probationary teacher takes days off for sick leave, personal necessity or other approved leave, do those days count towards the 75%?

The answer is no. It is not enough for the teacher to be in paid status for 75% of the school days; she must be physically present at work. Education Code 44975 explains that when a probationary teacher takes an approved leave, the time she is out does not count as employment for purposes of serving a "complete" year. However, the time she is out also does not count as a break in the continuity of service for purposes of serving a "consecutive" year.

In *Griego v. Los Angeles Unified S.D.* (1994) 28 Cal.App.4th 515, a teacher taught the full year in year 1. In year 2, she taught slightly less than 75% of the days because of a worker's comp leave. Then in year 3 she again taught the full year. Believing she was still probationary 1 because of the break in service, the district gave her a notice of non-reelection in June of year 3.

The court found that year 2 did not count as a complete year because the teacher's absence took her below the required 75% of the days, but it also held that her leave was not a break in the continuity of her service. As a result, the teacher was probationary 1 in year 1 and probationary 2 in year 3. Since she did not receive the non-reelection notice by March 15 of her second probationary year, she had become permanent.

If you have a probationary teacher who approaches 45 days of absence in one year, be sure to calculate carefully to determine whether the year will count as "complete" for tenure purposes.

pink
Laird