

TULARE/KINGS COUNTIES PERSONNEL COMMITTEE
Board Room, Education Building
Tulare County Office of Education

March 12, 2009

Minutes

The Personnel Committee meeting was called to order at 8:30 a.m. Jeanne Nava welcomed those in attendance. Introductions were made around the table.

Members in attendance were:

Jeanne Nava	Dennis Martinez	Jeri Higdon
Enid Brinkman	Mary Suarez	Bernadine Landeros
Carri Williams	Michael Salcido	Janet Jones
Norma Lovelace	Alfonso Gamino	Patti Ernsberger
Barbara Leal	Ken Stovall	Philip Pierschbacker
Rosemary Montemayor	Cindy Gist	Marie Macedo
Jeanette McDonald	Barbara Zaino	David DePaoli
Andrew Bukosky	Sue Peterson	
Craig Drennan	Fernie Marroquin	

Minutes Craig Drennan moved to approve the minutes of the February 6, 2009, Personnel Committee meeting; Dennis Martinez seconded the motion. The minutes were approved as prepared.

Family & Medical Leave Act Revisions Carol Laird, Deputy County Counsel, summarized recent revisions to the Family & Medical Leave Act. Since the document is 200 pages long, it was not possible to provide a concise handout. Carol recommended that district administrators contact her via email if they have any questions regarding FMLA as it is revised, and she will be happy to do the research. Some of the key points that she mentioned were as follows:

- after 15 years of experience, the U.S. Department of Labor developed the regulations which went into effect January of 2009;
- the new regulations are better for employers than employees in the big picture;
- a general notice which employers are required to give to employees telling them of their rights can be found on the Department of Labor (DOL) website;
- this notice should be in your employee handbook (every new hire should be given the notice whether or not you have a handbook);
- it can be posted electronically, as long as every employee has access to it in that form;
- employees must notify their employer 30 days in advance;
- employers now have 5 days instead of 2 to notify the employee of their eligibility;
- if you deem an employee ineligible, you must give them the reason why;
- basic eligibility includes employees who have worked: 12 months, 1,250 hours in the last year, working at a site with 50 or more employees;
- employers must give them their "Rights and Responsibilities" which can be found on the DOL website along with the six other forms (WH1420);
- the Designation Notice (WH382) is where you tell them you will apply their leave to FMLA and for how long, or if the answer is no, you tell them why;
- if they don't give you 30 days advance notice, they must let you know why so there is more accountability on the employee;
- if a person's leave is intermittent, they must let you know when they are out, when they come back, and when they are out again;

**Family &
Medical
Leave Act
Revisions**
(continued)

As far as a serious health condition, there are six definitions:

- there must be three consecutive days of incapacity;
- plus two visits to a health care provider (the first within 7 days and the 2nd within 30 days;
- more than three occasions in their treatment regimen (this could be taking medication);
- periodic visits are two visits per year for a serious health condition;
- the definition of a health care provider now includes a physician's assistant;
- in the case of a pregnancy, the husband can take care of his wife during her pregnancy (this doesn't include a "boyfriend" or "father of the child");
- in the case of an intermittent leave, the employee must make a reasonable effort to plan treatment(s) so that it does not affect the work situation (when tracking, you should go by the same time increments as you use with other leaves which is usually by the hour);
- FMLA is basically unpaid leave of absence, however, the employee can be paid if the leave is running concurrently with other available leaves. The change is that all paid leaves are now treated the same whether it be sick leave, vacation leave, etc. and subject to the employers' rules and policies. You can require them to use any comp time that is on the books if they have it.
- if the employee is on light duty, it doesn't count as FMLA, however, the employee does not lose the right to go back to their regular job.
- if there is a holiday in the work week, you count it as a full week;
- if the holiday is a day that the person would have normally worked, you count it as a missed work day;

Medical Certification for a Serious Health Condition

- DOL Form WH380E must be completed if the serious health condition is pertaining to the employee;
- DOL Form WH380F must be completed if the serious health condition pertains to a family member;
- the employer now has 5 days rather than 2 to provide the appropriate form to the employee;
- the employee has 15 days to return the completed form;
- the employer may give the employee another 7 days if you require additional information;
- these forms have a section where the physician would provide the diagnosis, however, in California, this section should be crossed off;
- if the leave goes on intermittently, you may request a new certification for each year;
- if it is a lifetime condition, the employer may ask for re-certification every 6 months;
- if you require the employee to provide a fitness for duty certification upon their return, you must let them know this in your first communication to them;

FMLA to Attend to an Injured Family Military Person

- an employee has up to 26 work weeks in a 12 month period to care for a family member who was injured while serving in the military - the leave is unpaid, however, they should continue to receive health benefits;
- the injury or illness must have been incurred while in the line of duty while on active duty including those in the National Guard, the Reserves, or retired from the Reserves;
- the family member is not limited to spouse, parent, son or daughter - this option extends to next of kin which is quite a bit broader (basically the nearest blood relative);
- the certification form for this situation is DOL WH385 which will indicate how they were injured in the line of duty and how long they are expected to be incapacitated;

Family & Medical Leave Act Revisions
(continued)

- If after the 26 weeks, the injured person still needs care, the employee can then take 12 additional weeks of FMLA;

Qualified Exigency Leave

- 12 work weeks may be given if they have a covered military member who has been called to active duty and there are urgent matters to attend to such as: military events and activities, child care and school activities that are non-routine, financial and legal arrangements, counseling, rest and recuperation, and post-deployment activities (up to 90 days).
- in this instance, DOL Form WH384 should be completed.

Alert

Lozano Smith will be presenting an Education Law Seminar on *Leaves & Disability Issues* on April 1, 2009, at Tulare COE. For registration information, contact Jeanne Croson at 733-6322.

A Sexual Harassment Prevention Training for Tulare County school district supervisors will be presented by the legal firm of Lozano Smith in Visalia on April 29th. A morning and an afternoon session will be offered. This training must be completed by supervisors every two years. For more information, contact Jenny Vue at jvue@lozanosmith.com or 559-431-4420.

The School Employers Association of California (SEAC) will be holding their 34th Annual Conference at the Orange County Airport on Wednesday, March 25, 2009. For more information, call 949-387-1869.

Jeanne announced that CODESP would be holding a WEBINAR on *Advanced Interview Training* for members on March 18th or March 20th.

Jeanne provided a chart which included a *Comparison of the ADA, the ADA Amendments Act & the FEHA*.

Jeanne provided a chart which included a *Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations*.

An Atkinson, Andelson, Loya, Ruud & Romo Alert provided information on a COBRA Subsidy Affecting Laid-Off Workers and Employers which was passed by Congress. To qualify, a person must have been covered by a plan subject to COBRA who "involuntarily" lost their job between September 1, 2008, and December 31, 2009. Additionally, an individual must have less than \$125,000 annual taxable income, or if a family, less than \$250,000 annual taxable income. The subsidy becomes available March 1, 2009. Employers should prepare for a re-vamp of their COBRA procedures. A notice will need to be provided to eligible employees who involuntarily terminated employment on or after September 1, 2008. Payroll practices will also need to accommodate the credit program.

A School Services Fiscal Report dated February 20, 2009, addressed the question of whether a teacher who was formerly a classified employee can be reinstated to classified service. A person in this situation would have seniority rights if reinstated within 39 months of his/her resignation per Education Code Section 45309.

Court Cases

The topic of a Lozano Smith Client News Brief #11 dated February 2009 was "The California Court of Appeals Decision Addresses 'Skipping' in Certificated Layoff."

A Lozano Smith Client News Brief #13 dated February 2009 related that a "Court Invalidates School District's Practice of Running Classified Employees' Vacation Leave Concurrently With Extended Sick Leave."

A Lozano Smith Client News Brief #12 dated February 2009 related that "A Public Employee May Be Disciplined for Failing to Answer Job-Related Questions, so Long as the Employee is not Required to Waive Self-Incrimination Rights."

A Lozano Smith Client News Brief #14 dated March 2009 related that the "Governor Signs Bill Regarding Emergency Credentials, the CBEST Exam and New Teacher Programs."

Credentials & Retirement

Enid provided a CTC Coded Correspondence #09-04 dated March 3, 2009, which announced notice of a Public Hearing regarding proposed *Amendments to 5 CA Code of Regulations §80027 pertaining to the General Education Limited Assignment Multiple or Single Subject Teaching Permits and Proposed Addition of §80027.1 Pertaining to the Special Education Limited Assignment Teaching Permit and 80048.7 Pertaining to Added Authorization in Special Education*. The Hearing will be held at 1:00 p.m. on April 23, 2009, at the Los Angeles COE in Downey, California. Interested parties are welcome to submit written comments by fax (916-322-0048), through the mail (Terri Fesperman, 1900 Capitol Avenue, Sacramento, CA 95811-4213), or by e-mail (tfesperman@ctc.ca.gov) on the proposed action. The written comment period closes at 5:00 p.m. on April 20, 2009. Enid encouraged everyone to take advantage of this opportunity and let them know your thoughts.

Enid provided a CTC Coded Correspondence #09-02 dated February 11, 2009, which stated that the amendments to Section 80004 of Title 5 of the CA Code of Regulations pertaining to the authorization for the Single Subject Teaching Credential have been approved by the Office of Administrative Law. The amendments to Section 80004 add an authorization for Foundational-Level General Science. The text of the regulations was included.

Enid also shared that beginning April 1st, all emergency sub permits must be renewed online.

Teacher Recruitment Center

Norma Lovelace was present to give an update on the activities of the Teacher Recruitment Center and the Intern Program. A discussion ensued regarding the PRIME Partnerships Conference held in Monterey on March 5-7, 2009. The Conference brought together educators from across California to explore best practices and ways to collaborate, recruit, and prepare math and science teachers for 21st century schools. Those who attended felt that the Conference was a success. The consensus was that the fall would be a better time to have this event.

Other

It was the consensus of the group to CANCEL the Personnel Committee meeting originally scheduled for April 3, 2009.

Adjourned

The meeting was adjourned at 10:20 a.m. The next meeting will be held in the Board Room of the Tulare COE Building beginning at 8:30 a.m. on Friday, May 1, 2009.

Meeting Dates for 2008-09

~~April 3, 2009~~ Cancelled
May 1, 2009

Upcoming Tulare/Kings Counties' Teacher Recruitment Fairs:

- **March 20, 2010**
- **March 19, 2011**
- **March 17, 2012**

Personnel Committee agendas, minutes and meeting handouts are posted on the TCOE HR Personnel Committee website . The website is as follows: <http://www.tcoe.org/HR/PersonnelCommittee>