

# A New Approach for Classified Layoffs: What you Need to Know to be Ready

Association of Chief Human Resources Officers/Equal Employment Officers (ACHRO/EEO) 2023 Fall Institute  
October 19, 2023

Presented By: David Betts & Eileen O'Hare-Anderson

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RCCD RIVERSIDE COMMUNITY COLLEGE DISTRICT

## A New Approach for Classified Layoffs: What you Need to Know to be Ready

Association of Chief Human Resources Officers/Equal  
Employment Officers (ACHRO/EEO) 2023 Fall Institute  
October 19, 2023

Presented By:  
Meredith Karasch, Partner, Liebert Cassidy Whitmore & Tammy Few, Vice Chancellor, HR &  
Employee Relations, Riverside CCD

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### Take It From Us ...

- Not so long ago, in a place pretty close to here ...
- Two women bravely faced what had never been done before... classified layoff hearings.
- RCCD had classified layoffs in 2022 and 2023.
- Both settled before hearing.

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### AGENDA

- Why This Matters Now
- Are You Ready?
  - Refresh the Basics
  - New Layoff Procedure
  - Know Your Timelines
- Lessons Learned

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Why This Matters Now

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Layoffs: Why Does This Matter Now?

- One-time or limited-time COVID-19 money
- Declining enrollments statewide
- Financial uncertainty
- Elimination of positions and structural changes

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Layoffs: Why Does This Matter Now?

- Districts need to
  - Determine budget and District need
  - Update seniority lists
  - Update employee information
  - Educate and work with your unions

**NOW!**

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Are You Ready: Refresh the Basics

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Some Wisdom to Remind Ourselves...

- What a Layoff Is:
  - Workforce reduction by eliminating/reducing services
  - Elimination of a position, not an employee
- What a Layoff Is Not:
  - An employee termination

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Classified: Authority for Layoffs

- Classified employees may be laid off for lack of work or lack of funds
- "Lack of funds" does not require the district to be bankrupt

Ed. Code, § 88017  
*California School Employees Assn. v. Pasadena Unified School District*  
(1977) 71 Cal.App.3d 318

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### Classified Seniority

- Two methods for determining seniority
  - By statute (default): Hours in paid status
    - Includes all hours – during the year, holiday, recess, in session or closed, and military leave
    - Does not include overtime hours
  - May negotiate: Date of hire
- Does not include time served as substitute or short term employee

Ed. Code, § 88127

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### Classified Seniority and Order of Layoff

- The order of layoff within a class shall be determined by length of service
- The employee who has been employed the shortest time *in the class, plus higher classes*, shall be laid off first

Ed. Code, § 88127

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### “Bumping”

- Ed Code calls this “displacement rights”
- Happens when employee has seniority in a different position or classification
- Should *not* occur within a classification or position
  - If an employee has seniority to bump within the classification or position of the layoff...it means you laid off the wrong person

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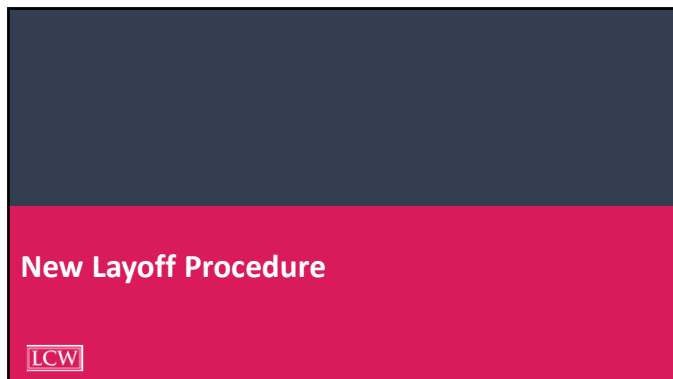
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**New Layoff Procedure**

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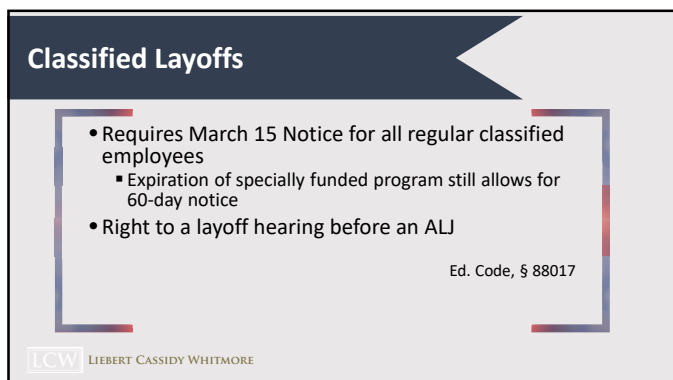
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### Classified Layoffs

- Requires March 15 Notice for all regular classified employees
  - Expiration of specially funded program still allows for 60-day notice
- Right to a layoff hearing before an ALJ

Ed. Code, § 88017

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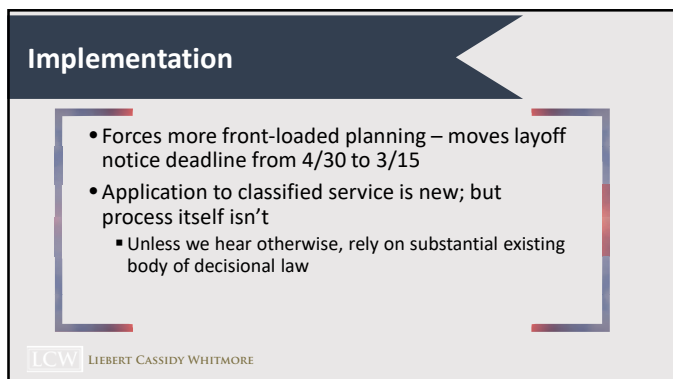
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### Implementation

- Forces more front-loaded planning – moves layoff notice deadline from 4/30 to 3/15
- Application to classified service is new; but process itself isn't
  - Unless we hear otherwise, rely on substantial existing body of decisional law

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### New Notice Requirements

- District must notice classified employees of layoff with written notice postmarked ~~on or~~ before March 15
- Written notice must provide:
  - Reasons that the employee's service will not be required;
  - Notice of the employees' displacement rights, if any;
  - Notice of the employee's reemployment rights; and
  - Notice of hearing rights.

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### Hearing Rights for Classified Employees

- Must provide employee right to hearing;
- Provide deadline for employee to make written request for hearing;
  - At least seven days after employee served with March 15 notice.
- If an employee fails to request a hearing – waiver of the right to a hearing

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### Hearing Rights for Classified Employees

- Classified employee is entitled to a hearing in front of Administrative Law Judge
- Hearing is to determine whether there is cause for not reemploying the employee for the ensuing year
- Employees may challenge:
  - Seniority date
  - Bumps
  - Status

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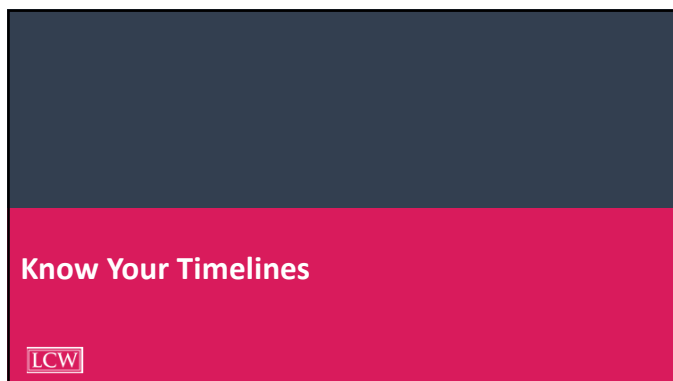
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**Know Your Timelines**

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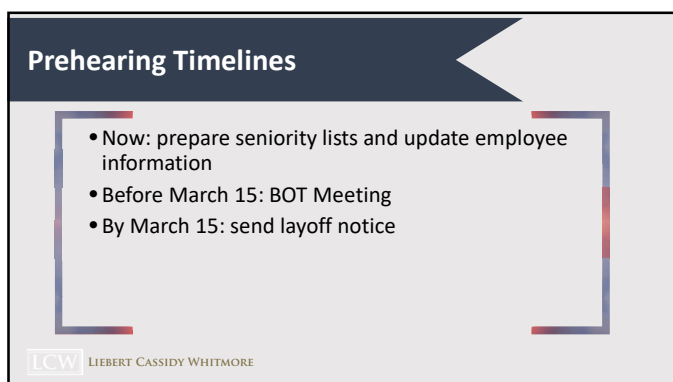
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**Prehearing Timelines**

- Now: prepare seniority lists and update employee information
- Before March 15: BOT Meeting
- By March 15: send layoff notice

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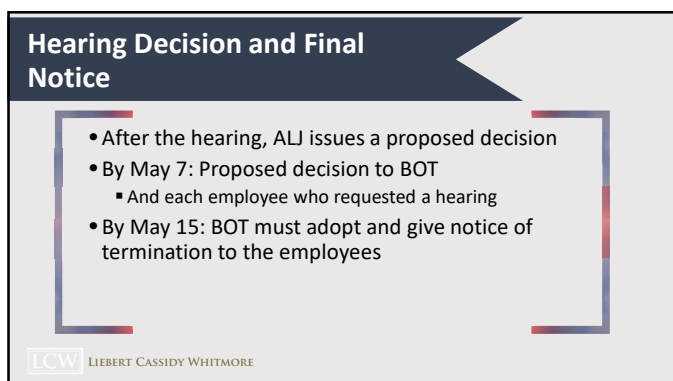
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**Hearing Decision and Final Notice**

- After the hearing, ALJ issues a proposed decision
- By May 7: Proposed decision to BOT
  - And each employee who requested a hearing
- By May 15: BOT must adopt and give notice of termination to the employees

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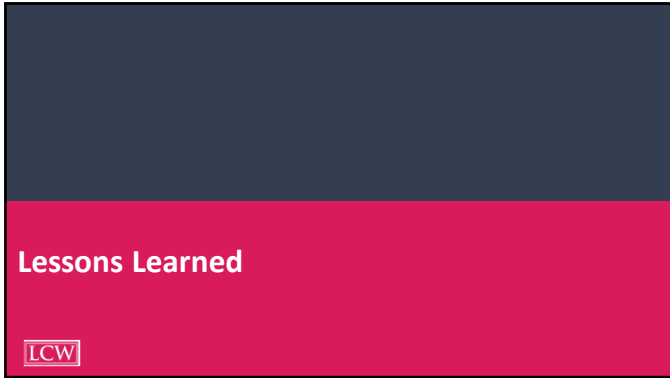
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Lessons Learned

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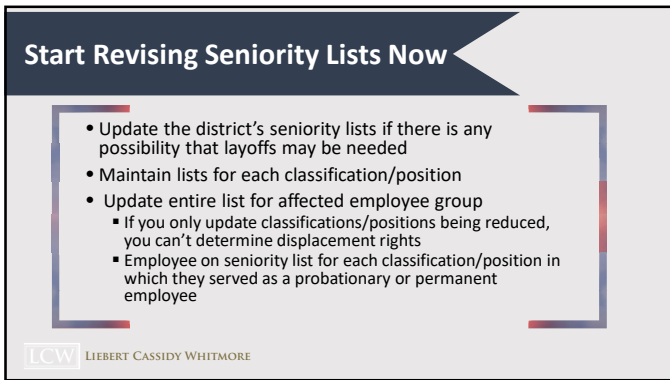
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### Start Revising Seniority Lists Now

- Update the district's seniority lists if there is any possibility that layoffs may be needed
- Maintain lists for each classification/position
- Update entire list for affected employee group
  - If you only update classifications/positions being reduced, you can't determine displacement rights
  - Employee on seniority list for each classification/position in which they served as a probationary or permanent employee

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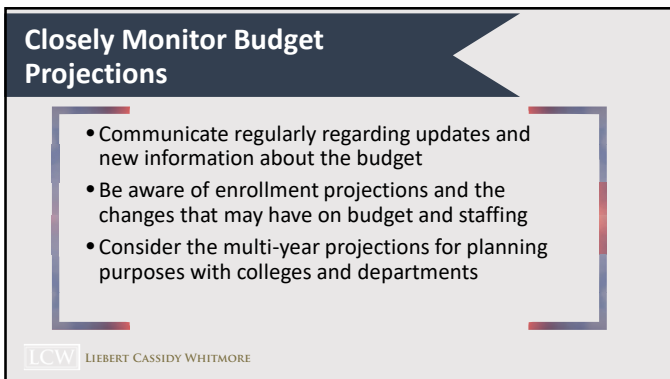
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### Closely Monitor Budget Projections

- Communicate regularly regarding updates and new information about the budget
- Be aware of enrollment projections and the changes that may have on budget and staffing
- Consider the multi-year projections for planning purposes with colleges and departments

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**Communicate With the Unions Early and Often**

- Ensure they are aware of budget projections and financial health if layoffs are possible or imminent
- Keep up with RFIs, especially related to membership and seniority
- Review CBAs for unique layoff provisions

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**Communicate With the Unions Early and Often**

- Help educate them to understand layoff process
- Partner to find alternative solutions and creative resolutions
- Continue to discuss even if you have a hearing

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**Prepare for Hearing**

- Between March 15 to Hearing, the District must
  - Meet with witnesses
  - Gather documents
  - Send required notices
- You do not need to wait until March 15

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**Remember Tucker**

- An employee who applies for a position outside of the class from which he/she/they was laid off and is otherwise qualified for the position has preference over a new applicant
  - What does "preference" mean

Ed. Code, § 88117;  
*Tucker v. Grossmont High School District* (2008) 168 Cal.App.4th 640

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**Be Ready for Reinstatement**

- Employees are reemployed in order of seniority
  - Prepare methodical processes to offer employees positions in order
- Classified employees eligible for reemployment for 39 months
  - Employees who take voluntary demotions in lieu of layoff
  - Reemployment rights for an additional 24 months
- Employees are reemployed in order of seniority as vacant positions open

Ed. Code, § 88117

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**Thank You!**

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