

**THE ASSOCIATION OF CHIEF
HUMAN RESOURCE OFFICERS
(ACHRO)
2026 ANNUAL CONFERENCE**

**Administrative Leave:
Smart Tool or Legal Trap?**

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PRESENTED BY:

Rancho Santiago CCD:

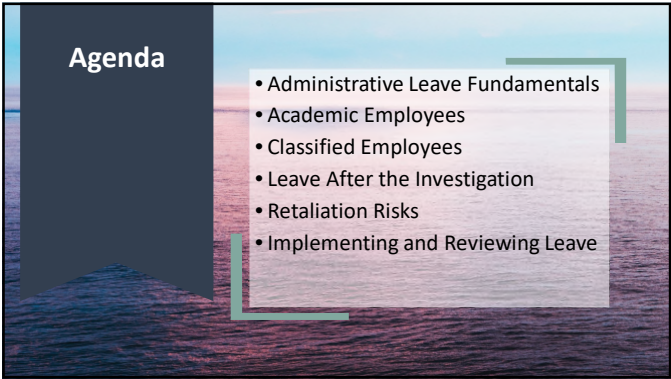
Kristin Olson, Vice Chancellor, Human Resources

Liebert Cassidy Whitmore:

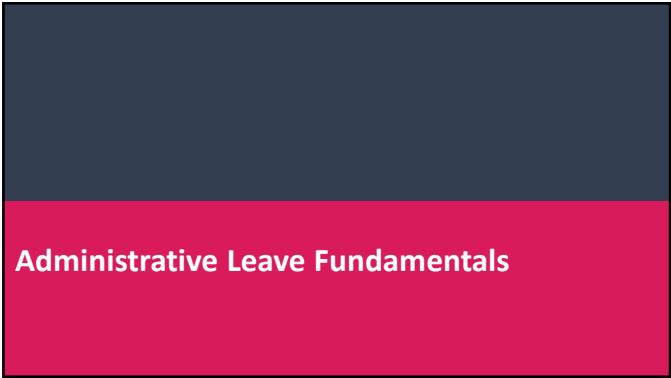
Alysha Stein-Manes, Co-Managing Partner of Los Angeles
Office, & **Allison Berquist**, Associate



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**Paid Administrative Leave (PAL)
is Not* Discipline**

- Temporarily removes an employee from the current assignment
- Maintains pay and benefits
- May be used while an investigation or disciplinary process is pending
- Does not resolve the allegations
- Is not itself the penalty

Its purpose should be temporary and nonpunitive

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When May Administrative Leave Be Appropriate?

A present concern involving:

- Physical safety
- Witness interference
- Records, evidence, or confidential systems
- Respondent’s continued authority over involved employees
- Repetition of the alleged conduct
- Significant disruption of District operations

Serious allegations do not automatically require leave.

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Consider Alternatives to PAL

- Temporary reassignment
- Modified duties, schedule, or location
- Removal of supervisory authority
- Restricted access to systems or records
- A tailored no-contact direction
- Remote work
- Additional supervision

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Case Study

- Jane, a classified employee in Student Services, is under investigation for alleged violations of the District's code of conduct, specifically bullying behavior of a colleague not in her chain of command. At the outset of the investigation, the District notifies her of its anti-retaliation policies, but does not place her on PAL.
- While continuing to work, she confronts coworkers about their interviews, attends meetings after being told not to, and sends department-wide messages disputing the allegations. HR begins receiving complaints that Jane's conduct is disrupting staff meetings and front-counter coverage. The investigator also reports that her conduct is interfering with the investigation. No one has reported any threat of physical harm.

Should the District place Jane on Administrative Leave?

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Case Study

- A district receives complaints from several students alleging that a tenured professor made inappropriate comments on their appearances, sent overly personal text messages and Canvas communications, and invited students to meet off campus for extra tutoring sessions. The professor denies the allegations and is scheduled to teach classes while the District conducts an investigation. The District is concerned about student safety and the integrity of the investigation but is uncertain how long the investigation will take.

Should the District place the professor on paid administrative leave, and what factors should it consider?

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Administrative Leave for Academic Employees

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Academic Employees and Administrative Leave

Education Code section 87623 addresses:

- Notice before leave begins
- Immediate placement in limited circumstances
- Notice following immediate placement
- Completion of the investigation
- Discipline or reinstatement
- Continued pay, benefits, and EERA rights

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Notice for Academic Employees

At least **two business days** before placing an academic employee on leave, the District must provide:

- 1) Written notification; and
- 2) The general nature of the accusations.

Education Code § 87623(a)

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True or False?

In some circumstances, a District can waive the 2-day notice requirement before placing an academic employee on PAL.

TRUE

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When May Academic Leave Begin Absent Two Days' Notice?

- An academic employee may be placed on leave immediately, without two days' notice, when the allegations create:
 - A serious risk of physical danger to students, staff, or others; or
 - Another necessity arising from the specific allegations
- The District must provide written notice of the general nature of the accusations within **five business days**.

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Academic Employees: 90 Working Days

- Within **90 working days** after placing an academic employee on leave, the District "should":
 - Complete its investigation; and
 - Initiate disciplinary proceedings or reinstate the employee.
- The District and employee may agree to an extension of up to 30 calendar days
- **Working days:** Monday through Friday, excluding weekends and state holidays

Education Code § 87623(c)

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Title 5 Investigations

- Title 5 prohibits discrimination and harassment based on a protected classification, and retaliation based on engaging in a protected activity associated with allegations of discrimination and harassment.
- Most Title 5 investigations must be completed within **90 calendar days** after the complaint is received.
 - Timeline applies to all Title 5 claims, not just to those involving academic employees

5 CCR § 59336

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Title 5 Investigations

- In matters involving academic employees placed on involuntary PAL, the District “shall”:
 - Complete its investigation within **90 working days** of PAL commencing, unless extended by agreement for a period not exceeding 30 calendar days.
 - Leave must be based on an independent workplace need, not the employee’s complaint or participation in the investigation.
 - “Complete its investigation” is not defined. Impact: Potentially competing timelines
 - More leeway with extensions if no PAL

5 CCR § 59336(d)

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Case Study

- After a heated faculty meeting, Professor Lee follows the department chair into the hallway, steps in front of her as she tries to leave, and says, “You will regret this.” Professor Lee denies threatening her and says he only wanted to continue the conversation. One witness supports the chair’s account, while another says the exchange did not appear threatening. The chair says she does not feel safe returning to the department. Professor Lee is scheduled to teach the next morning.

Should the District place Professor Lee on leave immediately, or provide two business days’ advance notice?

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Title IX*

- **Employee administrative leave**
 - Available during the Title IX grievance process
 - Does not require a separate Title IX emergency finding
 - State law, the CBA, and employee rights still apply
- **Emergency removal**
 - Requires an individualized safety and risk analysis
 - Requires an immediate threat to physical health or safety
 - Requires notice and an immediate opportunity to challenge the removal

**Applies to all Title IX claims not just those involving academic employees*

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Administrative Leave Does Not Replace Faculty Discipline

- Administrative leave and faculty discipline involve separate decisions and separate procedures:
 - **Administrative Leave**
 - o Education Code § 87623
 - o Temporary and paid
 - o Within 90 working days, complete the investigation
 - o No disciplinary penalty imposed
 - **Faculty Discipline**
 - o Education Code §§ 87660–87683, 87732-40
 - o Based on sustained misconduct
 - o Requires applicable notice, response, and hearing procedures

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Administrative Leave for Classified Employees

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Classified Leave Starts With Local Authority

- There is no single statewide classified administrative-leave procedure
 - Merit or non-merit system
 - Permanent or probationary status
 - Collective bargaining agreements
 - Personnel commission rules
 - Board policies and administrative procedures
 - Pay and benefit consequences

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Non-Merit Districts:
Education Code Section 88013

- For permanent classified employees, Education Code section 88013 requires:
 - Discipline only for cause established by District rule and CBA provisions, as applicable
 - Written notice of the specific charges
 - Notice of the right to a hearing
 - At least five days to request a hearing
 - The District to bear the burden of proof
 - The five-day period applies to requesting a disciplinary hearing, not advance notice of paid administrative leave

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Merit-System Districts: Start with
the Personnel Commission Rules

- For classified employees in a merit-system district:
 - Discipline must be supported by reasonable cause established by Personnel Commission rule
 - Personnel Commission rules govern charges, suspension, dismissal, and appeals
 - The Personnel Commission may review and modify disciplinary action
 - The CBA and District policies may impose additional requirements

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Leave Following Arrest & Criminal Charges

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Academic Employees

- If an employee is criminally charged with specified sex or controlled substances offenses, a district may place an academic employee on compulsory *unpaid* leave
 - Leave may continue until no more than 10 days after entry of judgment, subject to extension through dismissal proceedings.
 - Salary continues if the employee provides security acceptable to the district
 - If the employee is acquitted or charges are dismissed, the employee is entitled to full compensation (backpay) upon returning to service.
- Districts cannot place employees on compulsory *unpaid* leave before criminal charges are filed
 - Pre-charge = PAL

Education Code §§ 87736, 87010, 87011

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Classified Employees

- Merit Districts
 - Education Code section 88123 permits districts to place classified employees on unpaid leave post-charge for the same offenses under Section 87736
 - Pre-charge = PAL
 - Review CBA & Personnel Commission rules
- Non-Merit Districts
 - No specific Education Code provision identifying compulsory unpaid leaves for specified criminal offenses
 - Refer to Board Policies, Administrative Procedures, and CBA
 - Some CBAs adopt Section 88123 as applicable to classified employees in non-merit districts

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Classified Employees

- Both Merit and Non-Merit
 - Education Code section 88190
 - Applies when a classified employee is placed on involuntary leave while criminal charges, a criminal investigation, or related administrative determinations are pending
 - Defines “involuntary leave” broadly to include compulsory leave and suspension
 - If the proceedings conclude in the employee’s favor, the district must provide full compensation for the leave period when the employee returns to service

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Leave After the Investigation

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Case Study

- Academic employee Mary reports discrimination and participates in the District's investigation. At the same time, the District investigates separate allegations of misconduct against Mary. She continues working for ten weeks without incident. When the investigation ends, the District sustains the misconduct allegations against Mary and issues her a notice of proposed discipline. The District now wants to place her on paid administrative leave while the disciplinary process is pending.

Can the District place Mary on leave now, even though it allowed her to work throughout the investigation? What should the District be prepared to explain?

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Leave and Discipline Are Separate Decisions

- Leave notice
 - Why temporary removal is necessary now
 - Effective date, restrictions, pay, and review
- Proposed discipline
 - Charges and proposed penalty
 - Supporting reasons and materials
 - Opportunity to respond

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Retaliation and Adverse-Action Risk

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Elements of Retaliation

- A retaliation claim generally requires: (1) protected activity; (2) an adverse employment action; and (3) a causal connection between the two
- Potential sources of protected activity include:
 - FEHA
 - Labor Code whistleblower protections, e.g. Section 1102.5
 - EERA
 - Title 5
 - Title IX

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Case Study

• Professor Sally, a tenured nursing faculty member, believes that student clinical-evaluation records were changed before an accreditation review. She reports her concerns and sends supporting records, including student information, to her personal email account and the accrediting agency. Six days later, the District places her on paid administrative leave while it investigates whether she violated its confidentiality and record-handling policies. Her pay and benefits continue, and the District states that no disciplinary decision has been made. She is, however, removed from her courses, denied access to District systems, and replaced on the accreditation committee.

Is the paid leave an adverse employment action or a reasonable step while the District investigates the disclosure of confidential information?

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When Does Administrative Leave Look Punitive?

- Risk increases when:
 - The leave is described as a consequence of the alleged misconduct
 - The district communicates that the outcome is predetermined
 - The employee loses pay, benefits, or significant opportunities
 - Restrictions extend beyond the identified need
 - The leave continues without meaningful review
 - The explanation changes over time
 - Comparable employees were treated differently

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Administrative Leave: Retaliation Risk Factors

- Timing may support an inference of retaliation when:
 - Leave closely follows protected activity
 - The employee worked throughout the investigation
 - No new safety or operational concern exists
 - The District departs from its usual practice
 - The leave is unusually prolonged or restrictive

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Whistleblower Retaliation Uses a Two-Step Burden

- **Employee's Burden:** Prove by a preponderance of the evidence that protected activity was a contributing factor in the leave decision
- **District's Burden:** Prove by clear and convincing evidence that it would have made the same decision for legitimate, independent reasons

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Case Study

- Marcus works for the District as an information technology specialist and also teaches an evening computer applications course as an instructor. After his IT supervisor raises concerns about his performance, Marcus asks a union representative to attend a meeting with the supervisor. Approximately four and a half months later, the IT supervisor places Marcus on paid administrative leave from his IT position and requires him to complete a fitness-for-duty examination. While Marcus is on leave, the District cancels his computer applications course.

Marcus files a PERB charge alleging that the District retaliated against him for requesting union representation.

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Paid Leave May Be Adverse Under EERA

- PERB Decision 2453E The employee alleged that, after he filed PERB charges, the District:
 - Placed him on paid administrative leave
 - Withdrew a tentative teaching assignment
 - PERB reversed the dismissal and ordered issuance of a complaint.

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Document the Same-Decision Rationale

- Before imposing leave, document:
 - The legitimate reason for the decision
 - Why leave is necessary at that time
 - What changed during or after the investigation
 - The alternatives considered
 - How comparable matters were handled
 - The decision-maker's knowledge of protected activity

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Final Considerations

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Final Considerations

- Use administrative leave to address a specific, current need, not as an automatic response to allegations or a substitute for discipline
 - Follow the process that applies to the employee, including statutory notice requirements, board policies and administrative procedures, applicable CBA provisions, personnel rules, and applicable disciplinary procedures
 - Be prepared to explain why leave is necessary now, particularly when the employee previously remained at work or engaged in protected activity
- Administrative leave is most defensible when it is necessary, temporary, tailored, consistently applied, and regularly reassessed.

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Questions?

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Presented By: Rancho Santiago CCD: Kristin Olson
Liebert Cassidy Whitmore: Alysha Stein-Manes & Allison Berquist

Thank You!

Kristin Olson

Rancho Santiago CCD

Vice Chancellor, Human Resources

olson_kristin@rsccd.edu

LCW

LIEBERT CASSIDY WHITMORE

RANCHO SANTIAGO

Community College District

Alysha Stein-Manes

Liebert Cassidy Whitmore

Co-Managing Partner of Los Angeles

310.981.2734 | asteinmanes@lcwlegal.com

Allison Berquist

Liebert Cassidy Whitmore

Associate | Los Angeles

310.981.2327 | aberquist@lcwlegal.com

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