

AMENDED IN ASSEMBLY MAY 26, 2017
AMENDED IN ASSEMBLY APRIL 27, 2017
AMENDED IN ASSEMBLY APRIL 18, 2017
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1651

Introduced by Assembly Member Reyes

February 17, 2017

An act to add Section 87623 to the Education Code, relating to community colleges.

LEGISLATIVE COUNSEL'S DIGEST

AB 1651, as amended, Reyes. Community colleges: academic employees: involuntary administrative leave and investigations.

Existing law establishes the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges, as one of the segments of public postsecondary education in this state. Existing law establishes community college districts throughout the state that employ faculty and provide instruction at the community college campuses they operate. Existing law, for purposes of provisions relating to community college employees, defines an "academic employee" as a person employed by a community college district in a type of service, excluding paraprofessional service, for which minimum qualifications have been established, and thus, for this purpose, the term "academic employee" is synonymous with "certificated employee."

This bill, at least 2 business days before an academic employee of a community college is placed on involuntary paid administrative leave or is subject to an investigatory interview or other interrogation related

to an allegation or allegations of misconduct, would require the employee to be provided with a copy of each written complaint related to the proposed involuntary paid administrative leave or the investigation of the allegation or allegations of misconduct, as applicable, or, if there is no written complaint, a notification in writing of the details of the allegation or allegations upon which the decision to place the employee on involuntary paid administrative leave ~~or conduct the investigatory interview or other interrogation~~ is based, as specified. *The bill would require at least 5 business days before an investigatory interview or other interrogation, the employee to be provided with this same information, except as specified.* The bill would further specify that the parties to an applicable collective bargaining agreement are entitled to negotiate additional policies and procedures relating to the investigation or involuntary paid administrative leave of an academic employee as long as those policies and procedures ~~are not in conflict with this bill.~~ *provide, at minimum, as much notice as required by the bill.* The bill would provide that the identity of complainants are required to be disclosed ~~only to the extent permitted by a collective bargaining agreement and state and federal privacy laws, including the federal Family Educational Rights and Privacy Act.~~ *unless otherwise prohibited by state or federal law.*

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 87623 is added to the Education Code,
 2 to read:
 3 87623. (a) ~~At~~ *Each academic employee who is subject to*
 4 *accusations of misconduct is entitled to be provided with the*
 5 *accusations made against him or her at least two business days*
 6 *before an academic employee is placed on involuntary paid*
 7 *administrative leave, the leave. At least two business days before*
 8 *he or she is placed on involuntary paid administrative leave, the*
 9 *employee shall be provided a copy of each written complaint*
 10 *related to the proposed involuntary paid administrative leave or,*
 11 *if there is no written complaint, a notification in writing of the*
 12 *details of the allegation or allegations of misconduct upon which*
 13 *the decision to place the employee on involuntary paid*
 14 *administrative leave is based. If the information has been provided*

1 *to the employee pursuant to subdivision (c), it need not be provided*
2 *again.*

3 (b) The requirements of subdivision (a) do not apply in the event
4 of a serious risk of physical danger or other *documented* necessity
5 arising from the *specific* allegations, and the employee may
6 immediately be placed on involuntary paid administrative leave.
7 The employee shall be provided the information described in
8 subdivision (a) *and the evidence and reason for actions taken*
9 *under this section against him or her* within five business days of
10 the employee being placed on involuntary paid administrative
11 leave.

12 (c) ~~At~~(1) *Except as provided in paragraph (2), as a matter of*
13 *due process and to improve the effectiveness of employment*
14 *investigations, at least two five business days before an academic*
15 *employee is subject to an investigatory interview or other*
16 *interrogation related to an allegation or allegations of misconduct,*
17 *misconduct against him or her, the employee shall be provided a*
18 *copy of each written complaint related to that investigation of the*
19 *employee or, if there is no written complaint, notification in writing*
20 *of the details of the allegation or allegations upon which the*
21 *decision to conduct an investigatory interview or other interrogation*
22 *is based.*

23 (2) *An employer may withhold a complaint from a respondent*
24 *employee before his or her interview or other interrogation only*
25 *when the employer can demonstrate, on an individualized basis,*
26 *that revealing the complaint to the employee would result in any*
27 *of the following:*

28 (A) *Danger of relevant evidence being destroyed or relevant*
29 *testimony being fabricated.*

30 (B) *Reasonable danger of violence.*

31 (C) *Disclosure of an on-going, confidential law enforcement*
32 *investigation of criminal allegations, including where*
33 *confidentiality has been requested by law enforcement personnel.*

34 (D) *Violation of law.*

35 (3) *An employer shall not withhold copies of complaints before*
36 *an interview or other interrogation because of blanket rules or*
37 *generalized concerns, including a routine assertion that one or*
38 *more of the outcomes listed in subparagraphs (A) to (D), inclusive,*
39 *would occur.*

1 (d) The parties to a collective bargaining agreement entered into
2 pursuant to Chapter 10.7 (commencing with Section 3540) of
3 Division 4 of Title 1 of the Government Code shall be entitled to
4 negotiate additional policies and procedures relating to the
5 investigation or involuntary paid administrative leave of an
6 academic employee as long as those policies and procedures ~~are~~
7 ~~not in conflict with this section.~~ *provide, at minimum, as much*
8 *notice as required by this section.*

9 (e) For purposes of this section, the identity of complainants
10 shall be disclosed ~~only to the extent permitted by a collective~~
11 ~~bargaining agreement and state and federal laws relating to privacy,~~
12 ~~including the federal Family Educational Rights and Privacy Act~~
13 ~~(20 U.S.C. Sec. 1232g).~~ *unless otherwise prohibited by state or*
14 *federal law.*

15 (f) For purposes of this section, “paid administrative leave”
16 means a temporary leave from a job assignment, with pay and
17 benefits intact.

18 (g) *This section shall not supersede the rights of labor*
19 *organizations or employees pursuant to the Educational*
20 *Employment Relations Act established in Chapter 10.7*
21 *(commencing with Section 3540) of Division 4 of Title 1 of the*
22 *Government Code.*