

ASSEMBLY THIRD READING
 AB 615 (Rodriguez)
 As Introduced February 12, 2021
 Majority vote

SUMMARY

Provides minimum rights, including due process, for certain medical, dental, and resident physician subspecialty personnel, including trainees, who work for a higher education employer, among other provisions.

Major Provisions

- 1) Requires a higher education employer to provide a procedure for all medical and dental interns, residents, persons in resident physician subspecialty programs and other postgraduate medical and dental trainees in unaccredited programs, to challenge a termination of employment or disciplinary action by the employer. Regarding this procedure:
 - a) A higher education employee must, before exercising a challenge, first exhaust any administrative or academic grievance processes that are available to that employee.

Here, an administrative or disciplinary action taken by the higher education employer that is neither based on clinical nor academic matters that is subject to appeal under the employer's procedures are permitted to be grieved, and the exclusive representative is permitted to file a grievance following the result of the higher education employer's formal review.
 - b) A challenge by an employee must be heard by a panel consisting of an exclusive representative designee, designated representative of the graduate medical education program, and an impartial hearing officer.

Here, the panel must have the power to review the employer's action and provide a full remedy for termination of discipline without just cause. If the employee is represented by an exclusive representative, the impartial hearing officer or arbitrator must be jointly selected by the higher education employer and exclusive representative.
 - c) Establishes the precedence of a memorandum of understanding (MOU) over these provisions, if the MOU provides for this procedure.
- 2) Exempts application of these provisions to a termination of employment or a disciplinary action based on academic or clinical matters that are excluded from the scope of representation.

COMMENTS

- 1) Maintaining Higher Education Employer Grievance Processes and Procedures and Affording Additional Measures to Safeguard Against Potential Arbitrary or Capricious Employment Decisions

The provisions of this bill provide, among other things, that a higher education employee must first exhaust any administrative or academic grievance processes that are available to that employee before exercising a challenge. In this regard, the bill is deferential to a higher education employer's administrative or academic grievance processes.

Only after exhaustion of that process, and assuming that the employee is not satisfied with a determination or decision resulting from that process, is a covered employee afforded additional rights to challenge the employer's determination or decision regarding employment.

Establishing an additional process, whereby, a tripartite panel of individuals representing the interests of the employer and employee, respectively, and an impartial hearing officer, affords the employee an opportunity to challenge the employer's initial sole determination or decision which may be viewed as arbitrary or capricious from the employee's perspective.

This structure may foster fairness to employer and employee interests where concerns, information, facts, and evidence would be considered by an independent panel, and affords the employee a separate opportunity to seek resolution of an otherwise disagreeable decision or determination by the employer. In addition, the specified employees in the prescribed employment setting would be afforded at least a modicum of rights regarding their employment, especially regarding those matters that may be entered into their employment record that could have substantial negative effects on prospective employment opportunities that are not directly related to academic or clinical matters.

2) Please see the policy committee analysis for a full discussion of this bill.

According to the Author

"Currently, residents, interns and fellows (hereafter referred to as "residents") can be disciplined and terminated for a matter not directly related to academic or clinical performance. Statute does not provide due process to certain medical and dental residents and trainees employed by public institutions of higher learning. [This bill] would provide that due process, while at the same time still afford the higher education employer the ability to discipline."

The author further states that, "Medical residents and interns employed by a publicly funded university lack basic due process rights that other public employees have. This oversight has left them subject to unfair disciplinary actions and even termination. Assembly Bill 615 would afford these residents and interns an impartial review of termination and disciplinary matters, thereby providing them due process. Particularly at a time when these health professionals are over worked and sacrificing so much, it is necessary to provide a basic level of fairness to them."

Arguments in Support

According to the California State Council of the Service Employees International Union (SEIU California), "Many hospitals throughout California and the United States have due process review before an impartial hearing officer for their resident and intern physicians. Nationally, there were 15 discipline/termination arbitration cases impacting medical residents and interns over a 20 year period. We know these matters are infrequent but the impartial due process is available when necessary. UC [University of California] already has due process before an impartial hearing officer for all other employees so they are familiar with the process and already have established procedures in place. Their long-established human resources/labor relations departments handle these matters and are very familiar with the grievance and arbitration processes."

In addition, SEIU California states that, "California's resident and intern physicians employed by the UC system do not enjoy the same due process rights as other public employees, including others employed by UC. This discrimination has left resident and intern physicians particularly

exposed to unfair disciplines and terminations without the impartial consideration such a decision warrants. These resident and intern physicians are particularly vulnerable – competition is steep and without completion of a residency these physicians are unable to practice medicine in California. Assembly Bill 615 is neither radical nor a departure from current law. It simply provides an impartial review of disciplinary and termination matters that are unrelated to academic or clinical matters. There is no reason to continue to deny medical residents the equal treatment that is afforded to other public employees."

Arguments in Opposition

Registering a position of "opposed, unless amended," the UC states in part that, "Disciplinary decisions made by a labor arbiter not skilled in the assessment of resident trainees will put patient safety at risk. The assessment of clinical competency includes both observation in the clinical setting as well as consideration of character and conduct in all aspects of work and life. Given the autonomy and power afforded to physicians and dentists who are entrusted to care for all patients, particularly those most vulnerable, professionalism is an essential component of providing safe and effective patient care. A resident who has not achieved clinical and professional competence poses a risk to patients and hospital workers. The bill as currently drafted contains an insufficiently narrow definition of "academic or clinical matters" that does not include those additional competencies, and therefore does not adequately protect against the risks identified above." As to this latter point, the UC acknowledges that it continues to work with the author and sponsor to find common ground regarding this definition.

The UC further states that, "The UC believes the risk posed by [this bill] can be mitigated by further clarifying the definition of "academic or clinical matters. The UC medical education leadership, including our Graduate Medical Education programs, follow disciplinary procedures that are designed to teach, not punish, and to protect patients while helping residents learn. Residents already have multiple avenues to appeal discipline, and oversight by the Accreditation Council of Graduate Medical Education (the national entity responsible for accreditation of these programs) protects against arbitrary or capricious decision making. While we believe UC residents have sufficient due process rights already, the UC will continue to work with the author, but we will not compromise on patient safety as part of physician training, which is central to safe and independent practice for physicians."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, this bill would result in ongoing General Fund costs of an unknown, but potentially significant, amount to the UC for the costs of going to arbitration. The UC expects five to 10 cases systemwide per year. If every case goes to arbitration, the UC estimates costs of between \$500,000 and \$1.5 million.

VOTES

ASM PUBLIC EMPLOYMENT AND RETIREMENT: 5-2-0

YES: Cooper, Calderon, Cervantes, Cooley, O'Donnell

NO: Voepel, Seyarto

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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