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**SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT**

**Senator Dave Cortese, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 615 **Hearing Date:** June 28, 2021  
**Author:** Rodriguez  
**Version:** February 12, 2021  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Glenn Miles

**SUBJECT:** Higher Education Employer-Employee Relations Act: procedures relating to employee termination or discipline

**KEY ISSUE**

Should the Legislature require a higher education employer to provide a procedure for medical and dental interns and residents and other related employees to challenge a termination of employment or a disciplinary action, as specified?

**ANALYSIS**

**Existing law:**

- 1) Defines “Higher Education Employer” to mean any of the following:
  - a) A member of the Board of Regents of the University of California.
  - b) A member of the Board of Directors of Hastings College of the Law.
  - c) An affiliate of the University of California.
  - d) A member of the Board of Trustees governing the California State University system. (Government Code §3560)
- 2) Grants Higher Education employees the right to form, join and participate in the activities of employee organizations for the purpose of representation in employer-employee relations and for meeting and conferring. (GC §3565)
- 3) Allows any employee or group of employees to present grievances to their employer and have such grievances adjusted. The employer must not agree to a resolution of the grievance until provided with a copy of the grievance and proposed solution. (GC §3567)
- 4) Prohibits higher education employers from engaging in any of the following practices:
  - a) Refusing or failing to engage in a meeting and conferring with a chosen exclusive representative.
  - b) Interfering with the formation or administration of any employee organization or in any way encouraging employees to join any organization in preference to another.
  - c) Refusing to participate in good faith during an impasse procedure.
  - d) Consulting with any academic, professional, or staff advisory group on any matter within the scope of representation for employees who are represented by an exclusive representative until an election has been held in which “no representative” received a majority of the votes cast.

- e) Denying an employee organization any rights guaranteed above.
  - f) Imposing or threatening reprisals on employees for exercising any of the above rights or privileges. Employee includes an applicant for employment or reemployment.  
(GC §3571)
- 5) Prohibits an employee organization from engaging in the following practices:
- a) Causing or attempting to cause a higher education employer to violate the above section, 3571.
  - b) Imposing or threatening to impose reprisals on employees or otherwise discriminating against employees for exercising their rights under any of the above sections.
  - c) Refusing or failing to engage in meeting and conferring with the higher education employer.
  - d) Refusing to participate in good faith in an impasse procedure.
  - e) Failing to represent all the employees in the unit fairly and impartially.
  - f) Requiring the payment of a fee as a condition to becoming a member of an employee organization in an amount which the Public Employee Relations Board finds excessive or discriminatory under all the circumstances.
  - g) Causing or attempting to cause an employer to pay or deliver any money or other thing of value for services which are not performed or are not to be performed.  
(GC §3571.1)
- 6) States that the expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, does not constitute an unfair labor practice unless such expression contains a threat of reprisal, force, or promise of benefit, or expressly advocates for one employee organization over others. (GC §3571.3)

**This bill:**

- 1) Requires a higher education employer covered by Higher Education Employer-Employee Relations Act (HEERA) to provide a procedure to challenge a termination of employment or a disciplinary action by the employer for the following occupations:
  - a) Medical and dental interns and residents.
  - b) Persons in resident physician subspecialty programs accredited by the Accreditation Council for Graduate Medical Education.
  - c) Other postgraduate medical and dental trainees in programs not accredited by the Accreditation Council for Graduate Medical Education.
- 2) Requires a higher education employee first exhaust any administrative or academic grievance processes that are available to that employee before proceeding with a challenge.
- 3) Provides that the employee may file a grievance of an employer's administrative or disciplinary action provided that 1) it is based on neither clinical nor academic matters; 2) is subject to appeal under that employer's procedures, and 3) authorizes the union to file the grievance following the result of the employer's formal review.
- 4) Requires an arbitration panel hear a challenge to the employer's action. The panel shall consist of a designee of the exclusive representative, a designated representative of the graduate medical education program, and an impartial hearing officer or arbitrator. The panel will have the power to review the employer's action and provide a full remedy for

termination or discipline without just cause. If the employee is represented by a union, the impartial hearing officer or arbitrator must be jointly selected by the employer and the union.

- 5) States that a memorandum of understanding between a higher education employer and an exclusive representative that provides a procedure for the employee or employee's representative to challenge a termination of employment or a disciplinary action shall control over this bill's requirements.
- 6) Provides that the bill's required procedures do not apply to termination and disciplinary actions based on academic or clinical matters.
- 7) Defines "Academic or Clinical Matters" to mean matters that relate to an employee's acquisition of core competencies and the development of the clinical skills necessary to function at the level of the employee's credential for licensure, practice, or board certification in the academic discipline or medical specialty.
- 8) Defines "Disciplinary Action" to mean restriction, suspension, nonrenewal, or termination of employment.

## COMMENTS

### 1. Need for this bill?

According to the sponsor,

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.

### 2. Proponent Arguments

According to the sponsor,

Many hospitals throughout California and the United States have due process review before an impartial hearing officer for their resident and intern physicians. SEIU/Committee on Interns and Residents represents medical residents and interns in 57 of these hospitals. Based on this experience we know firsthand it is neither costly nor disruptive to the ability of hospitals to ensure resident physicians will become fully licensed physicians, but in fact, it increases harmonious relations and reduces unnecessary stress among 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 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.

### 3. Opponent Arguments:

According to University of California,

Assembly Bill 615 would allow graduate medical and dental residents (trainees not yet qualified for independent practice) to seek arbitration over disciplinary actions, except for those based on “academic or clinical matters.” The arbitration would be in addition to the substantial due process and grievance procedures already in place for UC’s s and residents.

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.

### 4. Prior and Related Legislation:

AB 1550 (L. Rivas, 2021) would require that represented position classifications transferred to UC’s academic senate retain their bargaining unit and union.

AB 2114 (Rodriguez, 2020) was identical to the current bill. The Governor vetoed the bill stating that:

This bill would require certain higher education employers to provide an arbitration or hearing officer process to challenge a termination of employment or a disciplinary action for medical and dental interns and residents. The bill excludes disciplinary actions and terminations based on academic or clinical matters, making arbitration available only for matters within the scope of representation.

These residents and interns represent our State's pipeline of medical professionals, and they have been on the frontlines of the COVID-19 pandemic. They deserve an opportunity to challenge a disciplinary action or termination of employment that may be wrongful and that could potentially jeopardize their professional career. However, I believe that the definition of "academic" and "clinical" in this bill is too narrow and does not fully consider the various criteria used in determining a resident's readiness to safely practice.

I encourage the affected parties to agree upon a definition that both protects employees' due process rights and patient safety.

Chapter 854, Statutes of 2017 (SB 201, Skinner) amended HEERA to provide collective bargaining rights to UC, CSU, and Hastings student employees whose employment is contingent on their status as students.

**SUPPORT**

Service Employees International Union, California (*Sponsor*)  
California Chapter of the American College of Emergency Physicians  
California Faculty Association  
California Federation of Teachers AFL-CIO  
California Labor Federation, AFL-CIO  
California Professional Firefighters  
California School Employees Association  
UAW Local 2865

**OPPOSITION**

University of California (*Oppose Unless Amended*)

**-- END --**