
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 615 (Rodriguez) - Higher Education Employer-Employee Relations Act: procedures relating to employee termination or discipline

Version: July 7, 2021

Urgency: No

Hearing Date: July 15, 2021

Policy Vote: L., P.E. & R. 4 - 1

Mandate: No

Consultant: Robert Ingenito

Bill Summary: AB 615 would 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.

Fiscal Impact: The University of California (UC) indicates that it would incur annual ongoing General Fund costs ranging from \$500,000 to \$1.5 million, depending on the number of disciplinary cases that go to arbitration. Additionally, the bill would result in a one-time cost in the hundreds of thousands of dollars to UC for changes to policies and procedures (General Fund).

Background: Enacted in 1978, the Higher Education Employer-Employee Relations Act (HEERA) provides a statutory framework to regulate labor relations between UC, CSU, and Hastings College of Law and their employees. HEERA is administered and enforced by the Public Employment Relations Board (PERB).

The Senate Labor, Public Employment and Retirement Committee analysis of AB 2114 (a similar bill from 2020) states that “Almost immediately following the passage of HEERA, UC alerted medical residents on its Davis, Irvine and San Francisco campuses that it no longer considered them to be employees and would stop making payroll deductions for union dues. The union that had represented these workers, the Physicians National Housestaff Association (PNHA), filed an unfair labor practice charge against UC. In the resulting case, Regents of University of California v. Public Employee Relations Board, the California Supreme Court eventually ruled in favor of PNHA, ruling that the residents were employees and were entitled to collective bargaining rights under HEERA.

While HEERA gives employee representative organizations the right to bargain on behalf of their members on matters “within the scope of representation”, this term went through several legal challenges, including one in 2008 with bearing on the bill at hand. The case, California Faculty Association v. Public Employee Relations Board, involved a decision by California State University (CSU) regents to exclude members of the California Faculty Association (CFA) union from the newly constructed parking structure. CSU asserted that the decision did not constitute an unfair labor practice, because location of parking was not covered under the scope of representation. However, the California Supreme Court found in favor of CFA, stating that scope of representation covers matters that “involve the employment relationship” and “are of such concern to both management and labor that conflict is likely to occur and the mediatory influence of collective negotiations is an appropriate means of resolving the conflict.”

Proposed Law: This bill would, among other things do the following:

- Require a higher education employer covered by HEERA to provide a procedure to challenge a termination of employment or a disciplinary action by the employer for the following occupations: (1) medical and dental interns and residents, (2) persons in resident physician subspecialty programs accredited by the Accreditation Council for Graduate Medical Education, and (3) other postgraduate medical and dental trainees in programs not accredited by the Accreditation Council for Graduate Medical Education.
- Require a higher education employee first exhaust any administrative or academic grievance processes that are available to that employee before proceeding with a challenge.
- Provide 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.
- Require 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.
- State 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.
- Provide that the bill's required procedures do not apply to termination and disciplinary actions based on academic or clinical matters.
- Provide that for matters that are submitted to arbitration, an arbitrator shall not have the authority to order a higher education employer to advance an employee or trainee to the next level of training, or attest that an employee or trainee is eligible for graduation or board certification.
- Define "Academic or Clinical Matters" to mean matters that relate to whether the employee has developed the practice-based learning and improvement, patient care and procedural skills, systems-based practice related to medical judgment, and medical knowledge competencies that are necessary to function at the current level of training, advance to the next level of training, or be assessed as eligible for graduation and board certification.
- Define "Disciplinary Action" to mean restriction, suspension, nonrenewal, or termination of employment.

Related Legislation:

- AB 1550 (L. Rivas) would require that represented position classifications transferred to UC's Academic Senate retain their bargaining unit and union. The bill is currently pending in this Committee.
- AB 2114 (Rodriguez, 2020) was substantively similar to the current bill, and was vetoed by the Governor.

Staff Comments: UC estimates five to ten eligible disciplinary cases across all of its campuses would occur each year. If all of them went to arbitration, the bill's annual costs would be in the aforementioned range of \$500,000 to \$1.5 million. As noted earlier, costs to develop and implement new UC system-wide personnel policies would be in the hundreds of thousands of dollars on a one-time basis.

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