

## Understanding “status” issues - release, non re-election, retention

What follows is an explanation of a teacher’s “status” and the various laws that impact that status.

**“Temporary” teachers**—by Education Code have three important indicators that dictate this status: These teachers are either 1) in a position that is funded temporarily, or 2) are filling in for a teacher on leave. Additionally, and most important, these teachers, upon signing their employment contracts, had to be informed on the document itself, that they are temporary. If the teacher was not notified on an employment contract, they are most likely probationary rather than temporary. If these people were notified on an employment contract that they were temporary, but they are neither in a temporarily funded program or backing up a teacher on leave, their status is probably probationary.

If the teacher is a “true” temporary, he or she is an “at will” employee, and in most cases, is employed for a time specific, like a school year. At the end of that year, it takes a positive act by the employer to rehire the teacher. Absent any act by the employer, the teacher’s contract expires and he or she is no longer employed. This teacher is not entitled to unemployment.

**Probationary employees:** There are three classifications of probationary employees—two by Education Code, and one addition by case law. The first two, probationary 1 and 2 employees, are determined by calendar employment. Literally, a teacher holding his or her preliminary or clear credential, hired by a school district, starts a clock ticking. During the year 1 period of that clock, the employee is a probationary 1. During the year 2 period of that clock, that employee is a probationary 2. It is literally the first day of his or her third full year that he or she is automatically granted, as per Ed Code, “permanent” status. If a probationary employee works less than 75% of the school year (literally “works”, not including paid leave), he or she does not earn a year toward permanency.

During the probationary years, the employee is “assumed” to continue unless the employer takes action to end that employment. For a Prob 1, that notification, called “non re-election,” may occur any time, including the last day of employment in a school year. For a Prob 2, notification to terminate employment must occur, by statute, by March 15. Notification has to be both personally served and served by certified letter. Most districts notify all of those employees, whom they intend to release or non re-elect, regardless of temporary, Prob 1 or Prob 2 status, by March 15. But remember, only probationary 2 employees must be notified by 3/15.

The third probationary classification is often referred to as “probationary 0” status. In fact, there is no such classification; however, everyone in education understands probationary 0 employees to be those who do not have preliminary or clear credentials, but who are also not “true” temporary employees. This may include interns, provisionally credentialed teachers, or “emergency” waiver teachers.

**Interns:** Of this last group, only interns have the right, once they complete their intern requirements, to retroactively count one year of employment as their probationary 1 year, thereby establishing them as probationary 2 once their internships are completed.

**Unemployment:** Probationary 1 and 2 employees are eligible for unemployment if non re-elected.

**Resignation in-lieu of non re-election:** Probationary 1 and 2 employees are also eligible for unemployment if they agree to resign, in lieu of non re-election. This concept of agreeing to resign is odd for many teachers, but some districts will inform their probationary employees that they will be non re-elected, but the District offers the employee the ability to resign rather than be non re-elected. The difference between resigning and being non re-elected is a function of what the teacher can legally report to a prospective employer about the reason for the dissolution of the previous employment. Specifically, if a teacher resigns, that is all he or she needs to say in an interview or on an application. However, if the teacher receives a non re-election, that must be disclosed in both an interview, if asked, and upon any application. Some applications have, however, a box that says, “Have you ever been non re-elected or resigned in lieu of being non re-elected.” if such a box is on a application, the teacher must mark it “yes”, if this is the case.