

**2009 CHANGES
IN ARIZONA SCHOOL EMPLOYMENT LAWS**



**Arizona School Boards Association
Arizona Association of School Business Officials
Arizona School Administrators**

2009 LEGISLATIVE WORKSHOP



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**When, and how, are these laws effective for
employees under 2009-2010 contracts?**

Begin with –

A.R.S. § 15-546. Rights in employment not vested

The provisions of this article [ARS § § 15-531 through 15-552] may be modified, amended or repealed at any time and *no person shall be deemed to have acquired any vested right to continuing employment under or by virtue of any provision of this article.*



Which amendments may affect “*continuing employment*”? This may well apply to elimination of 3-year recall rights under § 15-544. It may, or may not, apply to other changes in Title 15, including at least elimination of non-renewal and dismissal deadlines and reliance on tenure or seniority in RIF decisions in 2010 and later.

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When, and how, are these laws effective for employees under 2009-2010 contracts?

What about . . .

- Paid days off for employees' professional association activities?
- Repeal of probationary teachers' April 15 non-renewal deadline?
- Repeal of the March 15-May 15 window for offering contracts?
- 60 vs. 85 day tenured teacher correction period for inadequacy?
- 10 vs. 30 days before teacher dismissal is effective after notice of a Governing Board decision, and 10 vs. 30 days to request a hearing?
- The ban on consideration of tenure or seniority in RIF decisions?
- 3-year recall rights after a RIF, both for teachers RIFed in 2007, 2008 or 2009 and teachers who may be RIFed in spring, 2010?
- Salary reductions for teachers?
- Ban on career ladder participation unless in career ladder in 2008-09?

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When, and how, are these laws effective for employees under 2009-2010 contracts?

The difficult question – Breach of contract/impairment of contract
– Can you modify your practices while contracts entered into last spring or later, pre 11/24/09, are still in effect?

One easy, but perhaps unaffordable, answer – for teachers under 2009-2010 contracts on 11/24/09, apply the deadlines and procedures under pre-11/24/09 law, while you revise (1) contract language, (2) policies or (3) both, to remove most deadlines and other provisions inconsistent with new law before 2010-2011 contracts are issued. This issue-avoidance will reduce risk of challenges and litigation substantially.

But the state's and your district's finances may not give you this "luxury."

We'll discuss effective dates more specifically as most of the new provisions are explored in the following slides.

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Why isn't there one, consistent, "one size fits all" answer for every Arizona school district for employees under 2009-2010 contracts?

Policies: Your district's policies may differ from others. And by court decision, policies are deemed to be part of current contracts - and until changed they should be followed.

Contracts: Your contract language is almost certainly different from that in other districts.

Policies and contracts must be read carefully - their language may cause a different outcome in different districts. This is why you must consult your own district's school attorney.

And when you consult your own school attorney . . .

Consider ***Proksa v. Arizona State Schools for the Deaf and the Blind***, 205 Ariz. 627, 74 P.3d 939 (Arizona Supreme Court, 2003) -

- In 1993, the Arizona Legislature replaced ASDB's "permanent employee status" ("tenure") with 1, 2 or 3 year contracts.
- Two longtime ASDB employees (hired in 1981 and 1987) were later non-renewed. They sued.

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And when you consult your own school attorney . . .

In ***Proksa***, the Arizona Supreme Court held in 2003:

"The general principle . . . is that statutes do not create contract rights. . . . This is because the primary function of a legislature is not to make contracts, but to make laws that establish the policy of the state. . . . Policies, unlike contracts, are inherently subject to revision and repeal. . . . [S]tatutes will not be interpreted as contracts without an 'adequate expression of an actual intent of the State to bind itself.' . . .

"[As to] whether the legislature had the power under state law to change the status of [the employees'] tenure, the answer is plainly that it could legally do so."

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So what about our employees under 2009-10 contracts?

In short, the effect of HB 2011's amendments on employees under 2009-10 contracts is going to be answered on a case-by-case, depending on -

- Which statutory amendment is at issue
- What your employment contracts say
- What your district's policies say, today and after 11/24/09
- Existing Arizona court opinions, and the wisdom of judges who hear lawsuits over these issues, particularly . . .

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What's up with AEA's lawsuit?

Arizona Education Association's lawsuit (a Special Action) was filed in the Arizona Supreme Court November 23, 2009. It challenges several revisions to ARS Sections –

- 15-502 – bans retention policies based on tenure/seniority
- 15-504 – bans paid days off for professional ass'n activities
- 15-536 – repeals 4/15 probationary teacher non-renewal deadline, window to issue their contracts between 3/15 & 5/15
- 15-538.01 – repeals window to issue tenured teachers' contracts between 3/15 & 5/15
- 15-539 – (1) reduces from 30 to 10 days time between Board vote to dismiss and effective date, time to request a hearing; (2) shortens tenured teacher correction period for inadequacy of classroom performance from 85 to 60 instructional days

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What's up with AEA's lawsuit, cont'd?

The lawsuit challenges several revisions to ARS Sections –

- 15-541 – provides that a hearing on teacher dismissal now occurs 15 to 30 days from teacher's request, not 10 to 25 days.
- 15-544 – (1) eliminates requirement for a "general salary reduction" in order to reduce tenured teachers' salaries; (2) repeals 3-year recall rights for RIFFed teachers
- Section 76 of HB 2011 (uncodified in ARS) – limits career ladder participation in 2009-10 to those who participated in 2008-09



WHY? The lawsuit claims these provisions are beyond the scope of the call for the 3rd Special Session, beyond the scope of the Subject of HB 2011, combine general legislation in an appropriations Bill, the amendments above violate teachers' contracts, and 15-504 and Section 76 are too vague.

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What happened to . . . *paid days off for teacher/ employee association activities?* ARS § 15-504

15-504. Contract days for professional association activities; prohibition

SCHOOL DISTRICT EMPLOYMENT CONTRACTS SHALL NOT INCLUDE COMPENSATED DAYS FOR PROFESSIONAL ASSOCIATION ACTIVITIES. FOR THE PURPOSES OF THIS SECTION, PROFESSIONAL ASSOCIATION ACTIVITIES DO NOT INCLUDE CONDUCT THAT OCCURS DURING A FIELD TRIP FOR PUPILS. THIS SECTION DOES NOT PROHIBIT INDIVIDUAL EMPLOYEES OF SCHOOL DISTRICTS FROM TAKING COMPENSATED LEAVE TIME FOR ANY PERSONAL PURPOSE, ANY PROFESSIONAL PURPOSE OR ANY OTHER LAWFUL PURPOSE.

Key words: “SCHOOL DISTRICT EMPLOYMENT CONTRACTS SHALL NOT INCLUDE . . .”



Stay tuned for clarity on what are “professional association activities.” What about “Arizona Science Teachers” types of associations? What about an AEA in-service?

SUBJECT TO AEA LAWSUIT!

What happened to . . . *deadlines for probationary teacher non-renewal & contract issuance?* ARS § 15-536

15-536. Offer of contract to certificated teacher who has not been employed more than three consecutive school years; acceptance; notice to teacher of intention not to reemploy

A. . . . [T]he governing board shall, ~~between March 15 and May 15~~, offer a teaching contract for the next . . . year to each [probationary] teacher . . . unless, ~~on or before April 15~~, the governing board. . . gives notice to the teacher of the board's intention not to offer a teaching contract, OR unless such teacher has been dismissed pursuant to section 15-538, 15-539, 15-541 or 15-544. . . .

B. Notice of the board's intention not to reemploy the teacher shall be by delivering it personally to the teacher or by sending it by registered or certified mail ~~bearing a postmark of on or before April 15~~,



Now you can wait until the Legislature adjourns and you learn how much money you have to spend.

SUBJECT TO AEA LAWSUIT!

What happened to . . . a tenured teacher's correction period for inadequacy of classroom performance? ARS § 15-539(C)

15-539. Dismissal of certificated teacher; due process; written charges; notice; hearing on request

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C. The governing board shall give a [tenured] teacher . . . notice of intention to dismiss if its intention to dismiss is based on charges of inadequacy of classroom performance The governing board or its authorized representative shall give the teacher a written preliminary notice of inadequacy of classroom performance at least ten instructional days before the start of the period of time within which to correct the inadequacy and overcome the grounds for the charge. . . . The written preliminary notice of inadequacy of classroom performance . . . shall state the date by which the teacher has to correct the inadequacy and overcome the grounds for the charge. . . . The written preliminary notice of inadequacy of classroom performance shall allow the teacher not less than ~~eighty-five~~**SIXTY** instructional days within which to correct the inadequacy and overcome the grounds for the charge. . . .



Note: *The 90 calendar day correction period for a probationary teacher is unchanged.*

SUBJECT TO AEA LAWSUIT!

What happened to . . . deadlines for tenured teacher dismissal & contract issuance? ARS § 15-538.01

15-538.01. Offer of contract to certificated teacher employed more than three consecutive school years

A. . . . [T]he governing board shall, ~~between March 15 and May 15,~~ offer to each [tenured] teacher. . . a contract renewal for the next ensuing school year unless ~~on or before May 15~~ the governing board, a member of the board acting on behalf of the board or the superintendent of the school district gives notice to the teacher of the board's intent not to offer a contract and to dismiss the teacher as provided in section 15-539.

* * * * *

~~C. If dismissal proceedings in reference to the teacher cannot be completed by May 15 through no fault of the governing board or the superintendent, or if the incidents relied on in whole or in part occurred after May 15, dismissal proceedings may continue or be initiated.~~



Now you can wait until the Legislature adjourns and you learn how much money you have to spend.

SUBJECT TO AEA LAWSUIT!

What happened to . . . *timelines for teacher dismissal?*

ARS § 15-539

15-539. Dismissal of certificated teacher; due process; written charges; notice; hearing on request

A. On a written statement of charges presented by the superintendent, charging that there exists cause for the . . . dismissal of a certificated teacher of the district, the governing board . . . shall give notice to the teacher of its intention to . . . dismiss the teacher at the expiration of ~~thirty~~ **TEN** days from the date of the service of the notice.

* * * * *

C. . . . If within the time specified in [a] written preliminary notice of inadequacy of classroom performance the teacher does not demonstrate adequate classroom performance, the governing board shall dismiss the teacher either within ~~thirty~~ **TEN** days of the service of a subsequent notice of intention to dismiss or by the end of the contract year in which the subsequent notice of intention to dismiss is served unless the teacher has requested a hearing as provided in subsection G of this section. . . .

* * * * *

G. The certificated teacher who receives notice that there exists cause for dismissal . . . shall have the right to a hearing if the teacher files a written request with the governing board within ~~thirty~~ **TEN** days of service of notice. . . .

SUBJECT TO AEA LAWSUIT!

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What happened to . . . *scheduling a teacher dismissal hearing?* ARS § 15-541

15-541. Hearing on dismissal

A. The governing board shall decide whether to hold a hearing on the dismissal or suspension without pay for a period of time longer than ten days of a certificated teacher as provided in this article. If the governing board decides not to hold a hearing, the governing board shall designate a hearing officer to hold the hearing The hearing shall be held not less than ~~ten~~ **FIFTEEN** nor more than ~~twenty-five~~ **THIRTY** days after the request is filed unless all parties to the hearing mutually agree to a different hearing date, and notice of the time and place of the hearing shall be given to the teacher not less than three days before the date of the hearing. . . .

SUBJECT TO AEA LAWSUIT!

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What happened to . . . *reliance on tenure and seniority in RIF decisions?* ARS § 15-502

15-502. Employment of school district personnel; payment of wages of discharged employee

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H. NOTWITHSTANDING ANY OTHER LAW, **A SCHOOL DISTRICT SHALL NOT ADOPT POLICIES THAT PROVIDE EMPLOYMENT RETENTION PRIORITY FOR TEACHERS BASED ON TENURE OR SENIORITY.**



Key words: "**A SCHOOL DISTRICT SHALL NOT ADOPT POLICIES ...**"

Will districts use a "proxy" for seniority, *e.g.*, "overall teaching experience"? Can you rely on your evaluations?

SUBJECT TO AEA LAWSUIT!

Does § 15-502(H) abolish tenure? You decide!

15-502(H) (*new*):
Notwithstanding any other law, a school district shall not adopt policies that provide employment retention priority for teachers based on tenure or seniority.

15-538.01(A) (*as amended*):
[T]he governing board shall offer to each [tenured] teacher. . . a contract renewal for the next ensuing school year unless the governing board . . . gives notice to the teacher of the board's intent not to offer a contract and to dismiss the teacher as provided in section 15-539.

What happened to . . . *3-year recall rights after a RIF?*

ARS § 15-544

15-544. Limitations on reduction of salaries or personnel

A. A governing board may . . . eliminate certificated teachers in a school district in order to effectuate economies in the operation of the district or to improve the efficient conduct and administration of the schools of the school district . . .

* * * * *

~~C. A certificated teacher dismissed for reasons of economy or to improve the efficient conduct and administration of the schools of the school district shall have a preferred right of reappointment in the order of original employment by the governing board in the event of an increase in the number of certificated teachers or the reestablishment of services within a period of three years.~~

If a RIF is honestly “in order to effectuate economies in the operation of the district or to improve the efficient conduct and administration of the schools of the school district” the RIF is the preferred way to go, not dismissal for cause of tenured or non-renewal with reasons of probationary teachers.

SUBJECT TO AEA LAWSUIT!

What happened to . . . *the structure for a salary reduction?* ARS § 15-544

15-544. Limitations on reduction of salaries or personnel

A. A governing board may reduce salaries . . . in a school district in order to effectuate economies in the operation of the district or to improve the efficient conduct and administration of the schools of the school district, ~~but no reduction in the salary of a certificated teacher who has been employed by the school district for more than the major portion of three consecutive school years shall be made except in accordance with a general salary reduction in the school district by which the teacher is employed, and in such case the reduction shall be applied equitably among all such teachers.~~

B. Notice of a general salary reduction shall be given each certificated teacher affected ~~not later than May 15 before the fiscal year in which the reduction is to take effect.~~

C. The provisions of this section do not apply to reductions in salary from monies from the classroom site fund pursuant to section 15-977.

SUBJECT TO AEA LAWSUIT!

What happened to the process for renewal/non-renewal of an ASRS "Returned Retiree"? ARS § 38-766.01

Returned Retirees - A.R.S. § 38-766.01

A. . . . a retired member may return to work and still be eligible to receive [ASRS] retirement benefits if all of the following requirements are satisfied: * * * *

3. If the retired member returns to work as a teacher, *the retired member's employment is not subject to the requirements prescribed in sections 15-536 [Added reference to 15-536], 15-538, 15-538.01 and 15-539 through 15-543.*



11/24/09: BY ADDING 15-536 ABOVE, THE RETURNED RETIREE IS NOW A YEAR TO YEAR EMPLOYEE WITH NO EXPECTATION OF RENEWAL AFTER CONTRACT EXPIRATION. A DECISION TO NOT OFFER A RETURNED RETIREE A CONTRACT CAN BE MADE FOR FINANCIAL OR ANY OTHER LEGAL REASONS.

NOT SUBJECT TO AEA LAWSUIT!!!

What Happened to Career Ladder Teachers? Uncodified § 76 of HB2011

Sec. 76. Career ladder programs; maximum base level increase for fiscal year 2009-2010

A. * * * * *

For fiscal year 2009-2010, the career ladder program is limited only to teachers who participated in the program in the prior fiscal year.



Impression:

1. *Teachers who participated in career ladder programs in 2008-09 can do so in 2009-2010.*
2. *Teachers who didn't in 2008-09, but were contracted for career ladder participation pre-11/24/09, can do so in 2009-2010.*

SUBJECT TO AEA LAWSUIT!

