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## **Position Paper: Temporary, Probationary and Permanent Employee Status**

In recent years, there have been many cases where LEA bargaining unit members were hired as a temporary employee, signed and/or accepted temporary contracts, and never really understood what it meant to be a temporary employee. When the end of the school year comes, it can cause much confusion when they don't receive a placement for the following year and/or do not receive a Reduction In Force (RIF) notice (like other employees around them). When a member finally understands s/he was a temporary employee with a limited contract, s/he is often too late to apply for some of the early position openings because they have not been watching the weekly position openings on the District Website.

In the contract between the Livermore Education Association and the Livermore School District, there are three distinct classifications of employees: temporary, probationary, and permanent. All three classifications are employees of the district and members of the association. All three can be released from service *with* due cause and due process, and all receive the same compensation based on qualifications and years of service. Each level of employment though, provides a different level of job security and rights.

Temporary employees have a limited contract with a start and end date printed on their contract. At the top of their contract and evaluations, the check-box for "temporary" will be checked. Temporary employees are evaluated by their administrator for a beginning, mid-year and final evaluation every year. At the end of the school year, temporary employees are finished with their contract and are not required to notify the district that they will not return the next year. Equally, the district is not required to re-hire or dismiss them; they are simply finished at the end of that contractual period. Temporary employees should keep an eye out for open positions beginning each March or April for the following year. According to the "Temporary Teachers" Article in the contract, "upon completion of the second year of service, part time and full time temporary teachers shall be placed in vacant positions in accordance with their seniority, qualifications, evaluations and percentage of employment." This means that in normal situations, no teacher should be kept on a temporary contract longer than two years.

Probationary employees have a specific contractual period with a school-year listed on their contract. At the top of their contract and evaluations, the check-box for "probationary" will be checked – normally with a #1 (for 1<sup>st</sup> year) or #2 (for 2<sup>nd</sup> year), but could also be marked with a #0 (for teachers in an intern program). Probationary employees are evaluated by their administrator for a beginning and final evaluation every year. At the end of the school year, there is a commitment on the part of the district to re-hire probationary employees, so it is assumed that the employee will be returning to that

school site the following year. Probationary members will receive their next-year assignment from their principal at the same time as permanent teachers and may receive Reduction In Force (RIF) notices if positions are being eliminated and/or during layoffs. Probationary members may resign at any time before June 30th and do not have to return to work once their contractual school-year is over. If the district does not wish to re-hire probationary employees, they simply must notify those employees by March 15<sup>th</sup> and inform them that they will not be re-hired or “re-elected”. State Education and Employment Codes permit the district to non-re-elect any probationary employee without any requirement to disclose that reason. Obviously, if the employee feels that he/she is being unjustly targeted for a reason within the scope of the contract (academic and personal freedom, union activity, etc.) or for a discriminatory reason (family status, gender, sexual orientation, race, age, etc.) the employee should report that information to the union and we will assist in the grievance process and attempt to prove that the district is acting unjustly.

Permanent employees receive their “permanent status” on the first day of their next school-year after working two years as a probationary employee in our district. At the top of their contract and evaluations, the check-box for “permanent” will be checked. Permanent employees are evaluated by their administrator for a beginning and final evaluation every other year. At the end of the school year, permanent employees are expected back to work at the same site the following year unless they notify the district of their resignation or request a voluntary transfer. They can expect to return to their same position unless the district transfers them using the involuntary transfer procedure or terminates their employment following the processes outlined in our contract. If the district does not wish to re-hire a permanent employee, they must show “just cause” for that termination. This is usually done by informing the member during his/her initial conference or at some point during the year that the principal or supervisor has some concern regarding their abilities to do their job and has specific, reasonable goals for that member to reach before the end of their final evaluation that year. During evaluations and conferences, the principal will work to assist that member to improve and many times, the teacher will contact the Association for assistance in training and ways to meet those goals. It is advisable for the teacher to contact their union site representative as soon as they receive notification that they need to improve. If the teacher has not shown satisfactory improvement within the required amount of time s/he will receive a notice that s/he may not be re-hired for the fall. This letter will usually also re-state the reasons outlined in the evaluations. By May 15, if the member has still not shown satisfactory improvement, s/he will receive their final letter from the district that they will not be re-hired for the fall. At this time, the member may challenge that evaluation or decision to non-re-elect through a hearing. This is known as “due process.” Obviously, if the member feels that he/she is being unjustly targeted for a reason within the scope of the contract (academic and personal freedom, union activity, etc.) or a discriminatory reason (family status, gender, sexual orientation, race, age, etc.) the member should report that information to the union, may file a grievance and attempt to prove that the district is acting unjustly.

Many people have expressed that the two-year probationary period is too long. “When I worked for ‘Company X’, I was a permanent employee after 60 days,” is a comment that I hear a lot. The Livermore Education Association and our state and national affiliates (CTA and NEA) have worked very hard in the areas of employee’s status and rights. In some states, teachers have no due process rights, and in some districts, teachers are on probationary status for a shorter time than we are. In states with due process rights, the probationary period ranges from one to seven years depending on where you choose to work.

“Why should I be a member of the association when, as a temporary employee, I have the least amount of rights?” is also a question I have heard in the past. Association membership has a lot more to it than just one section of our contract. I generally respond that “the Association is here for you as a temporary or probationary member just as we are there for our permanent member. You receive the same pay-rate, access to training, grievance-rights, evaluation protections, member benefits and representation as every other member.” Why would you choose *not* be a member of the Association?

Many parents, government officials, and members of the community question the allowance of permanent or “tenured” status within the teaching profession. This generally comes from the mistaken use of the two words, “tenure” and “permanent”. When employees in a private business exit out of their probationary status, they generally receive a large increase in salary and due-process rights similar to those of teachers (being able to find out why you’re being dismissed, etc.). When teachers exit out of probationary status, they become permanent employees. Would *anyone* want to work for an employer who could let s/he go for any reason without telling them why they are being let go? Imagine being let go simply because there is a cheaper employee available after you have worked for your employer for twenty years? Many have the misconception that once a member has permanent status, they can’t be fired. That’s simply not true. If a member is struggling and needs assistance, the district is obligated to tell them to improve and give them the chance to. Educational employees are one of the only professional workers in the U.S. who are required to continue training yearly and are required to pay for it themselves. Most employers pay their employees to attend training and pay *for* that training. Educational employees are required to attend trainings on their own time and are expected to pay for that training with their own salary.

Hopefully this has cleared up some of the confusion regarding temporary, probationary, and permanent status within our Association and the education profession. If you have any further questions, concerns, ideas or corrections to this information please contact the Livermore Education Association President. You’ll find our e-mail addresses, phone numbers, addresses and more information about our association at:  
<http://www.livermoreteachers.org>