

LEGAL BULLETIN

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Information for California Educators Who Are Non-Permanent Residents

Like the student population they serve, California educators are a diverse group, coming from many different cultural backgrounds. A significant number of California educators are non-permanent residents, who hold visas enabling them to teach in the United States.

These educators may be subject to special rules that affect their employment and their retirement compensation. Below, we provide important information about some of the rules impacting visa-holding educators.

Who Are Our Non-Permanent Resident Educators, and What Types of Visas Do They Hold?

- **Exchange Teachers:** Exchange teachers come to the United States through global cultural exchange programs authorized by the U.S. Department of State. An individual may participate in an exchange program for up to three years, although this period may be extended by one or two more years. Exchange teachers typically hold J-1 visas, which are nonimmigrant visas that permit participation in authorized work or study programs. Education Code section 44853 applies to exchange certificated employees. This statute requires an exchange certificated employee to hold the necessary valid credential(s) issued by the Commission on Teacher Credentialing that authorize the person to serve in the exchange position.
- **Sojourn Teachers:** Sojourn teachers are employed by schools in order to provide bilingual education, foreign language instruction, or cultural enrichment to students. Sojourn teachers are employed for an initial period of two years, but their employment may be extended for a total of up to five one-year renewals. Like exchange teachers, sojourn teachers typically hold J-1 visas. Also like exchange teachers, sojourn teachers must hold the necessary valid CTC credential(s) to serve in their positions. See Education Code section 44856.
- **Workers in Specialty/Professional Occupations:** Local educational agencies may employ credentialed, qualified foreign teachers under H-1B visas to provide instruction to students. An H-1B visa permits the visa holder to remain in the United States for up to six years.

What Union Rights Do Visa-Holding Educators Have?

- **CBA Protections:** Non-permanent residents who are part of the bargaining unit are covered by the collective bargaining agreement. They are entitled to receive the benefits and protections of the CBA.
- **Union Membership:** Non-permanent residents are eligible to join the union. They enjoy the rights and benefits of membership, including the ability to vote in union elections and participate in union governance. However, federal elections law prohibits non-permanent residents from making political contributions, so they may not donate to union (or other) Political Action Committees (PACs).

What Rights Do Visa Holders Have Under the Education Code?

Visa-holding educators are covered by generally-applicable Education Code provisions, such as Education Code sections applying to leave rights. The questions that typically arise for these employees involve their ability to become classified as permanent employees and their ability to participate in STRS:

- **Permanent Classification:** Visa-holding teachers can earn classification as a permanent employee under the Education Code, just like U.S. citizens and permanent residents. It is important to note, however, that even when they are permanent employees, that classification does not obligate their employer to sponsor future visa renewals for them.
- **STRS Benefits:** Teachers holding H-1B visas are entitled to STRS credit and may make STRS contributions. However, sojourn teachers and teachers who are working under bona fide exchange programs are *not* eligible to participate in the STRS system (see Education Code section 22601). If a visa-holding teacher has not been enrolled into STRS and believes that this is in error – because they are not true sojourn or exchange teachers -- they should contact their local union. If the teacher is a union member, they may be entitled to legal assistance through the Group Legal Services (GLS) Program.

Where Can I Learn More?

- **Exchange Teachers:** The California Department of Education runs the Exchange Visitor Program for Teachers, which coordinates with the federal government and with local educational agencies that seek to employ exchange teachers. More information about the CDE's Exchange Visitor Program can be found here: <https://www.cde.ca.gov/sp/me/il/exchangevisit.asp>
- **Sojourn Teachers:** The Commission on Teacher Credentialing issues credentials that authorize sojourn teachers to provide bilingual education, foreign language instruction, and cultural enrichment to California students. More information about the sojourn credential can be found here: [https://www.ctc.ca.gov/credentials/leaflets/sojourn-certificated-employee-credential-\(cl-568\)](https://www.ctc.ca.gov/credentials/leaflets/sojourn-certificated-employee-credential-(cl-568))

- **Workers in Specialty/Professional Occupations:** The federal government authorizes local educational agencies to employ foreign educators under H-1B visas. The U.S. Department of Labor's Employment Law Guide for foreign workers in specialty occupations can be found here: <https://webapps.dol.gov/elaws/elg/h1b.htm>
- **National Immigration Law Center:** The National Immigration Law Center is a non-profit organization that provides information and assistance regarding immigration and workers' rights. More information about NILC and their resources can be found here: <https://www.nilc.org/>