

	LOS ANGELES COMMUNITY COLLEGES HUMAN RESOURCES GUIDE	HR H-201
		CONFIDENTIAL EMPLOYEE DESIGNATION
ISSUE DATE: July 28, 2016	SERVICE: <input type="checkbox"/> ACADEMIC <input checked="" type="checkbox"/> CLASSIFIED <input type="checkbox"/> UNCLASSIFIED	
REPLACES: HR Guide dated April 23,2008	CHANGES: Updated Table H 201-B	

I. POLICY

It is the policy of the District to assure that the use of the confidential employee designation meets the intent of the Government Code definition of Confidential Employees and addresses the business needs of the District.

II. DEFINITION

- A **confidential employee** means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions ([Government Code § 3540.1\(c\)](#)).
- **Collective Bargaining Unit** is an organization designated by the Public Employee Relations Board (PERB) as the official employee representative to the employer with regard to wages, hours and working conditions. No confidential employee can be a member of a Collective Bargaining Unit.
- **Educational Employment Relations Act (EERA)**, [California Government Code](#) (Sections 3540-3549.3), governs labor-management relations in California's public schools (elementary, secondary, unified, and community college districts and county education offices).
- **Employee Unit** is a group of employee jobs that can be categorized as having the same union representation, or, in the case of unrepresented employees, other similar characteristics, i.e., confidential, overtime exempt, unclaimed, etc. (HR Guide [H-200](#))
- **Employee Organization** means any organization which includes employees of a public school employer and which has one of its primary purposes representing those employees in their relations with that public school employer. Employee organization includes any person of the organization authorized to act on its behalf and is usually a union. ([Government Code § 3540.1\(d\)](#)).
- **Exclusive Representative** means the employee organization recognized or certified as the exclusive negotiating representative of academic or classified employees in an appropriate unit of a public school employer ([California Government Code §3513.1\(e\)](#)).
- **Employer-Employee Relations** is, in the context of confidential employees, activities related to collective bargaining proposals, communications about collective bargaining or contract administration, development of information or communication about employee grievances, and gathering and use of salary and benefits data of employees.

- **Management Employee** means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designed by the public school employer subject to review by the Public Employment Relations Board.
- **Public Employment Relations Board (PERB)** is the quasi-judicial administrative agency charged with administering the collective bargaining statutes covering employees of California's public schools, colleges, and universities, employees of the State of California, employees of California local public agencies (cities, counties and special districts), etc.
- **Supervisory employee** means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

III. REQUIREMENTS

A. Designation of Positions as Confidential

1. Under appropriate circumstances, EERA permits a position or classification to be designated as "confidential" as defined above. When such a designation occurs, the position is removed from, or prevented entry into, a certified recognized employee organization. The employee is excluded from a broad range of rights granted under EERA. Consequently, State statute and court rulings require strict adherence to a specific standard that includes, among other things, the positions access to collective bargaining negotiations and the processing of employee grievances. To meet this standard:
 - a. Employees in a position designated as confidential must have access to or possess confidential information related to the employer's employer-employee relations, collective bargaining negotiations, and/or employee grievances as a regular part of the employee's duties.
 - b. Frequency of duties must occur within the employee's regular course of duties and be more than happenstance. PERB requires 51 percent (51%) of the employee's time be spent on confidential matters related to the definition of a confidential employee.
 - c. State statute restricts the use of confidential status to Classified positions.
 - d. Positions are customarily designated as confidential by the employer at two points in time:
 - Upon the initial unit determination occurring when an exclusive bargaining representative is recognized;
 - Upon establishment of a new job class or position.
 - e. Table H-201A, Confidential Position Status Elements, below, summarizes the District's basic criteria used to designate a position as confidential. (Note: The District's criteria is adopted from the criteria used by PERB.)

TABLE H-201A CONFIDENTIAL POSITION STATUS ELEMENTS ^{1,2}	
ELEMENT	DESCRIPTION
Position	Position Title, Job Duties, and Work Location
Manager	Manager's Name, Position Title, Job Duties, and Number of Subordinates Supervised
Fringe Benefits	Nature of fringe benefits and salary as compared to bargaining unit employees
Employer's Workforce	Total number of employees, number of employees undisputedly confidential, and percentage of work force
Personnel Work	<ul style="list-style-type: none"> • Examples of personnel functions employee handles. • Nature of personnel matters to which employee has access related to employee relations and identification if this access is within normal course of employee's job.
Collective Bargaining Process	<ul style="list-style-type: none"> • Manager's role in negotiations and/or contract administration; frequency of manager's involvement; and manager's role vis-a-vis other management/supervisory employees involved in negotiations and/or contract administration. • Frequency and nature of employee's regular access to confidential information concerning the effects of bargaining proposals, identification of employee's involvement in preparation of materials for negotiations. • Identification of employee's involvement in stream of communications, including handling correspondence) among employer representatives regarding negotiation issues. • Employee's involvement in gathering and use of salary and benefits data of other employees.
Employee Grievance Process	Employee's access to information relating to employee grievances and/or employer's position on those grievances.
Public Information	Availability of access to alleged confidential information to public.
¹ 51 percent or more of the time spent by the individual holding the position must fall within the categories described above. ² As defined by Public Employee Relation's Board. See Confidential Employee Checklist (LACCD Form HR-201) for details.	

B. LACCD Procedure to Designate a Position Confidential

1. The designation of a position as confidential occurs when a job classification or new position is initially established.
 - a. **Create or Reclassify Position:** The department/division submits a request to create or reclassify an existing position.
 - See Human Resources Guide H-700, Position Establishment and Change, for details and [Government Code § 88104.5](#), Reclassification, and Personnel Commission Rule 555, Classification of New Positions, regarding the Personnel Commission's role in this process.
 - b. **Request for Confidential Position Status:** The Department / Division (manager and employee if an incumbent exists) requesting a position to be designated as a confidential position simultaneously completes and submits the Confidential Employee Status Check List ([H-201](#)) to the Senior Associate Vice Chancellor, Human Resources, for review and determination.
2. If the position duties appear to appropriately meet the criteria for a confidential position as defined by PERB and if the position has not been claimed by a collective bargaining unit, the Human Resources Division consults with the appropriate exclusive bargaining unit representative.

- a. If the exclusive bargaining representative concurs, the Personnel Commission classifies the position in one of the existing “confidential” classifications listed in Table H-201B, LACCD Job Codes Designated as Confidential, below). If no appropriate “confidential” classification exists, the Personnel Commission creates the classification.
- b. If the exclusive bargaining representative and the District do not agree, the District should file a petition with PERB. Human Resources Division completes the appropriate PERB documents and distributes copies as appropriate.

C. Confidential Position Designation Changes

1. Once a position is allocated to an employee unit, it remains part of the unit and may not be removed from the unit without consultation with the exclusive bargaining unit. When the employer and exclusive representative organization agree, the change may be made as part of the District labor-management consultation process.
2. If the employer and exclusive bargaining unit representative do not agree, the employer must file a petition to modify the unit within PERB-specified “window periods ([Government Code § 3544.1\(c\)](#)). See III. B. LACCD Procedure to Designate a Position Confidential, above, for details.
3. PERB recognizes that an employer’s workforce requirements will change and allows modifications to positions designated as confidential under the following conditions.
 - a. The deletion or addition of classifications or positions that occur due to changed circumstances.
 - b. A technical change made to clarify or update the unit description.
 - c. The resolution of a dispute regarding unit placement or designation of a new job classification or position.

D. LACCD Designated Confidential Job Classifications

- a. The entire job classification or an individual position may be designated as confidential. The nature of the work within the District that determines designation as a confidential position.
- b. When a position is designated as confidential, the Personnel Commission uses one of the job classifications listed in Table H-201B, LACCD Job Codes Designated Confidential, below. If the duties of a newly designated confidential position are unique, a new job classification may be established by the Personnel Commission.

TABLE H-201B LACCD JOB CODES DESIGNATED CONFIDENTIAL ¹ (As of May 2016)			
CODE	TITLE ²	CODE	TITLE ²
2301	Paralegal	2693	Office Assistant (Confidential)
2303	Paralegal (Litigation)	4264	Investigator
2405	Executive Secretary to the Chancellor	5011	Compliance Officer
2415	Assistant Secretary to the Chancellor	5056	Executive Assistant to the President
2430	Executive Assistant (Confidential)	5070	Administrative Analyst (Confidential)
2437	Executive Legal Assistant	5083	Assistant Administrative Analyst (Confidential)
2448	Executive Secretary to the Board of Trustees	5089	Assistant Financial Analyst (Confidential)
2450	Administrative Aide (Confidential)	5091	Administrative Intern (Confidential)
2452	Assistant Secretary to the Board of Trustees		
2461	Administrative Secretary (Stenographic / Confidential)		
2462	Legal Secretary		
2465	Administrative Secretary (Confidential)		
2475	Senior Secretary (Confidential)		

¹ From: Personnel Commission Online Pay scale
² See List of Job Codes and Pay Scales for abbreviations and short titles used in the SAP system.

E. Confidential Position Assignment Coding

- a. **Job Codes:** As designated in Table H-201B, LACCD Job Codes Designated Confidential, above.
- b. **Personnel Sub-Area Prefix, Employee Unit:** CN, Confidential
- c. **Pay Scale Area:** C2, Confidential
- d. **Pay Scale Type:** [01, 5-Step](#)
- e. **Payroll Area:** 1, Monthly

F. Effect of Confidential Status Designation on Assignment

- a. Confidential status is based on a specific position’s duty statement, not an individual employee’s current job assignment with the District. Therefore, an employee does not necessarily retain confidential status when he/she changes jobs through promotion, demotion, or transfer.
- b. Employees assigned to a position designated confidential are afforded the rights, benefits, and burdens of other unrepresented Classified employees.

IV. **ADDITIONAL SOURCES**

CALIFORNIA GOVERNMENT CODE

3540 Educational Employment Relations Act (EERA)
3544 Majority Representation

CALIFORNIA EDUCATION CODE

88104 Reclassification
88104.5 Notice of Proposed Classification or Reclassification

LACCD HUMAN RESOURCE GUIDE

[HR P-000 General Policy on Personnel Actions](#)
[R-000 Recruitment, Selection, and Employment](#)

PERSONNEL COMMISSION RULES

[520 Executive Secretaries to Chancellor and Board of Trustees](#)
[523 Classification of New Positions](#)

PUBLIC EMPLOYEES LABOR RELATIONS BOARD (PERB)

[Regulations: Chapter 2 – Educational Employment Relations Act](#)