

THE BRIEFING ROOM

NEWS AND DEVELOPMENTS IN EMPLOYMENT LAW AND LABOR RELATIONS FOR CALIFORNIA LAW ENFORCEMENT

April 2010

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QUALIFIED IMMUNITY

Officers Who "Touch-Tased" Pregnant Woman Who Was Resisting Arrest After Refusing To Sign A Traffic Citation Were Entitled To Qualified Immunity.

Seattle Police Officer Juan Ornelas stopped Malaika Brooks for speeding in a school zone. She denied speeding, took her driver's license out of Ornelas' ticket book and repeatedly refused to sign a Notice of Infraction (Notice). Officer Donald Jones arrived at the scene to assist and Brooks still refused to sign the Notice and remained uncooperative. Jones explained that signing the Notice was not an admission of guilt, but Brooks accused Jones of lying to her and being a racist. Throughout the interaction, Jones was sitting in her car with the ignition running.

Sergeant Steven Daman responded and told the officers to arrest Brooks after she again refused to sign the Notice. The officers attempted to arrest her, but Brooks refused to leave her car. Jones warned Brooks that he would tase her if she did not cooperate and that the taser would hurt. Brooks said that she was pregnant. The officers warned Brooks again that they would tase her, and the officers discussed tasing her on her thigh to avoid her stomach. Ornelas opened the door, removed the keys from the ignition, dropping the keys on the floorboard. Ornelas then brought Brooks's arm up behind her back - a pain compliance technique. Brooks stiffened her body and clutched the steering wheel so the officers could not remove her from the car. Jones then applied the Taser in "touch" or "drive-stun" mode to Brooks's thigh. Brooks began to yell and honked the car's horn. Jones tased her again on her shoulder and her neck. The officers were finally able to extract her from the car.

The officers charged Brooks with refusing to sign the notice and resisting arrest. The resisting arrest charge was later dismissed. Brooks sued the officers under Section 1983 for excessive force. The district court denied the officers' motion for summary judgment based on qualified immunity. The Ninth Circuit Court of Appeals reversed.

Public officials are entitled to qualified immunity if their actions do not amount to a constitutional violation, the violation was not clearly established, or their actions reflected a reasonable mistake about what the law requires. Here the Ninth Circuit found that the officers did not violate Brooks's constitutional rights.

First, the officers had probable cause to arrest Brooks because she refused to sign the Notice. The Court also found that the amount of force was less than an intermediate level of force. The use of a taser in "touch" or "drive-stun" mode involves touching the taser to the body, which only causes temporary, localized pain. The Court found that this amount of force was on par with

pain compliance techniques, such as counter-joint holds and pepper spray. The fact that the officers tased Brooks three times was a concern. However, after the first deployment, Brooks still did not communicate that she was willing to comply with the officers' commands, but instead started yelling and honking her horn. She did the same thing after the officers tased her the second time. Also, while her criminal conduct was not very severe, Brooks's continued refusal to comply with the officers' orders justified the deployment of the taser.

Consequently, the Court found that the officers' behavior did not amount to a constitutional violation and they were entitled to qualified immunity.

Brooks v. City of Seattle (9th Cir. 2010) ___ F.3d ___ [2010 WL 1135776].

SEXUAL HARASSMENT/DISABILITY DISCRIMINATION/RETALIATION

County Defeats Former Employee's Sexual Harassment And Discrimination Claims After Employee Was Terminated For Misconduct.

In a superior court jury trial handled by **Morin I. Jacob** and **Alison Neufeld** of our San Francisco office, a jury returned a defense verdict on all four claims brought by a former employee who alleged that she was sexually harassed, discriminated against because of a disability, and retaliated against for complaining of harassment and discrimination. The County denied any and all liability, and asserted had legitimate business reasons for all employment actions taken against Lopez.

Lydia Lopez began her employment with the County in 2002. In 2006, she was transferred out of one unit of the Sheriff's Department after concerns surfaced that she may have leaked confidential information to gang members. There was no actual evidence of this, but as a precautionary measure, she was assigned to a unit where this concern did not exist.

Lopez was placed on a graveyard shift in 2007, when she began her new assignment. She then began to bring in doctor's notes claiming she could only work the day shift, but the notes never provided the County with proper medical certification of a disability. The County engaged in an interactive process with Lopez to get proper medical certification, but she never provided it. The County complied with the doctor's note and put her on day shift for the period of time set forth in the doctor's note even though Lopez never provided proper medical certification.

While on day shift assignment, Lopez falsified her time cards that resulted in her being paid for time she did not work. She was investigated for this and recommended for termination. At her *Skelly* meeting in June 2007, Lopez complained for the first time that she had been sexually harassed by a sergeant in 2004 and again in 2006. Lopez's recommended termination was reduced to a write-up and a performance improvement plan. Her claim of sexual harassment was investigated by the County.

After being disciplined for the falsification of time cards, Lopez falsified her time cards again. She was given a notice of intent to terminate, but after her *Skelly* meeting she was demoted, not fired.

Lopez then quit her job claiming intolerable working conditions, and sued the County, alleging 17 separate causes of action. By the time the case was submitted to the jury, the defense had succeeded in eliminating all but four causes of action: sexual harassment, failure to accommodate a disability, failure to engage in the interactive process and retaliation. After a five week trial, the jury found in favor of the County on all four causes of action.

GENDER/DISABILITY DISCRIMINATION

County Did Not Discriminate Against Female Employee When It Promoted A Better Qualified Male Candidate.

Margee Johnson, who had multiple sclerosis, worked as an accountant for Weld County in

Colorado. While the County was looking for a new Fiscal Officer, Johnson worked in the position on an interim basis. Although Johnson applied for the permanent position, the County hired Dennis Bogott instead. Bogott had 35 years of experience in the accounting field, while Johnson had ten years of experience.

Johnson sued the County for gender and disability discrimination in violation of Title VII and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the County. The Tenth Circuit Court of Appeals affirmed.

Even assuming that Johnson could establish a *prima facie* case of gender discrimination, the County could satisfy its burden of showing that it had legitimate reasons for failing to hire Johnson. Specifically, Bogott was better qualified and Johnson lacked the requisite academic qualifications. Thus, the burden shifted to Johnson to show that the County's reasons were pretext.

To demonstrate that the County's decision to hire Bogott was discriminatory, Johnson would have to show that she was better qualified by an overwhelming margin. Here, however, Bogott was arguably more qualified than Johnson because he had significantly more accounting experience than she did. Bogott also had a bachelor's degree in business and another one in finance and accounting, while Johnson only had a bachelor's degree in business administration with an emphasis in computers and accounting.

Johnson argued that the County's use of a seven member interview panel rather than their normal six person panel was a procedural irregularity which evidenced discriminatory intent. But the Court found that not every failure to follow an employer's policy manual gives rise to an inference of discrimination. A procedural irregularity will only evidence discrimination if it directly and uniquely disadvantaged a minority employee. Here the seven member panel interviewed all candidates, and there is no evidence that female candidates were treated differently from male candidates.

In addition, Johnson asserted that her multiple sclerosis substantially limited her ability to work. But the evidence suggested just the

opposite. Johnson was a highly competent employee at the time of the challenged hiring decision with excellent performance reviews. As long as a plaintiff maintains a satisfactory level of job performance, her working ability cannot be so limited to constitute a disability under the ADA.

Johnson v. Weld County (10th Cir. 2010) 594 F.3d 1202.

AGE DISCRIMINATION

EEOC Publishes Proposed Regulations Regarding Affirmative Defense Under Age Discrimination In Employment Act.

The Equal Employment Opportunity Commission recently published new regulations under the Age Discrimination in Employment Act (ADEA). Specifically, the proposed rule defines the "reasonable factors other than age" (RFOA) defense available to employers. An employer may assert an affirmative defense to alleged age discrimination if it can prove that it based its employment decision on reasonable factors other than age. The changes to the regulations are intended to reflect the U.S. Supreme Court's decisions in *Smith v. Jackson* and *Meacham v. Knolls Atomic Power Laboratories*.

The proposed rule states that a "reasonable factor other than age" is one that is objectively reasonable when viewed from the position of a reasonable employer under like circumstances. It is one that would be used in a like manner by a prudent employer mindful of its responsibilities under the ADEA. According to the proposed regulation, a prudent employer knows or should know that the ADEA is designed in part to avoid the application of neutral employment standards that disproportionately affect employment opportunities for older persons. Consequently, a reasonable factor is one that an employer, using reasonable care to avoid limiting the employment opportunities of older persons, would use.

The EEOC offers a non-exhaustive list of relevant considerations in determining whether an employment practice is reasonable for purposes of the RFOA defense. Those considerations

are: whether the practice and its implementation are "common business practices"; the extent to which the factor is related to the employer's stated business goal; whether the employer took steps to define the factor accurately and apply it fairly; whether the employer assessed the adverse impact of the practice on older workers; the severity of harm to older individuals; and whether the employer had other options available and why it selected the option it did.

Unlike disparate impact claims under Title VII, an employer asserting the RFOA defense need not prove that the non-age related factor was a "business necessity." Under the ADEA, an employer only has the burden to show it relied on a reasonable factor other than age. Moreover, although the availability of options is relevant to deciding whether an employer's use of a factor causing adverse impact was "reasonable," the ADEA does not require an employer to choose the option with the least discriminatory impact.

Finally, the EEOC's proposal also contains a non-exhaustive list of ways to determine whether an employer's criteria for making a challenged employment decision actually consisted of non-age factors. The criteria should be as objective as possible and avoid age-based stereotypes when possible. Employers that give their supervisors unchecked discretion to make subjective decisions expose themselves to liability. When possible, employers should avoid giving supervisors the ability to rate employees on criteria susceptible to age-based stereotyping, such as flexibility, willingness to learn, or technological skills.

A full copy of the EEOC's proposed rule can be found at:
<http://edocket.access.gpo.gov/2010/2010-3126.htm>



RETALIATION

Employees Who Offered Evidence That Supervisor Wrongfully Retaliated Against Them For Cooperating In Employer's Disciplinary Investigation Of Him Could Take Their Retaliation Claim To Trial.

Tommy Baines is a supervisor in a residential youth facility operated by the State of New York. He was disciplined by the State for racially discriminating against a subordinate, Mark Pasternak. Pasternak's co-workers, Dwight Hicks, Antonio Melendez, and James Smith, cooperated in the investigation of Baines, and later filed a Title VII claim of retaliation against Baines. The district court awarded summary judgment in favor of Baines on the ground that the employees' evidence was conclusory. The Second Circuit Court of Appeals reversed in part and affirmed in part.

The employees alleged that Baines entered the residential facility on numerous occasions to disturb the facility and compromise the security of the site in an effort to make the employees look bad. Although the employees *believed* that Baines was the one entering the facility, they could not provide any evidence that Baines was the individual entering the facility.

The employees also alleged that, on a specified date, Baines purposely left the computer room window ajar, thereby prohibiting the employees from setting the facility alarm because the employees did not have keys to the computer room door. The employees were later reprimanded for not activating the facility alarm, even though Baines was the only person with a key to the room.

The employees also alleged that Baines intentionally adjusted shift times and work locations. For example, Baines repeatedly required the employees to work their shift alone. Having only one staff member on duty was not only tedious but hazardous as the residents were sometimes violent.

The Court found that a reasonable employee in the employees' position may reasonably be dissuaded from participating in a discrimination investigation if he knew that in retaliation, he

would be disciplined (though innocent) for failing to arm a security system that is needed to protect vulnerable residents and/or that his work schedule would be changed such that he would have to work alone at a facility more dangerous and threatening than the facility at which he usually worked.

There was also evidence that Baines told Smith that he (Baines) knew who cooperated in the investigation against him and that he would retaliate against them for their cooperation.

Hicks v. Baines (2d Cir. 2010) 593 F.3d 159.

RETALIATION/FIRST AMENDMENT

Employee Who Filed A Complaint With The State And Subsequently Had Her Caseload And Pay Reduced Stated A Claim For Retaliation.

Janet Reinhardt was a speech language pathologist (SLP) employed by the Albuquerque Public Schools Board of Education (APS). SLPs with a full-time caseload receive a 1.0 contract (standard contract). SLPs with a larger caseload may receive a 0.2 contract increase (extended contract). For several years, Reinhardt complained to APS administrators that she was not receiving accurate and timely caseload lists of students, which she believed led to qualified special education students not receiving speech and language services. Inaccurate lists also had the potential to affect SLPs' contract status and salaries. Reinhardt eventually consulted an attorney and filed an Individuals with Disabilities Education Act complaint with the New Mexico Public Education Department (NMPED). The state conducted an investigation and ordered APS to take corrective action. Reinhardt also advocated for a student to receive neuropsychological evaluation and specialized reading instruction.

Before the 2004-2005 school year, Reinhardt had received extended contracts. In 2004, APS assigned Reinhardt to work with only 9th grade students. Consequently, her caseload was only six students, well below a full-time caseload, and APS reduced her to a standard contract.

Reinhardt sued APS for retaliation in violation of the Rehabilitation Act and the First Amendment. The district court granted summary judgment in favor of APS. The Tenth Circuit Court of Appeals reversed.

To establish a retaliation claim under the Rehabilitation Act, an employee must show that: (1) she engaged in a protected activity; (2) she suffered a materially adverse action; and (3) a causal connection between the protected activity and the adverse action.

Here Reinhardt's advocacy for the student, complaints about APS's failure to provide SLPs with timely and accurate caseload lists, and her NMPED complaint were all protected activity under the Rehabilitation Act. APS's reduction in Reinhardt's caseload to 9th grade students resulted in a reduction in compensation and, consequently, was a materially adverse action. There was also a causal connection because Reinhardt's advocacy for the student in the 2003-2004 school year and APS reducing her to a standard contract near the beginning of the following school year.

APS could not defeat summary judgment because there was no explanation for why Reinhardt could not be assigned other students in addition to the 9th graders. Also, there was evidence that APS maintained inaccurate lists, which resulted in qualified students not receiving services. Moreover, there was factual dispute as to how APS actually calculates extended contracts and whether Reinhardt qualified for such a contract.

For a First Amendment retaliation claim, the employee must be speaking as a private citizen, and not as an employee. The Court found that Reinhardt's internal complaints to administrators about the inaccurate caseload lists were within her job duties. However, when she retained an attorney and filed the complaint with the NMPED, her actions went beyond her professional responsibilities and she acted as a private citizen.

Reinhardt v. Albuquerque Public Schools Board of Education (10th Cir. 2010) 595 F.3d 1126.



FIRST AMENDMENT

District's Refusal To Allow Employee To Speak In Open Session About Personal Grievance Did Not Infringe On Employee's Right To Free Speech.

Julie Fairchild worked for the Liberty Independent School District in Texas. Fairchild was a teacher's aide in Jessica Barrier Lanier's classroom. The two did not get along and the District eventually fired Fairchild. Fairchild filed a post-termination grievance alleging that the District's termination was in retaliation for her accusing Barrier Lanier of mis-treating the special needs students.

Under the District's grievance policy, the final level of the grievance process is a hearing before the School Board. The District also has a policy to hear the employee's concern in closed session, unless the target of the concern demands a public hearing. At the beginning of Board meetings, the District allows public comment on Board business, but the Board does not resolve any disputes or decide any questions during this time. When commentary moves to issues with named employees, the Board notes it as a matter beyond the scope of the open session, and the speaker must proceed through an alternative process. This practice avoids a frustration of the policy of not hearing personnel grievances in public absent the consent of the employee whose performance is questioned.

On August 16, 2005, Fairchild was scheduled to speak during the comment session regarding her grievance. The Board agreed to allow Fairchild to discuss her grievance in open session, but warned Fairchild that it would move any employee-on-employee concerns to closed session pursuant to District policy. During the open session, Fairchild presented her grievance. And during the closed session, she made her complaints against Barrier Lanier. The District ultimately denied her grievance.

Fairchild sued the District alleging that the District's policies violated the First Amendment and the Texas Open Meetings Act. The district court granted summary judgment in the District's favor, and the Fifth Circuit Court of Appeals affirmed.

The Court found that the District's policy limiting the public comment session to issues of general concern which do not require the Board to resolve any disputes is reasonable and constitutional. The policy was viewpoint-neutral and was implemented to prevent the public comment session from becoming a dispute resolution forum where the Board cannot take immediate action and is only presented with one side of the dispute. The Board's policy allowing disputes to be heard in closed session gives the employee the opportunity to be heard without disrupting the Board's meeting.

Fairchild wanted the Board to hold her post-termination grievance hearing in public, in part, because she wanted to ask the Board to fire Barrier Lanier. Although Fairchild had the right to present her grievance in open session, the District's policy prohibited her from discussing the employment of Barrier Lanier in public. The District's policy prohibiting her from airing her own issues in public when they involved the dismissal of another employee was not unconstitutional.

Fairchild v. Liberty Independent School District (5th Cir. 2010) 597 F.3d 747.

Note:

Although this case is based on the Texas state law, the ruling and analysis is consistent with the Ralph M. Brown Act and its jurisprudence.

LABOR RELATIONS

Under A "Maintenance Of Membership" Provision, Union Members Can Withdraw From Membership After Collective Bargaining Agreement Expires And Before Successor Agreement Is Reached.

Chris Lewis, Scott Lipscomb Edelen, and Savannah Morgan were members of the California Statewide Law Enforcement Association. After the expiration of a collective bargaining agreement (CBA) containing a "maintenance of membership" clause, the

members filed withdrawals from membership with the Union. The maintenance of membership clause stated that once employees join the Union, they must remain members for the duration of the CBA and members could only withdraw from membership during the 30 days prior to June 30, 2008 - the expiration date of the CBA.

Because the Union had not yet completed negotiations with the State for a successor agreement, the Union refused to honor the withdrawals. The Union argued that, because Lewis and Edelen had not withdrawn in the 30 day window prior to the expiration of the CBA, they could not withdraw from membership until a successor agreement or impasse was reached.

The members filed two separate unfair practice charges against the Union, alleging unlawful interference of their rights under the Ralph C. Dills Act. The administrative law judge (ALJ) found in their favor. The Public Employment Relations Board adopted the ALJ's opinion.

The Dills Act states that, if a memorandum of understanding has expired, and the parties have not agreed to a successor agreement and have not reached an impasse, the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding. The Board found that, by requiring the parties to continue to abide by the terms of the expired agreement until a new agreement or impasse is reached, the Dills Act effectively imposes the existing contractual terms on the parties on a day-to-day basis. A request to withdraw received before the parties enter into a successor agreement, while the existing terms are in effect on a day-to-day basis, falls within the meaning of a maintenance of membership clause and is therefore valid.

The Union's failure to honor the members' requests to withdraw after expiration of the CBA was unlawful interference. Regardless of whether the Union had unlawful intent or motive, the fact that the members suffered even slight harm as a result of the Union's conduct was sufficient to support an unlawful interference claim.

Edelen v. California Statewide Law Enforcement Ass'n (2009) PERB Dec. No. 2088-S [34 PERC ¶ 33];
Morgan v. California Statewide Law Enforcement Ass'n (2009) PERB Dec. No. 2089-S [34 PERC ¶ 34].

Teacher's Complaint Regarding The Reduction In His Own Workload Was Not Protected Activity Because Individual Complaints Are Protected Only When They Are A Continuation Of A Group Activity.

Don Stott is a part-time adjunct psychology instructor for the San Joaquin Delta Community College District. For several years, he was assigned to teach three classes per semester. In October 2008, the District assigned Stott to teach only one class. Stott complained to the Dean about the reduction in his class load. In June 2009, the Dean informed Stott that his one Fall 2009 class was being canceled due to budget restraints. In September 2009, the District asked if he would be interested in teaching a class in the Spring 2010 semester at another campus.

Stott filed an unfair practice charge against the District alleging retaliation in violation of the Educational Employment Relations Act (EERA). The PERB agent dismissed the charge for failure to state a *prima facie* case. The Board adopted the decision.

EERA gives public employees the right to represent themselves individually in their employment relations with the public school employer. Individual complaints related to employment matters made by an employee to his superior are protected if the complaints are a logical continuation of group activity. Here Stott's complaints to the Dean concerned the reduction of his own teaching assignment from three classes to one class, and were not a logical continuation of any group activity.

In addition, Stott's claims did not establish the requisite temporal proximity to suggest a nexus between his complaint and the cancellation of his class. Moreover, the District's offer to Stott to teach a class at a different location was not an adverse action because it was not an involuntary transfer to a position with less favorable working conditions. There was no requirement that Stott accept the transfer.

Stott v. San Joaquin Delta Community College District (2010) PERB Dec. No. 2091 [34 PERC ¶ 38].

The State Mediation And Conciliation Service To Charge Fees For Certain Of Its Services.

As we reported in our **February 2010 Briefing Room**, one result of the State's budget measures is legislation authorizing the State Mediation and Conciliation Service (SMCS) to charge employers and unions fees beginning July 1 of this year for its services other than for its core contract and grievance mediation services.

SMCS has issued proposed regulations listing the fees it proposes to charge for specified services as follows:

List of Arbitrators - A charge to requesting parties of \$50.00 per request. Also an annual charge of \$150.00 to arbitrators on the list.

Elections - A flat fee schedule for setting up and supervising elections based on the size of affected bargaining unit(s).

Training and Facilitating Services - \$115.00 per hour for providing labor-management training, facilitating non-traditional bargaining and services in connection with interpersonal workplace disputes.

Transit District Representational Services - \$115.00 per hour for providing services in connection with representational issues and disputes.

SMCS will hold public hearings in April prior to the adoption of the regulations by the Department of Industrial Relations.

ARBITRATION

Arbitrator Did Not Exceed His Authority When He Ordered Agency To Reinstate Laid Off Employee In A Different Position In Contravention Of The Layoff Provisions In The Collective Bargaining Agreement.

The San Francisco Housing Authority's Memorandum of Understanding (MOU) states that seniority by classification applies in layoffs.

An employee with more seniority may bump an employee with less seniority in the same classification or in a lower classification in the same classification series. A temporary employee may not bump a regular permanent employee, regardless of his/her seniority.

In the event of a layoff, the Union may meet and confer with the Housing Authority regarding the impact of, and alternatives to the layoff. The MOU's grievance procedure calls for Level III binding arbitration wherein the arbitrator shall have no power to amend the MOU.

In 2005, the Housing Authority laid off Donise Manchester, a 14 year employee. In 1991, Manchester worked as an administrative clerk until she was transferred in 1997 to senior storekeeper. When she was an administrative clerk, several of those positions were reclassified as senior administrative clerk. Manchester never held the position of senior administrative clerk because she was transferred to a different classification by the time the reclassification study was completed. Manchester subsequently moved between various administrative positions. In 2003, the Housing Authority reassigned her to the position of distribution specialist.

In 2005, the Housing Authority initiated layoffs, including Manchester. Manchester was less senior in the distribution specialist classification than the other employee in the classification and there were no lower positions in her classification series for her to bump into. The Union met and conferred with the Housing Authority over alternatives to the proposed layoffs. At the time of the layoff, there were temporary employees working as senior administrative clerks. The Union suggested that Manchester bump into a senior administrative clerk position, but the Housing Authority rejected the proposal because Manchester had never been a senior administrative clerk.

The Union filed a grievance and the arbitrator found that the Housing Authority had not violated the MOU's provisions regarding seniority bumping rights. However, the arbitrator ordered the Housing Authority to reinstate Manchester and place her in a senior administrative clerk position filled by a temporary employee. The superior court granted the Housing Authority's petition to vacate the arbitration award on the grounds that the arbitrator

exceeded his authority. The California Court of Appeal reversed.

A court may vacate an arbitration award if the arbitrator exceeded his authority. The Housing Authority asserted that the arbitrator's remedy constituted an amendment to or modification of the MOU, which exceeded the arbitrator's authority. Courts generally defer to an arbitrator's interpretation of an MOU. The arbitrator found that the seniority bumping rights provisions were not the exclusive manner in which an employee may be retained in the case of layoffs. Because the MOU required the parties to consider alternatives to layoffs not expressly addressed in the layoff provision, the Housing Authority was not bound to a strict application of the layoff provision. The Court found that the remedy awarded was not expressly forbidden by the MOU. Moreover, the terms of the grievance procedure did not prevent the arbitrator from fashioning a remedy that was neither expressly contemplated nor directly contrary to the agreement. Consequently, the Court upheld the award.

San Francisco Housing Authority v. SEIU Local 790 (2010) 182 Cal.App.4th 933.

Note:

This decision is yet another example of the deference courts extend to arbitration decisions. Here the court upheld the arbitrator's interpretation that the contract provision calling for negotiations to consider alternatives to layoffs constituted authority under the contract to avoid laying off the employee contrary to the layoff provisions of the contract - hardly the usual or likely intended meaning of alternatives to layoffs.

Although Union's Grievance Erroneously Cited To An Inapplicable Provision Of The Collective Bargaining Agreement, Union Was Entitled To Arbitration On The Merits.

The police officers' union filed a grievance against the Metropolitan Police Department in Washington D.C. for the Department's failure to pay police officers overtime worked during a special event. The Union's grievance sought

overtime payment and liquidated damages under the Fair Labor Standards Act. The grievance erroneously alleged a violation of Article 30, Section 2 of the collective bargaining agreement (CBA), which was not in effect, rather than Article 30, Section 1, which required the Department to pay officers overtime in compliance with the FLSA.

The Department denied the grievance on the grounds that the grievance cited a CBA provision that was not in effect. Nevertheless, the Department agreed to pay the officers overtime, but not liquidated damages. The Union sought arbitration. The arbitrator ruled in favor of the Department based on the technical deficiency and did not reach the merits of the dispute. Reviewing the arbitrator's decision, the D.C. Public Employee Relations Board found nothing in the arbitrator's decision contrary to law and public policy and upheld the decision. The superior court set aside the PERB's ruling and the arbitration decision. The D.C. Court of Appeals affirmed.

Under D.C. law, PERB can only overturn an arbitral award if it is contrary to law and public policy. The Court found that the arbitrator's refusal to reach the merits of the dispute frustrated the public policy favoring arbitration of a dispute. The Department was well aware that the Union's grievance was in fact claiming violation of the FLSA's timely compensation requirement for overtime work, incorporated into the CBA by Article 30, Section 1. The arbitrator's refusal to reach the merits of the case because of a technical defect that did not disguise the actual grievance was improper. And PERB should have recognized that the award violated the clear policy in favor of enforcing arbitration agreements.

District of Columbia Public Employee Relations Board v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (D.C. 2010) 987 A.2d 1205.



FAMILY AND MEDICAL LEAVE ACT

The Issue Of An Employee's Right To, And Amount Of Front Pay In Lieu Of Reinstatement Under The FMLA Is To Be Decided By The Court, And Not A Jury.

Jill Traxler worked as a Human Resources Manager for the Multnomah County Sheriff's Office in Oregon. In 2005, she took Family and Medical Leave Act (FMLA) leave due to a serious health condition. In June 2005, the County notified Traxler that her position would be eliminated. She was placed on a paid administrative leave and then transferred to a lower paying position. Traxler continued to take FMLA leave in 2005. And in September 2005, she received an unfavorable performance review in her new position. The County then terminated her employment.

Traxler sued the County for retaliation under the FMLA. The jury found in her favor and awarded her \$250,000 in back pay damages and over \$1.5 million in front pay. The district court later found that it erred in submitting the front pay calculation to the jury and limited the front pay award to \$267,000. On appeal, the Ninth Circuit Court of Appeals found that inasmuch as the FMLA does not explicitly provide for a right to front pay, the amount of front pay is an equitable remedy for the court to decide, and the district court's front pay award was appropriate. The Court also found that the district court erred in not providing factual findings to support its denial of liquidated damages.

In a case of first impression, the Ninth Circuit followed the Fourth, Fifth and the Tenth Circuits in finding that, under the FMLA, front pay is an equitable remedy that must be determined by the court, both as to the availability of the remedy and the amount of any award. Front pay is awarded at the court's discretion only if the court determines that reinstatement is inappropriate, such as where no position is available or the employer-employee relationship has been so damaged by animosity that reinstatement is impracticable. Consequently, it makes sense that the availability of the front pay and the amount of front pay should be decided by the

court. The Court also found that the district court's front pay award of \$267,000 was supported by substantial evidence.

The FMLA contains a liquidated damages provision, subjecting an employer who violates the Act to double damages unless the employer can prove that its employment action was taken in good faith and that it had reasonable grounds for believing that its action was not a violation. Here the district court erred by denying Traxler a liquidated damages award without explaining its rationale.

Traxler v. Multnomah County (9th Cir. 2010) 596 F.3d 1007.

FAIR LABOR STANDARDS ACT

On Rehearing, Ninth Circuit Concludes That Compensability Of Commuting Time Under The FLSA Is More Restrictive Than Under California Law.

In our **October 2009 Briefing Room** we reported on the Ninth Circuit *Rutti v. Lojack Corp.* case addressing the issues of the compensability of commuting time, and of the performance of preliminary and postliminary work activities.

Facts of the Case

Mike Rutti worked for LoJack as a technician installing and repairing vehicle recovery systems. Most of the work is done at the clients' locations. Consequently, Rutti was required to travel to the job sites in a company-owned vehicle. The Company paid Rutti on an hourly basis for the time period beginning when he arrived at his first job location and ending when he completed his final job installation of the day.

Before he left for the first job in the morning, Rutti would log onto a handheld computer device provided by the Company that informed him of his jobs for the day, map his routes to the assignments, and prioritize the jobs. He also completed some minimal paperwork at home. During the day, Rutti recorded information about the installations he performed on a

portable data terminal (PDT) provided by the Company. At the end of the day, Rutti was required to upload data about his day's work. He then would have to connect the PDT to a modem at home to transmit the information. Sometimes he would have to make more than one attempt to successfully transmit the information. He could upload the data any time after the work day between 7:00 p.m. and 7:00 a.m.

Rutti filed a class action suit against the Company alleging he was denied compensation for the commute time and pre-shift and post-shift work in violation of the federal Fair Labor Standards Act and California law. The district court granted summary judgment in favor of the Company. The Ninth Circuit Court of Appeals affirmed as to the commute time and the pre-shift work, but reversed as to the post-shift uploading of PDT information.

Pre-Shift Activities

Pre-shift activities were held compensable if they are an integral and indispensable part of the principal activities for which people are employed. The work must be necessary to the business and performed primarily for the benefit of the employer in the ordinary course of that business. Furthermore, otherwise compensable time may be considered *de minimis*, and therefore not compensable, depending on (1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work. The Court found that Rutti's morning activities were not integral to his principal activities. Receiving, mapping, and prioritizing jobs and routes for assignment were related to his commute, which is clearly distinct from his principal activities for the Company. In addition, Rutti could not show that the paperwork he performed could not be done after Rutti reached the job site. Even if these activities were compensable, the Court found that they would be *de minimis*.

Post-Shift Activities

On the other hand, Rutti's daily post-shift PDT transmissions to the Company appear to have been part of the regular work of the employees in the ordinary course of business and are necessary to the business and performed primarily for the benefit of the employer. Even if the

PDT transmissions took only five to ten minutes, there was sufficient evidence that technicians often would have to come back to the system to ensure that the transmission was successful, and, if not, send it again. There was also evidence of frequent transmission failures. Moreover, the aggregate amount of time and the regularity of the additional work suggest that the transmissions were performed as part of the regular work of the employees in the ordinary course of business. Thus, material issues of fact existed as to whether the PDT transmissions were *de minimis*.

Commuting Time - FLSA

Under the federal Employee Commuter Flexibility Act, which is incorporated into the FLSA through the Portal-to-Portal Act, commuting time is not compensable if activities performed in the course of the commute are incidental to the use of the vehicle, and are not part of the employee's principal activities. The Court found that based on this standard, Rutti's commuting time was not compensable.

Commuting Time - California Law

Under State law, if employees are foreclosed from activities in which they might otherwise engage if they were permitted to commute by their own transportation, the time is compensable. Here Rutti was required to drive the company vehicle, could not stop off for personal errands, could not take passengers, was required to drive directly from home to his job and back, and had to keep his cell phone on to answer calls from the company dispatcher. The Court held that under this standard, Rutti's commute time was compensable.

Rutti v. Lojack Corp. (9th Cir. 2010) 596 F.3d 1046.

Note:

Public agencies are subject to the FLSA, and are not covered by the State law in this regard.



EMPLOYER LIABILITY

Employer May Be Liable For Death Caused By Employee's Driving While In The Course Of His Daily Commute Where The Employee Occasionally Made His Car Available For Performing Work Related Activities.

Luis Del Rosario worked for Tamco, a steel bars manufacturer, as its manager of quality control. One day, as Del Rosario was leaving work and was driving out of the driveway, he failed to notice three motorcycle deputies approaching with their lights and sirens activated. Del Rosario collided with San Bernardino County Deputy Sheriff Daniel Lobo's motorcycle and Lobo suffered fatal injuries.

Del Rosario's job duties included responding to customer complaints and visiting customers' facilities to gain information and/or maintain customer relations. Consequently, if a customer called with quality concerns, Del Rosario would accompany a sales engineer to the site to answer any technical questions. Although he usually went with a sales engineer who would drive, Del Rosario would sometimes drive his own car if no sales engineer was available. The Company reimbursed him for his mileage. During his 16 years of employment, Del Rosario only used his own car to visit customers approximately ten times.

Lobo's family sued the Company for wrongful death, alleging that Del Rosario was acting within the course and scope of his employment at the time of the accident. The superior court granted summary judgment in favor of the Company. The California Court of Appeal reversed.

Employers are vicariously liable for tortious acts committed by employees during the course and scope of their employment. Generally employers are exempt from liability for tortious acts committed by employees during their daily commute to and from work. However, an exception to this rule arises where the use of the car gives some incidental benefit to the employer. The exception can only apply if the employee has agreed to make the vehicle available as an accommodation to the employer and

the employer has reasonably come to rely upon its use and to expect the employee to make the vehicle available on a regular basis while still not requiring it as a condition of employment.

The Court found that there was sufficient evidence that the Company required Del Rosario to make his car available to visit customer sites and that the Company benefited from the availability of Del Rosario's car. Although the Company rarely required Del Rosario to drive his own car, that fact was inconsequential. The availability of Del Rosario's car provided the Company with the benefit of insuring that Del Rosario could respond promptly to customer complaints and the benefit of not having to provide him with a company car.

Lobo v. Tamco (2010) 182 Cal.App.4th 297 [105 Cal.Rptr.3d 718].

Company Can Be Liable For Damages Caused By Employee's Driving Under Both The Theory Of Vicarious Liability And The Theory Of Negligent Hiring And Retention Of The Employee.

Karen Tagliaferri was driving on the freeway and tried to pass Jose Carcamo, who was driving a truck for Sugar Transport. Their two vehicles collided and Tagliaferri's car landed on top of Dawn Diaz's car.

Diaz sued Tagliaferri and Carcamo. She also sued the Company alleging it was vicariously liable as Carcamo's employer and directly liable for its negligent hiring and retention of Carcamo. Prior to trial, the Company moved to preclude Diaz from proceeding with the negligent hiring and retention theory. The Company argued that, because it admitted it was vicariously liable for Carcamo's conduct on a theory of *respondeat superior*, Diaz should not be able to proceed against it for its negligent hiring and retention of Carcamo. The trial court denied the motion. After trial, the jury awarded Diaz over \$22.5 million in damages. The Company was required to pay 35% of the judgment. The Company appealed and the California Court of Appeal affirmed.

The Court found that negligent retention is a theory of direct liability independent of vicarious

liability. The *respondeat superior* theory of liability makes the employer liable for the negligent conduct of the employee committed in the course and scope of his/her employment. On the other hand, the negligent retention theory of liability is not based on the conduct of subordinate officers, but rather the negligence of superior officers. Consequently, an employer can be vicariously liable and directly liable.

Diaz v. Carcamo (2010) 182 Cal.App.4th 339 [106 Cal.Rptr.3d 306].

LAYOFF BENEFITS

COBRA Premium Subsidy Extended to May 31, 2010.

The American Recovery and Reinvestment Act (ARRA) included a 65% COBRA subsidy for employees involuntarily terminated from their employment between September 1, 2008 and December 31, 2009. The federal government has since passed a number of bills extending the COBRA premium subsidy for a few months at a time.

Under the last extension, the COBRA premium subsidy ended on March 31, 2010. On April 15, President Barack Obama signed a bill extending the COBRA premium subsidy - again - to May 31, 2010. The President also urged Congress to renew the extension through the end of 2010.

The premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months.

INDEPENDENT CONTRACTORS

The Internal Revenue Service And Department Of Labor Are Auditing Employers For Misclassification Of Employees As Independent Contractors.

The IRS is engaged in a three year program addressing a perceived tax shortfall in the

collection of employment taxes due to misclassification of employees as independent contractors. It can be expected that the State will be apprised of any IRS misclassification actions.

Further, the DOL's 2011 budget proposal seeks funding for conducting investigations of employers looking for instances where employees are misclassified as independent contractors.

The City of Dana Point is an example of an agency that was recently audited by the IRS. The audit concluded that the City had misclassified certain Parks & Recreation instructors as independent contractors. No doubt the IRS has and will target other public agencies.

The courts look to a number of characteristics in the relationship between an individual and an employer to determine whether it constitutes an independent contractor or employer-employee relationship. While the nature and extent of control over the work is a key factor, the courts examine the circumstances of the relationship as a whole, and caution that no single characteristic is determining.

Note:

The potential liability of misclassification can be very substantial. In the case of IRS audits, it can involve unpaid social security, medicare, unemployment insurance, employment training taxes, back-up withholding, and fines and penalties. FLSA claims can result in liability for wages, overtime, a variety of benefits including pension payments, liquidated damages and attorney fees.

To protect your agency from claims made by the IRS, DOL and individuals that you are misclassifying employees as independent contractors, you will want to revisit those jobs you have classified as independent contractors to confirm that they do in fact meet the requisite legal standards. We are continually conducting audits in this regard for our clients. Feel free to contact one of our attorneys with any questions you have.



Profile:

Employment Relations Consortiums

When Liebert Cassidy Whitmore was founded in 1980, one of our guiding principles was that we didn't want to solely *represent* public agency management -- we wanted to *partner* with them to best facilitate economical and positive employment relations by engaging in "preventive maintenance." This philosophy is best illustrated by our Employment Relations Consortiums. A consortium is a group of local agencies who join together for the purpose of securing quality employment relations training, consultation and informational services on a very economical basis.

Members range from agencies with a handful of employees to agencies with thousands of employees. Members span the state and currently there are more than 540 local agencies participating. Some have been in a consortium since we were founded and new members are joining regularly. All receive training workshops to which they may generally send as many employees as they would like. Workshop attendees receive the reknowned Liebert Cassidy Whitmore blue workbook (a reference guide on the subject being discussed). Member agencies also have the ability to attend any of our more than 500 annual trainings through our consortium services across the state. Finally, and for some the most important benefit, member agencies receive unlimited, complimentary telephone consultation. You read that right -- anything we know or should know off the top of our heads in labor and employment law is a free call.

The cost of membership ranges depending upon the consortium and number of training days, but generally is less than sending a couple managers to one out of town conference. The comments from Consortium members are the best testament to this service:

"These workshops are very helpful. I continue to refer to the workbooks when counseling and training staff." -- Central Valley ERC

"Good examples and great overview." -- Napa/Solano/Yolo ERC

"Presenter was knowledgeable and well spoken. Information was presented in an effective manner, clear and concise." -- Gateway Public ERC

"As always, LCW has excellent speakers. Their knowledge in the topics is outstanding." -- Imperial Valley ERC

Many of our 33 consortiums are beginning to select their workshops for the 2010 - 2011 year. These planning meetings are taking place across the state this spring and can be a great way to learn about this service. To receive information about a consortium in your area, contact:

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Northern CA Consortium Training Coordinator
(310) 981-2054
cfondacaro@lcwlegal.com

Crystal Tinoco
Southern CA Consortium Training Coordinator
(310) 981-2023
ctinoco@lcwlegal.com



Firm Publications

Steven Berliner of our Los Angeles office and **Frances Rogers** of our Fresno office authored the article, "Strategic Early Retirement Incentives" which appeared in the March 15, 2010 issue of Employment Law 360. The complete article can be read online at <http://www2.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "Retirement".

Frances Rogers also authored the article, "High Courts Clarify State Employment Laws" which appeared in the March 31, 2010 issue of the Los Angeles/San Francisco Daily Journal. The complete article can be read online at <http://www2.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "pregnancy".

Brianne Marriott also authored the article, "The Limits of Megan's Law" which appeared in the April 13, 2010 issue of the Los Angeles/San Francisco Daily Journal. The complete article can be read online at <http://www2.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "Megan".

Todd Simonson also authored the article, "New Judicial Standards for the Deployment of Tasers" which appeared in the Jan/Feb 2010 issue of the Campus Safety Magazine. The complete article can be read online at <http://www2.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "Tasers".



The Briefing Room is a publication that discusses law enforcement issues that may impact your agency. The publication is distributed by Liebert Cassidy Whitmore and is available to law enforcement agencies. If you know someone who would benefit from this publication, it would be our pleasure to add them to the distribution list. Please send their name, agency, address, city, state, zip, phone number, fax number and e-mail address to info@lcwlegal.com.

Clients of Liebert Cassidy Whitmore may receive the newsletter either via surface mail or e-mail. Non-clients may receive it via e-mail.

If you have any questions, call Cynthia Weldon at (310) 981-2000.

LIEBERT CASSIDY WHITMORE



Mandated Ethics Training

Do you have newly elected personnel who need Ethics Training?

Has it been two years since your last Ethics Training?

Then it's time for Mandated Ethics Training!

On October 7, 2005, the Governor signed Assembly Bill No. 1234 mandating a minimum of 2 (two) hours of ethics training for local agency officials in service as of January 1, 2006.

*AB 1234 mandates that if a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then **all** local agency officials shall receive a minimum of 2 hours of ethics training by January 1, 2007, **and every two years thereafter**. This is in effect for officials in service as of January 1, 2006.*

Liebert Cassidy Whitmore has been a leader in providing management and supervisory training to employers for more than twenty-five years.

Our workshops are conducted by attorneys who practice employment law and who bring a wealth of current, timely information and tips into the presentation.

These workshops are in compliance with the Fair Political Practices Commission and the Attorney General's Office.

Please contact us for more information on how to bring this training to your agency by contacting Anna Sanzone-Ortiz at ASanzone-Ortiz@lcwlegal.com or (310) 981-2051.

Firm Activities

Consortium Workshop Training

April 1	"Supervisory Skills for the First Line Supervisor/Manager" Imperial Valley ERC Imperial Donna Evans
April 1	"Managing Performance Through Evaluation" Gateway Public ERC Lakewood Laura Kalty
April 1	"Leaves, Leaves and More Leaves" and "Public Sector Employment Law Update" East Inland Empire ERC Fontana Melanie Poturica
April 7	"Issues and Challenges Regarding Drugs and Alcohol in the Workplace" Gold Country ERC Webinar Richard Whitmore
April 8	"Sick and Disabled Employees" and "Family and Medical Care Leave Acts" Monterey Bay ERC Morgan Hill Morin I. Jacob
April 8	"Supervisory Skills for the First Line Supervisor/Manager Part II" Los Angeles County Management Attorneys Consortium Los Angeles Donna Evans
April 8	"Public Sector Employment Law Update" and "Exercising Your Management Rights" San Diego ERC La Mesa Richard Whitmore
April 13	"Preventing Workplace Harassment, Discrimination and Retaliation" and "Ethics in Public Service" Coachella Valley ERC Cathedral City Scott Tiedemann
April 14	"Public Sector Employment Law Update" and "Legal Aspects of Violence in the Workplace" Bay Area ERC Los Altos Richard Whitmore
April 15	"Discipline: Putting It into Practice" South Bay ERC Carson Mark Meyerhoff
April 15	"Discipline: Putting It into Practice" Orange County ERC Costa Mesa Scott Tiedemann and Tim Owen
April 20	"Leaves, Leaves and More Leaves" and "Family and Medical Care Leave Acts" San Mateo County ERC Colma Cepideh Roufougar
April 21	"Discipline: Putting It into Practice" San Gabriel Valley ERC Alhambra Donna Evans and Tim Owen
April 22	"Employee Due Process Rights and 'Skelly': A Guide to Implementing Public Employee Discipline" and "Principles for Public Safety Employment" NorCal ERC San Ramon Todd Simonson
April 23	"Retaliation" and "12 Steps to Avoiding Liability" Southern CA Community College Districts (CCDs) ERC San Diego Pilar Morin and Judith Islas
April 27	"Handling Grievances" and "Labor and Employment Relations Issues During Lean Economic Times" Mendocino County ERC Ukiah Jack Hughes
April 28	"Managing Leave Laws" and "The Discipline Process" North State ERC Red Bluff Morin I. Jacob

April 28	"Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce" and "Employees and Driving" Los Angeles County Human Resources Consortium Alhambra Mark Meyerhoff
April 30	"Advanced Investigations of Harassment and Complaints" and "Human Resources Academy II for Community College Districts" Central CA CCDs ERC Fresno Mary Dowell & Shelline Bennett
April 30	"Reductions in Staffing" and "Checking References: The Most Important Part of the Hiring Process" Bay Area CCDs ERC Oakland Alison Neufeld
May 4	"Wage and Hour Issues Affecting Independent Schools" Bay Area Jewish Schools Consortium San Francisco Donna Williamson
May 5	"Legal Issues for Negotiators" and "Finding the Facts: Disciplinary and Harassment Investigations" Gold Country ERC Citrus Heights Jack Hughes
May 6	"Supervisory Skills for the First Line Supervisor/Manager" East Inland Empire ERC Fontana Donna Evans
May 6	"Prevention and Control of Absenteeism and Abuse of Leave" and "Preventing Workplace Harassment, Discrimination and Retaliation" West Inland Empire ERC Diamond Bar Laura Kalty and Camille Townsend
May 12	"Managing Performance Through Evaluation" and "Annual Audit of Your Personnel Rules" Coachella Valley ERC Indian Wells Brian Walter and Lauren Liebes
May 12	"Embracing Diversity" and "Preventing Workplace Harassment, Discrimination and Retaliation" Bay Area ERC Palo Alto Laura Schulkind
May 12	"Employee Due Process Rights and 'Skelly': A Guide to Implementing Employee Discipline" and "12 Steps to Avoiding Liability" Central Valley ERC Kerman Shelline Bennett
May 13	"FLSA: New Developments and Hot Topics" and "Leaves, Leaves and More Leaves" San Diego ERC Chula Vista Peter Brown
May 13	"Preventing Workplace Harassment, Discrimination and Retaliation" Gateway Public ERC Long Beach Donna Evans
May 13	"A Supervisor's Employment Relations Primer" Monterey Bay ERC Morgan Hill Kelly Tuffo
May 13	"Prevention and Control of Absenteeism and Abuse of Leave" Los Angeles County Management Attorneys Consortium Los Angeles Jennifer Hong
May 14	"Advanced Investigations of Harassment Complaints" Southern CA CCDs ERC Torrance Mark Meyerhoff
May 18	"Supervisory Skills for the First Line Supervisor/Manager" North San Diego County ERC San Marcos Laura Kalty
May 19	"Introduction to Public Service" and "Privacy Issues in Our Technological World" San Mateo County ERC San Mateo Jack Hughes
May 20	"Retirement Issues for California's Public Employers" and "Preventing Workplace Harassment, Discrimination and Retaliation" Orange County ERC Cypress Steve Berliner and Frances Rogers
May 20	"Prevention and Control of Absenteeism and Abuse of Leave" and "Annual Audit of Your Personnel Rules" NorCal ERC Pleasant Hill Jack Hughes

May 26	"Handling Grievances" and "Embracing Diversity" Ventura/Santa Barbara ERC Santa Barbara Donna Evans
May 26	"Employee Due Process Rights and 'Skelly': A Guide to Implementing Public Employee Discipline" and "Retirement Issues for California's Public Employers" Sonoma/Marin ERC Rohnert Park Cepideh Roufougar
May 27	"Family and Medical Care Leave Acts" and "The Disability Interactive Process" Humboldt County ERC Fortuna Morin I. Jacob

Customized Training Presentations

April 5,7, 27	"FBOR" City of Vallejo Fire Department Vallejo Todd Simonson
April 7	"Preventing Workplace Harassment, Discrimination and Retaliation" West County Wastewater District Richmond Jack Hughes
April 8	"How to Respond to Employment References" San Diego French American School La Jolla Judith Islas
April 9	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Fresno Shelline Bennett
April 12	"Certificated Evaluation" UC Berkeley Principal Leadership Institute Berkeley Laura Schulkind
April 13	"Exercising Your Management Rights" and "Absenteeism Prevention" County of Sonoma Santa Rosa Jack Hughes
April 16	"Sexual Harassment/Hostile Workplace Training" San Jose/Evergreen Community College District San Jose Laura Schulkind and Kelly Tuffo
April 20	"Train the Trainer: Harassment Prevention" Liebert Cassidy Whitmore Los Angeles Donna Evans
April 21	"Train the Trainer: Harassment Prevention" Liebert Cassidy Whitmore San Francisco Suzanne Solomon
April 21	"The Disability Interactive Process" Monterey County Salinas Jack Hughes
April 23	"Embracing Diversity" USDA Forest Service Willits Jack Hughes
April 26	"Families in Crisis" UC Berkeley Principal Leadership Institute Berkeley Laura Schulkind
April 27	"Ethics in Public Service" and "The Brown Act" Yorba Linda Water District Placentia Donna Evans
April 28	"Collective Bargaining" Labor Relations Information System - LRIS Las Vegas Richard Whitmore
April 28	"Train the Trainer: Harassment Prevention" Liebert Cassidy Whitmore Fresno Shelline Bennett
April 29	"Ethics in Public Service" and "Public Sector Employment Law Update" California Joint Powers Risk Management Authority Santa Rosa Richard Whitmore
April 30	"Ethics in Public Service" County of San Luis Obispo San Luis Obispo Donna Evans
May 1	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Fresno Gage Dungy

May 4	"Discipline: Putting It Into Practice" County of Ventura, Human Services Agency Ventura Donna Evans and Tim Owens
May 6	"Performance Evaluations" El Camino Community College District Torrance Mary Dowell
May 7	"Collective Bargaining Negotiations Training Seminar" The California Collegiate Brain Trust and Liebert Cassidy Whitmore Los Angeles Jean Malone and Mary Dowell
May 12	"12 Steps to Avoiding Liability" and "Managing the Marginal Employee" County of Sonoma Santa Rosa Jack Hughes
May 13	"The Meaning of At-Will, Part-Time and Contract Employment" and "Managing Leave Laws and the Discipline Process" City of Beverly Hills Mark Meyerhoff
May 14	"Preventing Workplace Harassment, Discrimination and Retaliation" County of Sonoma Santa Rosa Jack Hughes
May 17	"FMLA" City of Brentwood Jack Hughes
May 18	"Legal Issues Regarding Hiring" City of Glendale Mark Meyerhoff
May 18	"Labor & Employment Relations Issues During Lean Economic Times" Employment Resource Management Association Novato Jack Hughes
May 21	"FLSA" Soledad Police Department Cepideh Roufougar
May 26	"Supervisory Skills for the First Line Supervisor/Manager" City of San Bernardino Mark Meyerhoff

Speaking Engagements

LCW appreciates the invitation to address professional organizations and associations. To learn how you can have an LCW presentation at your association meeting, contact info@lcwlegal.com.

April 9	"Administering Overlapping Laws: Disability Discrimination, FMLA, Workers Comp, and Disability Retirement" California District Attorneys Association Management & Leadership Conference Sacramento Jack Hughes
April 14	"Understanding Employee Privacy and Confidentiality Issues" California Special Districts Association Education Workshop Sacramento Morin Jacob
April 15	"Public Sector Employment Law Update" County Counsels Association of California (CCAC) Annual Conference Monterey Melanie Poturica
April 15	"Personnel Issues: Hiring, Reference Checks, Personnel Records and Files" Central Valley Public Personnel Management Association Fresno Shelline Bennett
April 15	"Reduction in Employee Benefits" CCAC Annual Conference Monterey Steven Berliner
April 20	"FMLA/CFRA" California Public Employee Relations Seminar Oakland Morin Jacob
April 22	"Common Areas to Avoid Litigation" Southern California Public Management Association (SCPMA) - HR Alhambra Peter Brown

April 22	"Public Sector Employment Law Update" SCPMA - HR Alhambra Richard Whitmore
April 22	"Furloughs and FLSA Overtime Issues" Auditor Controller Association Meeting Sacramento Richard Bolanos
April 23	"Managing Boards and Staff" Special Districts Institute Advanced Studies Workshop Indian Wells Mark Meyerhoff and Laura Kalty
April 23	"Managing the Marginal Employee" California Crime Lab Directors Conference Long Beach Donna Evans
April 24	"Between a Rock and a Hard Place: The Effects of the Financial Meltdown on Labor Relations" Los Angeles County Bar Association Annual Retreat Ojai Bruce Barsook
April 26	"Negotiating in Difficult Times: Is there a light at the end of the tunnel?" National Public Employer Labor Relations Association (NPELRA) New Orleans Donna Williamson
April 27	"Protecting and Regaining Management Rights" NPELRA New Orleans Donna Williamson
April 28	"Labor Relations Game Show" NPELRA New Orleans Melanie Poturica
April 28	"FLSA" NPELRA New Orleans Peter Brown
April 28	"Employment Practices Law Update for Public Agencies" California Sanitation Risk Management Authority Newport Beach Michael Blacher
April 29	"Advanced FLSA" NPELRA New Orleans Peter Brown
April 29	"Model Policy and Procedure Workshop" Community College League of California (CCLC) Annual Trustees Conference Long Beach Mary Dowell
April 29	"Surviving the Gale Force Winds of Federal Leave Laws" International Public Management Association HR Western Region Conference San Diego Debra Bray
May 1	"Contract Negotiations" CCLC Annual Trustees Conference Long Beach Mary Dowell
May 5	"Assessing Options and Alternatives to Retirement Benefits" Association of California Water Agencies (ACWA) Spring Conference Monterey Steven Berliner
May 6	"Social Media" ACWA Spring Conference Monterey Pilar Morin
May 7	"Free Speech in the Public Sector" California State Bar Association Annual Public Sector Conference Sacramento Bruce Barsook
May 7	"POBR/FBOR" California State Bar Association Annual Public Sector Conference Sacramento Richard Kreisler
May 7	"Addressing Substance Abuse for Attorneys" League of California Cities City Attorneys Conference Santa Barbara Cynthia O'Neill
May 13	"The Do's and Don'ts of Ethics for Legal Professionals" CCAC Health and Welfare Conference Monterey Morin Jacob

May 18	"Engaging in the Interactive Process" Human Resource Association of Central California Meeting Fresno Shelline Bennett
May 21	"Labor Negotiations Panel" California Counsel of School Attorneys (CCSA) Spring Workshop Sacramento Bruce Barsook
May 21	"Big Issues: Furloughs, Retiree Benefits, PERS/STRS, FLSA and Working with Boards" CCSA Spring Workshop Sacramento Brian Walter
May 21	"Community Colleges" CCSA Spring Workshop Sacramento Eileen O'Hare Anderson
May 21	"Case Law Update" CCSA Spring Workshop Sacramento Laura Schulkind
May 28	"Interagency Collaboration" Municipal Managers Association of Southern California Annual Conference Santa Barbara Steven Berliner



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