Liebert Cassidy Whitmore's Law Enforcement Update

THE BRIEFING ROOM

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

June 2010

INSIDE THIS ISSUE

Qualified Immunity 1
Fair Labor Standards Act 2
Hiring 3
First Amendment 4
Pregnancy Discrimination 6
Disability Discrimination 6
Race Discrimination 7
Sexual Orientation Discrimination / Retaliation 8
Labor Relations 8
Employee Discipline 11
Retirement 12

DEPARTMENT

Firm Profile 14
New to the Firm 14
Firm Publicaitons 15
Congratulations 15
The Fair Labor Standards Act . . . 16
Mandated Ethics Training 17
Firm Activities 18

THE BRIEFING ROOM

The Briefing Room is published monthly for the benefit of the clients of Liebert Cassidy Whitmore. The information in *The Briefing Room* should not be acted on without professional advice.

©2010 Liebert Cassidy Whitmore

6033 W. Century Blvd., Suite 500
Los Angeles, CA 90045
Tel: (310) 981-2000
Fax: (310) 337-0837

5701 N. West Ave.
Fresno, CA 93711
Tel: (559) 256-7800
Fax: (559) 449-4535

153 Townsend St., Suite 520
San Francisco, CA 94107
Tel: (415) 512-3000
Fax: (415) 856-0306

www.lcwlegal.com

QUALIFIED IMMUNITY

Ninth Circuit Finds That Officer Who Deployed Taser On Suspect Was Entitled To Qualified Immunity Even Though The Use Of Force Was Excessive.

In our January 7, 2010 ***Special Bulletin***, we reported on the *Bryan v. MacPherson* case where the Ninth Circuit Court of Appeals held that the deployment of a taser was an intermediate use of force and the officer who deployed the taser was not entitled to qualified immunity. The Court recently withdrew its prior decision and reissued the opinion with the same findings with respect to the standards for deployment of tasers, but found that the officer was entitled to qualified immunity.

A Coronado police officer stopped Carl Bryan for not wearing his seatbealt. Bryan turned off his engine, hit the steering wheel, yelled expletives to himself and then – without any clear reason – stepped out of his car wearing only his boxer shorts and tennis shoes. Bryan was clearly agitated and began yelling gibberish and hitting his thighs. The officer told Bryan to remain in the car, but Bryan did not hear the command. According to the officer, Bryan took a step toward him. Bryan denied taking any step. The physical evidence suggested that Bryan was not actually facing the officer. Without warning, the officer shot Bryan with his taser from approximately fifteen to twenty-five feet. The electrical current immobilized Bryan and he fell to the ground, fracturing four teeth and suffering facial contusions.

Bryan sued the officer, the Coronado Police Department, its police chief, and the City of Coronado for federal and state causes of action. On summary judgment, the district court granted relief to the City of Coronado and Coronado Police Department, but determined that the officer was not entitled to qualified immunity. The district court held that, because a reasonable jury could find that Bryan did not pose an immediate threat to the officer and the officer knew that the taser would cause pain and possible injury under the circumstances, "it would have been clear to a reasonable officer that shooting Bryan with the taser was unlawful." The Ninth Circuit initially agreed that the officer was not entitled to qualified immunity, but the Court withdrew its prior opinion and issued a new opinion, finding that the officer was entitled to qualified immunity because the case law was not clear at the time that the use of a taser in dart mode constituted an intermediate level of force.

The qualified immunity analysis requires the Court to consider: (1) whether the officer's conduct violated a constitutional right; and (2) if a violation occurred, whether the right was clearly established in light of the specific context of the case. The Court found that the officer here violated Bryan's rights because the use of the taser in dart mode constituted an intermediate level of force, and Bryan did not pose an immediate threat warranting that level of

force. Bryan was obviously unarmed, did not advance upon the officer, and was facing away from the officer at the point that he was shot. In addition, the officer did not provide a warning to Bryan that he would be shot with the taser if he did not comply with the order to remain in his car, despite the feasibility to provide such a warning.

Nevertheless, the Court found that Bryan was entitled to qualified immunity because at the time of the incident it was not clearly established that a taser is an intermediate level of force. Thus, the officer could have made a reasonable mistake of law regarding the constitutionality of the taser use.

Bryan v. MacPherson (9th Cir. 2010) ___ F.3d ______; 2010 WL 2431482.

FAIR LABOR STANDARDS ACT

Department Of Labor Announces New Regulatory And Enforcement Strategy Which May Require Employers To Self-Audit Their Compliance With Wage And Hour Law, Report Findings To Employees And Provide Employees With Overtime Exemption Analyses.

On April 26, the Department of Labor (DOL) released its spring 2010 regulatory agenda outlining its anticipated regulatory and enforcement focus for the upcoming year. The DOL announced a new "departmentwide regulatory and enforcement strategy," entitled "Plan/Prevent/Protect." The "Plan/Prevent/Protect" program is a cross-department initiative that involves the DOL's worker protection agencies – including the Wage and Hour Division (WHD) and the Occupational Safety and Health Administration (OSHA). This initiative is intended to be a fundamental shift from what the DOL termed "catch me if you can" compliance to placing the onus on all employers to assemble plans, create processes, and designate people charged with achieving compliance.

The Wage and Hour Division plans on publishing proposed regulations regarding requirements under the Fair Labor Standards Act in August 2010. The proposed regulations will likely establish a requirement that employers provide workers with basic information about their employment, including how their pay is calculated (which would require a regular rate of pay calculation and analysis). Any employers that seek to exclude workers from the FLSA's coverage would be required to perform a classification analysis and disclose that analysis to the employees, such as overtime exempt employees and independent contractors. The DOL states that these new measures are intended to protect workers through greater transparency by employers. Of course all this will require agencies to invest significant resources in order to comply with such a regulatory scheme.

In a recent DOL web-based "regulatory chat", the Deputy Administrator of the WHD said that the proposed regulation will be sent to the Office of Management and Budget (OMB) for review soon. If employers and other stakeholders are interested in reacting to the proposed rule, the Deputy Administrator suggested they consider approaching OMB during this review and before the proposal is sent out for public comment. Employers can also express their views during the public comment period that follows OMB review.

More information regarding the DOL's 2010 regulatory agenda can be found at: http://www.dol.gov/regulations/2010RegNarrative.htm

Fair Labor Standards Act Amended To Include Lactation Rest Breaks For Mothers.

The President recently signed the Patient Protection and Affordable Care Act into law. The law includes an amendment to the Fair Labor Standards Act which requires employers to provide rest breaks and space for employees who are nursing mothers to express breast milk.

All FLSA-covered employers who employ 50 or more employees are required to comply with the amendment. Employers covered by the FLSA that employ fewer than 50 employees are not required to provide the breaks, "if such requirements would impose an undue hardship

by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business." However, this will likely be a high burden for an employer to satisfy. In addition, the amendment does not specify whether the 50 employees must be full-time, part-time, or employed for a minimum amount of time.

Under the amendment, employers are required to provide employees "reasonable break time" to express breast milk "each time" that an employee has the need to do so. The amendment does not define "reasonable break time." The length and frequency of each employee's lactation breaks could vary based on the needs of each individual employee. The amendment does not require the breaks to be paid. However, FLSA regulations regarding rest breaks state that rest periods running from five to 20 minutes are common and must be counted as hours worked.

Employers must provide mothers a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public.

The law requires employers to provide these breaks for up to one year after a child's birth, which is consistent with the American Academy of Pediatrics' recommendations on breastfeeding.

Notably, this federal law does not preempt a state law providing greater protections, and California state law already requires employers to provide lactation breaks under similar parameters. Accordingly, clients should already be in compliance with the new FLSA amendments.

Under Labor Code sections 1030-1033, every employer is required to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. If possible, these breaks should run concurrently with the state-mandated rest breaks and would consequently be paid. However, if they do not run concurrently with other rest breaks, the breaks are not required to be paid.

As with the FLSA amendment, California law requires employers to provide mothers a room or location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private.

Under state law, an employer is not required to provide these breaks if to do so would seriously disrupt the operations of the employer.

HIRING

The California Commission On Peace Officer Standards And Training Publishes Information Regarding Pre-Offer Personality Testing For Entry-Level Peace Officers.

The California Commission on Peace Officer Standards and Training (POST) has recently considered the advantages of adding personality testing to the regimen of pre-offer tests that should be administered to applicants for entry-level peace officer employment. Scores on pre-employment personality tests — particularly those measuring conscientiousness, emotional stability, agreeableness, and integrity — may aid in the prediction of on-the-job performance. Unlike psychological examinations, properly administered personality tests are not considered medical examinations and may lawfully be administered before extending a conditional offer of employment.

POST has published a resource guide which provides law enforcement agencies with the information necessary to weigh the costs and benefits of adding a personality test to the pre-offer phase of the peace officer hiring process. The guide also provides a summary of the current state of pre-employment personality testing along with practical advice on how to evaluate the individual tests. POST has also released a companion document, the "Pre-Offer Personality Testing in the Selection of Entry-Level California Peace Officers: Technical Report", which provides more detailed technical information on this project and its findings.

POST is also pilot testing an online database of test publisher-provided information on individual personality tests. The database, which will

be available shortly, will provide agencies with background information, test descriptions and uses, and technical details of individual pre-offer personality tests.

A copy of the Resource Guide can be found at:

http://lib.post.ca.gov/Publications/resource_guide.pdf

And a copy of the Technical Report can be found at:

http://lib.post.ca.gov/Publications/technical_report.pdf

FIRST AMENDMENT

Supervisor's Demotion Based On Extramarital Affair With Subordinate Did Not Violate His First Amendment Rights.

Randolph Starling was a rescue captain with the Palm Beach County Fire Rescue Department in Florida. In May 2005, he arranged to have Carolyn Smith, another firefighter, transferred to his fire station as his subordinate. Smith and Starling, who was married but separated from his wife, soon began an intimate relationship.

Ken Fisher, Starling's direct supervisor, used Smith's home for extramarital trysts with another married firefighter. Starling asked Smith to stop letting Fisher use her home. Fisher was upset and threatened Starling with disciplinary action and told him to end his relationship with Smith. When Starling and Smith continued their association, Fisher allegedly began saying offensive things about their relationship.

Fisher issued Starling an employee development form stating that Starling's preoccupation with Smith was causing disruption for the station officer and for the crew, and urged Starling to improve his performance. The form stated that Starling had delivered a package for Smith when he was supposed to be responding to a call, cancelled a training session to spend time with her, and helped her at night with her reports while he was on duty. Herman Brice, the County's Fire Rescue Administrator, subsequently demoted Starling from captain to firefighter/paramedic.

Starling sued Fisher and the County under Section 1983 for violating his First Amendment right to intimate association. The district court granted summary judgment in favor of Fisher and the County. The Eleventh Circuit Court of Appeals affirmed.

The Court found that neither Fisher nor the County violated Starling's constitutional rights because the County's interest in discouraging intimate association between supervisors and subordinates is so critical to the effective functioning of its Fire Department that it outweighed Starling's interest in his relationship with Smith in the workplace.

The mere potential for disruption of the efficiency of a quasi-military agency is enough to justify a burden on a fundamental right to intimate association, but here Starling's relationship was actually damaging operational efficiency. The relationship was impairing internal discipline in Starling's battalion. Starling also afforded Smith special favoritism, which can undermine personal loyalty and confidence in impartial leadership. Moreover, Starling's relationship distracted him from his responsibilities.

Starling v. Board of County Commissioners (11th Cir. 2010) 602 F.3d 1257.

Fire Chief Who Spoke About Staffing Levels While On Duty At Press Conference Was Not Entitled To First Amendment Protection.

Charles Foley is the Chief of the Fire Department in Randolph, Massachusetts. On May 17, 2007, the Department responded to a fire at a residence. Foley arrived at the scene and took command as Chief. Tragically, two children died in the fire. At the scene of the fatal fire, the State Fire Marshal and Foley answered questions from the media at a press conference. Foley was in uniform and fire suppression activities were still ongoing when he spoke.

Foley discussed the details of the fire and commented on what he considered to be inadequate funding and resulting understaffing at the Department. He also said the public needed to pass a pending proposition to override a Massachusetts statute which limits property tax increases by municipalities. The Town later suspended Foley for demonstrating a lack of sound judgment at the press conference.

Foley sued the Town and its elected officials under Section 1983 for First Amendment retaliation. The district court granted summary judgment in favor of the Town. The First Circuit Court of Appeals found in favor of the Town and its Elected Officials.

To be protected by the First Amendment, a public employee's speech must address a matter of public concern, and the employee must be speaking as a private citizen. Foley's speech regarding the budget and effectiveness of the Town's fire department were certainly of public concern. However, the Court found that Foley was speaking in his official capacity as the Fire Chief, and not as a private citizen.

Foley was the Fire Chief and had been in command at the fire scene. When he spoke to the press about the incident, he would naturally be regarded as the public spokesperson of the Department. Indeed, Foley was on duty, in uniform, and speaking alongside the State Fire Marshal, and consequently his speech had official significance.

Foley v. Town of Randolph (1st Cir. 2010) 598 F.3d 1.

Supervisor Who Reported Subordinate's Third Party Complaint Of Discrimination Did Not Engage In Protected Speech.

Florence Huth worked for the New York State Thruway Authority. Dorothy Archer, one of Huth's subordinates, told Huth that certain coworkers were selling bootleg DVDs on Authority premises and that she believed a supervisor was engaging in reverse discrimination. Huth conveyed these concerns to her supervisor during daily meetings with him.

In April 2005, Huth drove an Authority vehicle to an Authority facility in a different city and stopped at several toll plazas along the way. Archer accompanied Huth on this trip. During the stops, Archer solicited and obtained Authority employees' signatures on petitions to nominate Archer for a union office. Huth denies knowing about Archer's solicitation of signatures. The Authority investigated Huth for violating Authority policy prohibiting management personnel, such as Huth, from being involved in union elections or using Authority vehicles in connection with union elections. The Authority ultimately demoted Huth for her misconduct.

After disciplinary proceedings had begun, Huth sued the Authority and various individuals under Section 1983 for First Amendment retaliation. She alleged that the Authority disciplined her in retaliation for reporting Archer's concerns and violated her rights by disciplining her in retaliation for Archer's union-related activities. On a motion for summary judgment, the district court denied the individual defendants qualified immunity. The Second Circuit Court of Appeals reversed.

To overcome the defense of qualified immunity, a plaintiff must show both (1) the violation of a constitutional right and (2) that the constitutional right was clearly established at the time of the alleged violation. The Court found that Huth could not establish a violation of a constitutional right.

To establish a First Amendment retaliation claim, the plaintiff must show that he or she spoke as a private citizen on a matter of public concern. Here the Court found that Huth's speech regarding Archer's concerns was not made as a private citizen, but rather pursuant to Huth's official duties as an employee and supervisor. Similarly, Huth's lawsuit also did not qualify as speech on a matter of public concern. Her original complaint alleged that defendants retaliated against her for specific statements she made to her supervisor and for the union activities of Archer. The lawsuit was personal in nature and generally related to her own situation. She was not trying to debate issues of discrimination, seek relief against systemic misconduct by a public agency, or engage in an overall effort to correct allegedly unlawful practices.

In order to assert the constitutional claims of a third party, the plaintiff must show, among other things, that the third party had a constitutional claim. Here it was undisputed that Archer did not suffer any retaliation for her activities and that her constitutional rights were not violated in any way. Thus, Huth cannot show she suffered a violation of a constitutional right.

Huth v. Haslun (2d Cir. 2010) 598 F.3d 70.

PREGNANCY DISCRIMINATION

California Supreme Court To Decide Whether Mixed-Motive Defense Applies To Fair Employment And Housing Act Claims.

In our **March 2010 *Briefing Room***, we reported on the *Harris v. City of Santa Monica* case involving a former employee who was released from probation based on performance but sued for pregnancy discrimination under the Fair Employment and Housing Act (FEHA).

Harris sued the City alleging that the City terminated her because of her pregnancy. At trial, the City asked the Court to instruct the jury on the City's "mixed-motives" defense. Under the mixed motives defense, even if the employer's action was motivated by both discriminatory and non-discriminatory reasons, the employer is not liable if it can establish that its legitimate reason, standing alone, would have induced it to make the same decision. Although there was substantial evidence of Harris's deficient performance which, standing alone, lawfully permitted the City to discharge her, the trial court refused to issue the mixed motives jury instruction, and the jury returned a verdict in favor of Harris. The California Court of Appeal reversed the trial court, set aside the jury verdict, and remanded the case for a new trial. On April 22, the California Supreme Court agreed to review the case to decide whether the mixed-motive defense applies to employment discrimination cases under FEHA.

We will update you on additional developments.

Harris v. City of Santa Monica (2010) 106 Cal.Rptr.3d 6, cert. granted Apr. 22, 2010, ___ Cal.4th ___ [108 Cal.Rptr.3d 555] (No. S181004).

DISABILITY DISCRIMINATION

Disabled Employee Not Entitled To Relief Where She Rejects Employer's Reasonable Accommodation And Insists On A Position No Longer Available.

Jeanne Gratzl suffers from incontinence and must get to a restroom within minutes of feeling an urge to urinate. She worked for the Office of Chief Judges of the 12th, 18th, 19th, and 22nd Judicial Circuits in Illinois as an electronic court reporter specialist working exclusively in the control room of the DuPage County courthouse. The job was ideal for her and her responsibilities were so compatible with her medical condition that her supervisors were not aware of it for five years.

In 2006, the Chief Judge eliminated her specialist position and required all court reporters to rotate through live courtrooms as well as the control room. Believing that she was unable to perform in-court reporting, Gratzl requested an accommodation which would allow her to work full time in the control room. She stated that she did not believe any accommodation other than maintaining her prior specialist position would accommodate her needs. The court offered to structure her rotation to include only the courtrooms with an adjacent restroom; allowing her to avoid assignment to any courtrooms in which a trial was scheduled; and establishing a "high sign" that she could use to signal to the presiding judge that she needed a break. Gratzl rejected this offer. The court subsequently terminated Gratzl's employment.

Gratzl sued the Office of the Chief Judges under the Americans with Disabilities Act (ADA) and the Rehabilitation Act for failing to accommodate her. The district court concluded that Gratzl had not established that she was disabled and granted the employer summary judgment. The Seventh Circuit Court of Appeals affirmed.

To assert a disability discrimination claim, the employee must show that she is a qualified individual with a disability; specifically, that she can perform the essential functions of the job, with or without reasonable accommodation.

Gratzl argued that in-court reporting was not a necessary qualification for the job, but it is indisputable that with the 2006 elimination of specialist positions, in-court reporting became a necessary function. Gratzl had to show that she was qualified for the official court reporter position, and not the specialist position for which she was hired in 2001. An employer is not required to create a new job or strip a current job of its principal duties to accommodate a disabled employee. The employer also does not have any duty to reassign an employee to a permanent light duty position.

The only accommodation Gratzl suggested – permanent assignment to the control room – was not a reasonable accommodation and therefore not required by the ADA. The employer's offer of accommodation fulfilled its obligation to offer reasonable accommodation to Gratzl.

Gratzl v. Office of the Chief Judges of the 12th, 18th, 19th and 22nd Judicial Circuits (7th Cir. 2010) 601 F.3d 674.

RACE DISCRIMINATION

Chief Who Declined To Promote Firefighters Based On Subjective Reasons, Such As Negative Attitudes And Resistance To Change, Did Not Engage In Race Discrimination.

Jason Bell was the Fire Chief for the City of Harvey, Illinois. He decided to hire three Assistant Chiefs and one Deputy Chief, and posted a sign-up sheet for interested firefighters. Three of the nine individuals who signed up to be interviewed were African-American, the other six were white.

Chief Bell stated that he was looking for candidates who exhibited competence, loyalty, dedication and confidence. Unacceptable traits included selfishness, complaining, dishonesty and undermining authority. After completing the interviews, the four highest scores belonged to the three African-American applicants and Richard Climpson. The three African-American candidates ultimately received promotions. Climpson declined the promotion.

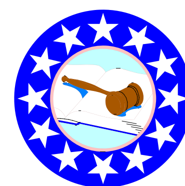
Rich Stockwell had the next highest score, but the Chief did not offer him the position because Stockwell had indicated he would be retiring soon and the Chief did not want to fill the positions with individuals who were using the promotion as a stepping stone to retirement. The Chief offered the position to the next highest scoring candidate, but he declined the position. The Chief then gave the position to Jeff Cook, who is white, even though he never applied for the position. The Chief thought Cook was very knowledgeable and would put the Department's interests before his own.

Four of the white applicants who were denied promotion sued the City for race discrimination in violation of Title VII. The district court granted summary judgment in favor of the City. The Seventh Circuit Court of Appeals affirmed.

The Court found that, even if the plaintiffs could establish a *prima facie* case, they could not show that the City's articulated legitimate, nondiscriminatory reason for its decision was pretext for discrimination. The plaintiff must show that the employer's reason is not credible or is factually baseless. Notably, subjective evaluations of each candidate are consistent with Title VII.

The Chief provided specific reasons as to why he believed the non-selected applicants were not good candidates for the management positions. Specifically, they exhibited negative attitudes and behavior that suggested they would undermine management. The Chief found them to be resistant to change. The Chief also considered one applicant to be dishonest and untrustworthy because when he had competed for the Chief position he had made false statements about Chief Bell's experience. Because the plaintiffs were unable to show that the City's stated reasons were pretextual, the City was entitled to summary judgment.

Stockwell v. City of Harvey (7th Cir. 2010) 597 F.3d 895.



SEXUAL ORIENTATION DISCRIMINATION/ RETALIATION

Court Grants Summary Judgment On Claims For Sexual Orientation Harassment, Discrimination, And Retaliation.

In an action asserting claims of sexual orientation harassment, sexual orientation discrimination, and retaliation against a city, handled by **Geoff Sheldon** and **Jeff Stockley** of our Los Angeles office, the Superior Court recently granted summary judgment in favor of the city on all of the employee's causes of action.

The Plaintiff worked as a Fire Captain for the city. He applied for a promotion to Battalion Chief but another candidate was chosen. The Plaintiff asserted that the Fire Chief, who made the ultimate decision on the promotion, first found out that the Plaintiff was homosexual just prior to the promotional process and began treating him more harshly and dismissively upon learning of his homosexuality. The Plaintiff asserted he was the Fire Chief's "golden boy" prior to the Chief learning that he was homosexual and that their relationship rapidly and negatively changed after the Fire Chief learned of his sexual orientation. The Plaintiff also alleged various other acts of harassment and/or retaliation, such as the failure to appoint him to certain committees and unduly harsh criticism of his work performance.

The Court determined the city offered sufficient evidence of legitimate, business reasons for the promotional decision and that Plaintiff could not raise convincing evidence that those reasons were pretext for discrimination. The Fire Chief had stated that he picked the other candidate due to his work ethic, experience, and scores from an independent examination board which scored the Plaintiff lower than the candidate chosen. The Court further found that the Plaintiff was unable to establish that any other actions were taken against him due to his sexual orientation or complaints about sexual orientation.

LABOR RELATIONS

Providing Dental Benefits At A Lower Cost To Non-Union Members In The Unit May Be A Basis For An Interference Claim, But Not A Discrimination Claim Because The Union Members' Benefits Were Not Reduced.

The State of California Department of Personnel Administration (DPA) had a memorandum of understanding with the correctional peace officers' union which provided that the Union Benefit Trust Fund would provide certain benefits to all unit employees, including dental and vision benefits. Under the MOU, the employee would pay $41.80 per month for the employee plus two dependants to provide the dental benefit through the Benefit Trust Fund.

The Benefit Trust Fund administrator subsequently advised the State that it would no longer provide dental and vision benefits for non-Union members (agency fee payers), and it was the DPA's responsibility to arrange for these benefits to be provided to the impacted employees through another source. The State immediately advised the non-Union members that they should immediately enroll in the State-sponsored dental plan. As a result, while the employee's contribution toward a Union member's dental benefit remained at $41.80 per month, the non-Union employee's contribution for the state sponsored plan changed to $30.94 per month for the employee plus two dependents. Under the State-sponsored dental plan, non-Union members paid less for a comparable dental benefit than Union members paid. The DPA did not offer the lower cost dental plan to Union members.

The Union filed an unfair practice charge with PERB against the State alleging interference and discrimination in violation of the Ralph C. Dills Act, a labor relations statute similar but not identical to the Meyers Milias Brown Act. The Board agent dismissed the charge. On appeal, the Board affirmed in part and reversed in part.

To establish a *prima facie* case of interference under the Dills Act, a charging party must

establish that the employer's conduct tends to or does result in some harm to the employee rights granted under the statute.

The Union argued that the State provided enhanced dental benefits to non-Union members by those employees paying less under the State-sponsored dental plan than the Union dental plan. But there was no evidence that there was any actual harm to the rights of the Union members. No Union member opted to resign his or her Union membership in order to obtain dental benefits at a reduced cost, nor did any non-Union employees decline membership because of the benefit cost. On the other hand, the fact that the lower cost dental benefit was offered to non-Union members, but not Union members, tends to result in at least slight harm to employees who choose to exercise the right to join a Union. Thus, the charge states a *prima facie* case of interference.

To demonstrate that an employer discriminated against an employee in violation of the Dills Act, the charging party must show, among other things, that the employer took adverse action against the employee. Here there was no discipline imposed or change in the Union members' terms and conditions of employment. They continued to receive the same dental benefits at the same employee contribution rate. Accordingly, there was no impact on the employee's employment to serve as the basis for a discrimination claim.

California Correctional Peace Officers' Ass'n v. State of California (Department of Personnel Administration) (2010) PERB Dec. No. 2106S [34 PERC ¶ 79].

After Reaching Impasse And Making A Last Best Final Offer, Employer Was Not Required To Re-Open Negotiations When Union Cited "Changed Circumstances" But Failed To Show A Willingness To Make Concessions.

The State of California Department of Personnel Administration (DPA) and the Union representing correctional officers were bargaining over a successor memorandum of understanding. After 18 months of unsuccessful negotiations, the parties reached impasse. The DPA implemented its last, best, and final offer (LBFO) for a three year agreement. The LBFO included certain pay and benefit increases which required Legislature approval.

The Union filed an unfair practice charge with the Public Employment Relations Board. After the issuance of a PERB complaint in December 2007, the State withdrew implementation of the second and third year of the LBFO. The Union then sent the DPA a letter demanding further negotiations. The letter cited to PERB precedent under the Ralph C. Dills Act to the effect that implementation of a last, best, and final offer does not relieve the parties of the obligation to bargain in good faith and reach an agreement on a memorandum of understanding if circumstances change. The Union considered the issuance of the PERB complaint to be a change in circumstances under the Act. In January 2008, the California Department of Corrections and Rehabilitation issued a press release announcing an agency budget cut of ten percent due to insufficient revenues.

The Union sent the DPA a letter citing the issuance of the PERB complaint, DPA's withdrawal of implementation of the second and third year of the LBFO and the announced budget crisis as changed circumstances requiring additional bargaining. The DPA denied the request to bargain contending that there had been no change in circumstances that would revive the obligation to bargain.

The Union filed another unfair practice charge with PERB, alleging that the DPA violated the Dills Act by refusing to resume bargaining. The ALJ found in favor of the DPA. The Board adopted the decision.

Once a legitimate impasse is reached in collective bargaining, an employer may implement changes that were contained in its "last, best and final offer." However, an impasse does not terminate an employer's duty to bargain. Rather, the obligation is suspended only until changed circumstances indicate that an attempt to reach agreement is no longer futile. The party asserting that the impasse has been broken must show that future bargaining might produce positive results.

The Board found that the DPA's failure to secure legislative approval of the financial terms in the LBFO, the Department's

announcement of a ten percent spending reduction, and the issuance of a PERB complaint did not lead either party to suggest a concession from its earlier bargaining position – the changed circumstances required to trigger the parties' obligation to bargain.

A request by one party for additional meetings, if unaccompanied by an indication of the areas in which that party foresees possible future concessions, is insufficient to defeat impasse where the other party has clearly announced that its position is final. Nothing in the Union's letters demanding a return to bargaining demonstrated the Union's willingness to make concessions or compromise.

California Correctional Peace Officers Association v. State of California (Department of Personnel Administration) (2010) PERB Dec. No. 2102S [34 ¶ PERC 62].

Note:

While the PERB reached this decision under the Dills Act covering state employees, its rationale would presumably apply to the other public sector bargaining laws. The Meyers-Milias-Brown Act, Section 3505.4 entitled "Imposition of Final Offer" would not be expected to cause a different result.

However, the Union has appealed the case to the Court of Appeal, so this PERB decision is not yet deemed final. We will keep you posted.

City Defeats Union's Attempt To Block Furloughs.

In a matter handled by **Shelline Bennett** and **Frances Rogers** of our Fresno Office, a superior court ruled in favor of a city, denying a firefighters union's application for a temporary restraining order to block the city's implementation of work furloughs.

The city decided to institute furloughs for most city employees, including firefighters. The city did not meet and confer with the firefighters union regarding the decision to implement furloughs. Although employees would be furloughed, the effect of the furloughs on the employees' usual wages and salary was to be spread out over the course of three years. On the eve of the first furlough day, the union filed a petition for writ of mandate and an application for a temporary restraining order to block the city's implementation of furloughs as to the represented firefighters. The Court ruled in favor of the city and denied the union's application for a temporary restraining order.

The Court held that the union failed to show a likelihood of success on the merits because the city's MOU with the union reserved to management the right to relieve its employees from duty because of lack of work or for other legitimate reasons and to maintain the efficiency of governmental operations. Accordingly, the city did not have an obligation to meet and confer over the decision to implement furloughs. The court further found that the city's interest in unencumbered decision-making in managing its operations outweighed the benefit to employer-employee relations in bargaining over the decision, especially during dire financial circumstances. The union later dropped its petition for writ of mandate.

City Successfully Defeats Police Officer Union's Attempt To Block Shift-Bidding Procedure For Patrol Officers.

In a matter handled by **Richard Kreisler**, **Debra Bray** of our Los Angeles office and **Frances Rogers** of our Fresno office, a superior court ruled in favor of a city in denying a police officers union's petition for writ of mandate to block a shift bidding procedure instituted years ago.

The city had adopted a seniority shift bidding procedure in 1993 for all patrol officers and at the same time, amended its memorandum of understanding (MOU) with the union which specifically stated that the shift bidding procedure was to be that procedure agreed to and implemented by the Police Chief and the union. The 1993 shift bidding procedure was agreed to and implemented by the union and the Police Chief, and underwent a few revisions over the years. In 2008, the City recognized that many officers were not following the traditional 1993 shift bidding procedure and announced that all patrol officers were to follow the 1993 shift bidding procedure at the next shift bidding cycle.

The union argued that the shift bidding procedure was not the 1993 shift bidding procedure, but an informal guideline written in 2006 by the scheduling lieutenant at the time. The Union also argued, in the alternative, that the shift bidding procedure was a written memorandum agreed to by the former police chief and the union in 2001. In either case, the union maintained that the city would be required to meet and confer with the union before requiring patrol officers to follow the 1993 shift bidding procedure because it would be an impermissible change to the terms and conditions of employment. The city attempted to meet and confer with the union, but the union abandoned the meet and confer process, whereupon the city enforced the 1993 shift bidding procedure. The union filed a petition for writ of mandate in superior court to require the city to either meet and confer or otherwise stop the enforcement of the 1993 shift bidding policy. The Court ruled in favor of the city and denied the union's petition for writ of mandate.

The Court held that the union did not meet its burden of proving that the 2006 informal guideline written by the scheduling lieutenant was "agreed to" by the police chief as required by the parties' MOU. The Court also found that the union failed to meet its burden of proof that the 2001 memorandum was "implemented" as required by the parties' MOU. Thus, the default or baseline was the 1993 shift bidding procedure. The court found that the union did not prove that a different shift bidding procedure was established by past practice because no other procedure was clearly enunciated and adhered to by both the city and the union. Accordingly, the city's enforcement of the 1993 shift bidding procedure was not an impermissible change to the terms and conditions of employment, and therefore the city was not required to meet and confer with the union. Moreover, the Court noted that the city announced its intention to enforce the 1993 shift bidding procedure well in advance of the next shift bidding period and allowed the officers who had not previously conformed a grace period. At the time the parties renewed their MOU in late 2009, the union was aware of the city's intention to enforce the 1993 shift bidding procedure at the next shift bidding period. Thus there was no change to a term and condition of employment during the life of the parties' current MOU.

EMPLOYEE DISCIPLINE

Civil Service Commission Upholds Termination Of Police Officer Who Engaged In Sex With Motorist Hours After Stopping Her.

In a case handled by **Scott Tiedemann** and **Lauren Liebes** of our Los Angeles office, a civil service commission upheld the termination of a police officer who had sex with a woman within just hours of conducting an intensive, one and a half hour long criminal investigation of the same woman.

The officer, who had served as a field training officer, was employed for eight years before he was terminated. On March 2, 2007, at 9 p.m., the officer and his partner conducted a traffic stop of a lone female motorist for expired tags. It turned out that she also lacked insurance and was driving on a suspended driver's license.

When contacted, the woman told the officer about some prior arrests, including one involving some hash seed oil. She also told the officer that she was in Narcotics Anonymous because she had previously been arrested for possession of marijuana and drug paraphernalia.

Importantly, the woman also revealed that she had been arrested about four months before by members of the officer's own department while in the company of a known drug dealer and had spent the weekend in jail pending arraignment. On that occasion, she was released from jail because officers lacked sufficient evidence to prosecute her, but the officers had told her that she would be re-arrested unless she called them in 30 days with information about illegal drug activity. The woman never called the police and feared that she remained subject to prosecution in connection with her earlier arrest.

On the night in question, the officers searched the woman's car three separate times, finding a methamphetamine pipe, bullets, and a small, clear baggie with a white residue. They also called the arresting officer from the prior arrest and had him come to the traffic stop, where he threatened her with arrest for not having called with any information.

The woman was very concerned about her car being towed due to the cost and because she needed her car to attend her boyfriend's funeral the next day. Therefore, she proposed a quid pro quo: she would provide the officer with information about a drug dealer in exchange for not having her car towed. The officer agreed and she provided the promised information, although the officer never followed up on it.

Then, in a subsequent discussion while the less senior officer was searching the woman's car for the third time, the senior officer told the woman that he would get off work at midnight and would go to the bar across the street. He told her that she should meet him there. The woman was then issued a citation and permitted to drive away even though she had expired tags, no insurance and no license.

The officer and woman met later that night at the time and place he suggested. The two traveled to a hotel where they engaged in sex in the parking lot.

The officer alleged that the sexual encounter was consensual and that there was no specific rule prohibiting officers from engaging in consensual sex with subjects. However, the civil service commission found that the "misconduct with which Appellant is charged here unquestionably falls into the category of extremely serious acts that justifies summary discharge without the necessity of progressive discipline and without the need for any rule or other prior warning. Such misconduct is so clearly and unmistakably wrong that any employee must necessarily understand without being told that it will lead to dismissal."

Court Upholds Termination Of Police Officer Arrested In Prostitution Sting.

In a case handled by **Scott Tiedemann** and **Connie Almond** of our Los Angeles office, the Superior Court upheld the termination of a police officer's employment based on his solicitation of prostitution. A police department was conducting a prostitution sting operation to arrest potential "johns" in an area well known for illegal prostitution. Undercover female officers posed as prostitutes and would approach potential "johns" who stopped to talk to them. During the sting operation, an off-duty police officer from a different agency pulled up near an undercover officer and motioned her over to his car. He then agreed to pay her money for oral sex. The undercover officer directed the police officer to leave the parking lot and meet her at the end of the street. After the police officer drove to the end of the street, he was arrested for solicitation of prostitution.

The police officer was terminated for his conduct. After an appeal hearing conducted by a hearing officer, the city manager found that termination was the appropriate discipline. Subsequently, the former officer filed a petition for writ of mandate to overturn his termination, but the Superior Court denied the petition.

The Superior Court found that the city manager did not abuse his discretion in upholding the termination as there was no dispute that the officer agreed to engage in the sex act - a criminal offense. Although the former officer alleged that he had changed his mind before he was arrested, the Court found that the former officer had already engaged in gross misconduct by soliciting prostitution and that termination of his employment was warranted.

RETIREMENT

County Deputy Coroners Do Not Qualify As Local Safety Members For Purposes Of PERS Retirement Status.

The Riverside Sheriff's Association requested that the Public Employment Retirement System (PERS) reclassify its deputy coroners as local safety members, rather than miscellaneous employees. Under Government Code section 20436(a), a local safety member includes a "county peace officer," except one whose functions do not clearly come within the scope of active law enforcement service even though the employee is subject to occasional call, or is occasionally called upon to perform duties within the scope of active law enforcement service.

The County's deputy coroners visit scenes of unusual deaths, examine and remove the body and determine the cause of death. Some of the cases are criminal, some are not. They wear

uniforms that are indistinguishable from deputy sheriffs and carry a handgun, baton, pepper spray, and a safety vest. They are occasionally exposed to hazardous and emotionally charged situations because death scenes may be in dangerous locations and notifying the next of kin sometimes exposes them to danger. There is also an implied expectation that deputy coroners will back up deputy sheriffs if necessary to help clear residences, engage in crowd control or make arrests.

The PERS staff refused the request on the ground that the duties of deputy coroners did not clearly come within the scope of active law enforcement. The union appealed the decision and, after an evidentiary hearing, the administrative law judge denied the union's application to reclassify the deputy coroners. The PERS Board adopted the ALJ's decision as its own. The union filed a petition for writ of mandate, which the superior court denied. And the California Court of Appeal affirmed.

The Court found that deputy coroners do not qualify for safety member status because their *principal* duties do not *clearly* fall within the scope of active law enforcement, as required by the statute. The deputy coroners' primary duty is to investigate causes of death in unusual (both criminal and noncriminal) cases. Their normal job duties do not include chasing or apprehending criminals or otherwise engaging in active crime suppression, even though they may, in unusual situations, provide logistical support to those law enforcement officers who are "on the firing line." Moreover, the statute itself expressly excludes sheriff employees who are only "occasionally" called upon to engage in active law enforcement service.

Riverside Sheriff's Ass'n v. Board of Administration of the California Public Employees' Retirement System (2010) 184 Cal.App.4th 1 [108 Cal.Rptr.3d 752].

§

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.

FIRM PROFILE
T. Oliver Yee
Associate

T. Oliver Yee, of our Los Angeles office, provides representation and legal counsel to Liebert Cassidy Whitmore's city, county, special district, public safety, school and community college district, and independent school clients.

His practice involves representing and advising clients on a variety of labor and employment topics including the Fair Labor Standards Act, the Family Medical and Leave Act, laws and regulations of public employee retirement plans, disciplinary actions, unfair labor practices, and grievances.

Oliver has successfully represented clients in litigation matters in both state and federal court from inception through discovery, pre-trial proceedings and settlement or trial. In addition, Oliver develops and updates personnel rules and policies, and advises clients on collective bargaining agreement interpretation.

Oliver earned his Juris Doctorate and Masters in East Asian Studies from Washington University in St. Louis. Oliver also attended Washington University for his Bachelors Degree.

While studying for his Juris Doctorate, Oliver authored two published articles for the Washington University Global Studies Law Review where he was also the Associate Editor for two years.

When not practicing law, Oliver enjoys playing tennis and is an avid Chicago sports fan.

New to the Firm

Liebert Cassidy Whitmore Welcomes Two New Associates in our San Francisco Office

Matthew Nakano, an associate, is experienced in representing local agencies in such areas as employment discrimination, harassment, retaliation, terminations and discipline, and constitutional issues. He advises clients regarding matters involving the Brown Act and the Public Records Act, and represents them in proceedings before the PERB, the DFEH and the EEOC. Matthew can be contacted at (415) 512-3027 or emailed at mnakano@lcwlegal.com.

Randall (Randy) Parent, an associate, brings his experience as a public school teacher and district administrator, as well as his 15 years of experience as a transactional and litigation attorney, to his representation of LCW clients. Prior to joining LCW, Randy most recently worked for a major construction firm in the private sector, but was eager to return to serving public entities. Randy can be contacted at (415) 512-3086 or emailed at rparent@lcwlegal.com.

Firm Publications

Brianne Marriott of our Fresno office authored the article, "Judicial Review of Employment Arbitration Decisions" which appeared in the May 17, 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 “Arbitration”.

Frances Rogers of our Fresno office authored the article, "Employer to Be Tried on FMLA Claims," which appeared in the June 3, 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 “FMLA.”

Mark Meyerhoff and **Camille Townsend** of our Los Angeles office co-authored the article, "Bargaining During Lean Economic Times: The Duty to Meet and Confer," which appeared in the Spring 2010 issue of The Public Law Journal. The complete article can be read online at http://www2.lcwlegal.com/newspublications/ newsandpubsearch.asp and search for the keyword “Bargaining.”

Todd Simonson of our San Francisco office authored the article, "Sun, Surf, and Tasers?," which appeared in the Spring 2010 issue of The Police Chief Magazine. The complete article can be read online at http://www2.lcwlegal.com/newspublications/ newsandpubsearch.asp and search for the keyword “Tasers.”

Congratulations... **Angela (Angie) Work** and her husband Brian welcomed the arrival of their son, Cooper Brian Work on May 11, 2009. Angie is an Administrative Assistant in the Fresno office. We wish them much joy and happiness.

Congratulations to... **Grace Chan and Wesley Chua** on their recent wedding. Grace is an associate in the San Francisco office. We we wish them a lifetime of happiness together.

Fair Labor Standards Act

Is Your Department in Compliance?

- Is your department engaged in best practices for compliance with the Fair Labor Standards Act (FLSA)?
- Do you know which employees are exempt from overtime (and what it means to be exempt)?
- Do you know the legal requirements and best practices for timekeeping?
- Do you know how to properly compensate employees for supervising student trips and attendance at conferences?

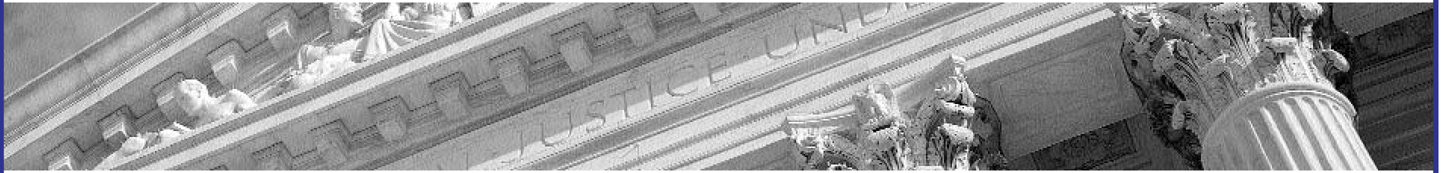
The application of FLSA to the unique public safety environment can be challenging and frustrating.

Liebert Cassidy Whitmore can help you navigate the complexities of this ever-changing area of the law:

- **Audits** of your current policies and practices – audits allow you to rectify any errors that may be occurring before a claim is filed
- **Training** – understanding the requirements and best practices is the first step in compliance
- **Guides** – LCW has a reference book specifically addressing the FLSA

For more information on this topic or our services, please contact any of our offices.

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.

MANAGEMENT TRAINING WORKSHOPS

Firm *Activities*

Consortium Workshop Training

June 3 **"Privacy Issues in the Workplace"**
Gateway Public ERC | Santa Fe Springs | Pilar Morin

June 4 **"Disability Discrimination, Family and Medical Care Leave Acts, Workers' Compensation and Disability Retirement: Administering Overlapping Laws"**
Central Coast Personnel Council | Santa Barbara | Peter Brown and Doug Bray

June 16 **"Managing Leave Laws and the Discipline Process"**
Orange County ERC | Anaheim | Peter Brown

Customized Training Presentations

June 1, 9, 24 **"Preventing Workplace Harassment, Discrimination and Retaliation and Violence in the Workplace"**
City of El Segundo | Scott Tiedemann

June 3, 14, 29 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Monrovia | Donna Evans

June 8, 9 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Inglewood | Laura Kalty

June 9 **"Guide for Supervisors on Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fontana | Jennifer Hong

June 9 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Torrance | Donna Evans

June 10, 11 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Town of Truckee | Jack Hughes

June 10 **"Disability Discrimination"**
Monjaras & Wismeyer Group | Oxnard | Peter Brown

June 11 **"Freedom of Speech and Right to Privacy"**
Labor Relation Information System - LRIS | Las Vegas | Mark Meyerhoff

June 15 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fresno | Gage Dungy

June 16 **"Handling Grievances"** and **"Preventing Discrimination"**
County of Sonoma | Santa Rosa | Jack Hughes

June 22 **"A Supervisor's Employment Relations Primer"**
Dublin San Ramon Services District | Dublin | Jack Hughes

June 28 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Chico | Jack Hughes

July 12 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fresno | Gage Dungy

July 15 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Glendale | Jennifer Hong

July 16 **"Freedom of Speech and Right to Privacy for Firefighters"**
Labor Relation Information System - LRIS | Las Vegas | Mark Meyerhoff

July 21 **"Finding the Facts: Disciplinary and Harassment Investigations"**
Yuba Community College District | Marysville | Laura Schulkind & Eileen Anderson O'Hare

July 22 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Half Moon Bay | Morin Jacob

July 22 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Chabot Las Positas Community College District | Pleasanton | Jack Hughes

July 27, 29 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
National Brain Tumor Society | San Francisco | Morin Jacob

July 29 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Chico | Jack Hughes

July 30 **"Ethics in Public Service"**
County of San Luis Obispo | San Luis Obispo | Donna Evans

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.

June 4 **"Team Building Workshop"**
City of Glendora | Palm Springs | Richard Kreisler

June 10 **"Progressive Discipline and Skelly Hearings"**
Cooperative Organization for the Development of Employee Selection Procedures | Webinar | Laura Schulkind

June 11 **"Hiring and Keeping Great Employees"**
Special Districts Association | San Diego | Judith Islas

June 11 **"*Tucker v. Grossmont Unified School District*"**
Equal Employment Equity & Diversity Consortium Year End Luncheon | Huntington Beach | Peter Brown

June 16 **"12 Steps to Avoiding Liability"**
California Special Districts Association (CSDA) Education Workshop | Ontario | Laura Kalty

June 16 **"Negotiations and Employment Trends"**
San Gabriel City Managers Conference | San Gabriel | Richard Kreisler

June 16 **"Trial and Deposition Testimony"**
Independent Cities Risk Management Authority Meeting | Downey | Melanie Poturica and Mark Meyerhoff

June 18 **"Social Media and Harassment in the Workplace"**
Riverside County Bar Association Meeting | Riverside | Michael Blacher

June 23 **"The Foundation of Labor Relations"**
Public Employer Labor Relations Association of California (PELRAC) - Academy I | San Diego | Donna Williamson

June 23 **"Understanding the Brown Act and Your Responsibilities"**
CSDA | Goleta | Mark Meyerhoff

June 30 **"Common Labor Relations Mistakes/Due Process"**
PELRAC | Clovis | Gage Dungy

June 30 **"Employment Litigation Update"** and **"The Top 5 Things You Need To Know About Being An Effective Negotiator During These Challenging Times**
PELRAC | Clovis | Shelline Bennett

July 28 **"What Can Be Done About Reducing Pension Costs and Retirement Benefits"**
Northern California County Counsels Association Meeting | Mt. Shasta | Cepideh Roufougar

LIEBERT CASSIDY WHITMORE

6033 West Century Blvd., Suite 500
Los Angeles, CA 90045

PRSRT STD
U.S. POSTAGE
PAID
LOS ANGELES CA
PERMIT #33068

Copyright ©2010, LIEBERT CASSIDY WHITMORE
Requests for permission to reproduce all or part of this publication should be addressed to Cynthia Weldon, Director of Training and Marketing at (310) 981-2000.

The Briefing Room is published monthly for the benefit of the clients of Liebert Cassidy Whitmore. The information in *The Briefing Room* should not be acted on without professional advice. To contact us, please call (310) 981-2000, (559) 256-7800 or (415) 512-3000 or e-mail info@lcwlegal.com.