

CLIENT UPDATE

NEWS AND DEVELOPMENTS IN EMPLOYMENT LAW AND LABOR RELATIONS FOR CALIFORNIA PUBLIC AGENCIES

January 2010

■ SETTLEMENT AGREEMENTS/PUBLIC MEETING LAW

Statutory Maximum Cash Settlement For Termination Of Employment Contract Includes Potential Non-Contractual Claims And Board's Closed Session Mediation With Potential Litigant And Mediator Violated The Brown Act.

A college president's four year employment contract with a community college district provided for an annual salary of approximately of \$227,200 from July 1, 2006 through June 20, 2010. In 2006, the college president initiated an investigation of potential fraud within the College's Horticulture Department. In early 2007, there was public criticism of the college president's role in the investigation. The Board of Trustees' president issued a letter indicating the Board's support for the college president. However, three trustees issued a "minority response" criticizing the Board's responses to various concerns about the investigation. The college president wrote a letter to the Board stating that the minority response was a public negative evaluation of her and violated her due process rights. During a public hearing, one of the minority trustees spoke negatively about the college president's letter and berated her.

The college president retained an attorney to evaluate her claims against the individual trustees. The District believed the college president's claims presented a significant threat of litigation. Consequently, the Board met in closed session with the college president, her counsel, and a mediator. The mediator never entered the boardroom, but groups of Board members in numbers less than a quorum left the room to meet with the mediator. The parties reached a settlement which provided that the college president would step down as president and the District would pay her for 18 months as a consultant, plus \$43,500 in attorney fees and \$650,000 in damages.

A taxpayer, filed a petition for writ of mandate alleging that the District violated the Ralph M. Brown Act, made an unconstitutional gift, and wasted public funds by authorizing a settlement in violation of Government Code sections 53260 and 53261. The trial court sustained the demurrer to the Brown Act cause of action and granted summary judgment in favor of the defendants on the remaining claims. The California Court of Appeal reversed.

With respect to local agency government officers and employees, Section 53260 allows a maximum cash settlement of no more than 18 months of pay and specified benefits upon termination of an employment contract. Section 53261 states that a cash settlement shall not include any other noncash items except health benefits. The District argued that the payment limitations are limited to settlements in exchange for an employee's waiver of contract rights, and not to the settlement of tort claims. The Court disagreed, and held that Section 53260's statutory payment limitations apply to

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CLIENT UPDATE

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any "settlement" a public employee may receive under his or her contract in the event that contract is severed or terminated before the end of the contract term. Consequently, the maximum cash settlement applies regardless of the underlying reasons for termination or the employee's legal claims that he or she may possess at the time of termination.

The Brown Act generally requires legislative bodies to hold meetings in public. There is an exception for meetings with legal counsel regarding pending litigation which allows a legislative body to hold a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation. However, here the Board's negotiations with an adverse party and mediation with a private mediator exceeds the scope of activity allowed in a closed session. While the discussions with the mediator were outside the closed session conference room, they constituted serial meetings in violation of the Brown Act. The Brown Act exception for meetings regarding pending litigation only applies to the legislative body's meetings with its own legal counsel.

Page v. MiraCosta Community College District (2009) ___ Cal.App.4th ___ [2009 WL 4021535].

■ PRIVACY

U.S. Supreme Court To Consider Employee's Privacy Rights Over Text Messages On Employer-Provided Pager.

In our June 23, 2008 *Special Bulletin*, we reported on the Ninth Circuit Court of Appeals' ruling in *Quon v. Arch Wireless, Inc.* The City of Ontario Police Department had issued police personnel, including Sergeant Quon, alphanumeric text-messaging pagers. The City later obtained transcripts of the text messages and found that Sergeant Quon had sent and received personal and sexually explicit messages on his pager.

Sergeant Quon, his wife, and other employees filed a complaint against ArchWireless alleging violation of the federal Stored Communication Act, and against the City and the Police Chief for violation of their right to be free from unreasonable searches and seizures pursuant to the Fourth Amendment to the United States Constitution, and violation of their privacy rights under the California Constitution. The district court denied the plaintiffs' summary judgment in full, and granted in part and denied in part the City's summary judgment motion.

The plaintiffs appealed the trial court's decision. On appeal, the Ninth Circuit held that the search of the text messages violated the employees' Fourth Amendment and privacy rights because they had a reasonable expectation of privacy in the content of the text messages, and because the search was unreasonable in scope.

On December 14, the U.S. Supreme Court agreed to review the case to determine: 1) Whether a SWAT team member has a reasonable expectation of privacy in text messages transmitted on his SWAT pager, where the police department has an official no-privacy policy but a non-policymaking lieutenant announced an informal policy of allowing some personal use of the pagers; and (2) Whether individuals who send text messages to a SWAT team member's SWAT pager have a reasonable expectation that their messages will be free from review by the recipient's government employer.

City of Ontario v. Quon (9th Cir. 2008) 529 F.3d 892, cert. granted Dec. 14, 2009, ___ U.S. ___ [2009 WL 1146443] (No. 08-1332).

■ ATTORNEY-CLIENT PRIVILEGE

A Client's Privilege Not To Disclose Communications Had With The Client's Attorney Is Absolute.

The Costco Wholesale Corporation sought advice from its outside counsel regarding its employee classification system. Counsel responded with a 22 page opinion letter.

Some time later, Costco was sued for alleged wage and hour violations. The plaintiffs in that action asked that they be provided with the opinion letter. Costco refused on the ground of attorney-client privilege.

The trial court ruled that the opinion letter could be disclosed with its legal opinions redacted. The court directed a referee to conduct an *in camera* review of the letter, and to redact those portions the referee believed to be privileged.

The court of appeal affirmed the trial court, concluding that Costco had not shown that the disclosure of the un-redacted portions of the letter would cause it any harm.

The California Supreme Court reversed the court of

appeal. The Supreme Court held that the contents of the letter were irrelevant; that the harm to be avoided was any compromise to the confidentiality of the attorney-client relationship itself. Thus the entire communication is privileged.

Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 [101 Cal.Rptr.3d 758].

■ SEXUAL ORIENTATION DISCRIMINATION

Ninth Circuit Awards Federal Employees Back Pay Where Employees' Same Sex Spouses Were Denied Health Benefits Notwithstanding The Prohibition Of The Federal Defense Of Marriage Act.

Brad Levenson is a deputy federal public defender and married to someone of the same sex. Karen Golinski is a federal judicial employee and also married to someone of the same sex. The employees married during the brief period when same sex marriages were legal in California. Both employees requested to add their spouses as a family member beneficiary to the Federal Employees Health Benefits Program (FEHBP). However, the Administrative Office of the United States Courts denied the requests on the ground that the federal Defense of Marriage Act (DOMA) prohibits the provision of benefits to same-sex spouses. As the employees are not covered by Title VII as judicial employees, they filed claims challenging the decision through the Ninth Circuit Court of Appeals' Employment Dispute Resolution plan. The Ninth Circuit ordered the Administrative Office to process the requests for spousal health coverage. Thereupon, the Office of Personnel Management (OPM) intervened and prevented the insurance carrier from processing the request forms as ordered by the Court.

In two separate cases, the Ninth Circuit found that the employees were entitled to back pay under the Back Pay Act. The Back Pay Act entitles judicial employees to back pay if: (1) there has been a personnel action; that (2) is unjustified or unwarranted; and (3) results in a withdrawal or reduction of all or part of the employee's pay, allowances, or differentials. Here the employees were improperly denied health benefits simply because of the sex of their spouse and their sexual orientation. In the Golinski case, the Court found that, even as limited by the

DOMA, the FEHBP permits federal employees to provide health insurance coverage to their same-sex spouses. In the Levenson case, the Court held that the denial of health benefits to a same-sex spouse violated the Due Process Clause of the U.S. Constitution because there was no rational basis for the denial of benefits. The Court stated that the denial of same-sex health benefits "is far too attenuated a means of achieving the [DOMA objectives] of 'defending traditional notions of morality' or 'defending and nurturing the institution of traditional, heterosexual marriage.'"

Consequently, the employees were entitled to the amount associated with providing their respective spouses with health, dental, and vision insurance coverage equivalent to those provided under the federal benefits plans. The Court ordered the OPM to rescind its directive prohibiting the employees from enrolling their spouses.

In re Levenson (9th Cir. 2009) 587 F.3d 925; *In re Golinski* (9th Cir. 2009) 587 F.3d 956.

Note:

The current status is that Ninth Circuit's Chief Judge Kozinski ruled on December 22 that the time has run out on the OPM to appeal his November order in favor of Golinski. With the OPM and Judge Kozinski now at impasse, further court proceedings are no doubt in the offing. (Daily Journal, December 24, 2009).

■ RACE DISCRIMINATION

Black Employee Could Be Similarly Situated To White Employees Even Though Procedurally He Fell Under A Different Compensation Category.

William Houston was the Director of Support Services for the Easton Area School District in Pennsylvania. Houston served on Superintendent Joseph Piazza's cabinet (i.e. administrative team) contemporaneously with employees Lousi Ciccarella, Business Manager; Karl Hettel, Director of Personnel; and Roger Wrazien, Director of Elementary Education. Houston was African-American and the Superintendent and other cabinet members were white.

Piazza resigned in 1997 and requested that he be paid for all unused sick days. The Board of Education approved the request. In 1998, Houston

retired and, pursuant to policy, the District paid him 25% of the value of his unused sick days. Ciccarelli, Hettel, and Wrazien all retired within a few months of each other in 1999. Although the general policy was to pay employees 25% of the value of their unused sick days, Superintendent Meck agreed to pay them 100% of their unused sick days.

Pennsylvania state law (Act 93) requires school employers to adopt compensation plans for certain school administrators. Houston and Wrazien were covered by the District's Act 93 compensation plan, but Piazza, Ciccarelli, and Hettel were not.

Houston sued the District for race discrimination in violation of Title VII because of the District's failure to pay him 100% of the value of his unused sick days. The district court excluded evidence of Piazza, Ciccarelli, and Hettel's retirement packages, finding that they were not similarly situated employees because they were not Act 93 employees. At the end of the trial, the court entered judgment in favor of the District. In an unpublished case, the Third Circuit Court of Appeals reversed and remanded.

To make a comparison of the plaintiff's treatment to that of an employee outside the plaintiff's protected class for a discrimination claim, the plaintiff must show that he and the employee are similarly situated in all relevant respects. Whether a factor is relevant for purposes of a similarly situated analysis must be determined by the context of each case.

In determining whether the employees were similarly situated, the district court here only considered whether the employees had Act 93 status. The court did not consider the evidence showing that Act 93 status was not determinative as to the amount of sick time paid to District employees upon retirement. Houston offered evidence demonstrating that the District's Act 93 plan did not specify the percentage of unused sick days that would be paid upon retirement. Moreover the District had a general policy of paying all employees, regardless of Act 93 status, 25% of their unused sick days at retirement.

Superintendent Meck retained the discretion to pay both Act 93 and non-Act 93 employees more than 25% of their unused sick days. Consequently, the employees' Act 93 status was not dispositive as to whether they were similarly situated to Houston. At minimum, Ciccarelli and Hettel could be similarly situated to Houston because they were all long-term employees of the District, held positions of roughly equivalent rank during the same time period, and retired within a year of each other.

Therefore, the district court should have allowed Houston to compare his retirement package to Cicarrelli, Hettel, and Wrazien's packages.

Houston v. Easton Area School District (3d Cir. 2009)
2009 WL 4609756

■ DISABILITY DISCRIMINATION

Police Sergeant Who Applied For And Received A Disability Retirement Could Not Later Claim In His Disability Discrimination Lawsuit That He Was Qualified To Perform Essential Police Functions.

Patrick Butler worked as a police sergeant for the village of Round Lake, Illinois. As a sergeant, he performed regular patrol activities and supervised officers on duty. Butler worked the night shift for the majority years of service with the department. In late 2003, Butler's health began to rapidly deteriorate. He suffered from severe breathing problems, night blindness, and fatigue. He asked to be transferred to the day shift, but the Police Chief denied the request.

By May 2004, Butler could not even walk 50 feet at a time and it hurt simply to breathe. He was diagnosed with a permanent and incurable lung condition, and never returned to work. Butler's physician reported that Butler could return to light duty, but he could not run or fight. The Village's doctor stated that Butler could return to work on light duty but with the permanent restriction of day shifts. The Village refused to reinstate him and Butler applied for a disability pension. During the pension hearing, Butler said his pulmonary condition made it impossible for him to perform his required duties, such as chasing a suspect or wrestling with an unruly one. The Village's doctor also testified that Butler could not wrestle, fight, run, or walk for more than 4 blocks. The pension board found that Butler was qualified as disabled and awarded him benefits.

Butler later sued the Village for disability discrimination in violation of the Americans with Disabilities Act (ADA). To succeed on his claim, Butler would have to show that he could perform the essential functions of his job. The district court granted summary judgment in favor of the Village because Butler was judicially estopped from claim-

ing he could perform essential police functions in light of his testimony before the pension board. The Seventh Circuit Court of Appeals affirmed.

The Court found that Butler could not state he was unable to perform basic police duties in order to secure disability benefits and then claim he was able to perform those duties to support a discrimination claim. Claiming disability benefits and asserting ADA claims are not always mutually exclusive, but the plaintiff must demonstrate a reasonable explanation for how his statements at the pension board hearing are consistent with his ADA claim. Butler could not explain the inconsistency.

Butler argued that the pension board did not consider whether a reasonable accommodation would have allowed him to continue working. However, the Seventh Circuit found this issue irrelevant because no accommodation would have sufficed. Simply switching Butler to the day shift would not have allowed him to run or fight as police work requires.

Butler v. Village of Round Lake Police Department (7th Cir. 2009) 585 F.3d 1020.

As Under The Americans With Disabilities Act, Independent Contractors Can Assert Employment Disability Discrimination Claims Under The Rehabilitation Act.

Dr. Lester Fleming is an anesthesiologist who suffers from sickle cell anemia. He applied for an anesthesiologist position at the Yuma Regional Medical Center. However, Yuma told Fleming that it would not be able to accommodate his operating room and call schedules. Fleming sued Yuma for disability discrimination in violation of the Rehabilitation Act. The district court granted summary judgment in favor of Yuma, finding that independent contractors, such as Fleming, are not protected by the Rehabilitation Act. The Ninth Circuit Court of Appeals reversed.

The Rehabilitation Act allows for individuals subjected to disability discrimination to sue in connection with any program or activity receiving federal financial assistance. The Act provides that it will follow the standards applied under Title I of the Americans with Disabilities Act (ADA) when determining whether an alleged act of employment discrimination violates the Rehabilitation Act. The appellate courts have split regarding whether the Rehabilitation Act incorporates Title I literally or selectively. The Sixth and Eighth Circuit Courts of

Appeals have adopted a literal interpretation and, consequently, have found that the Rehabilitation Act only covers employer-employee relationships. Adopting a selective interpretation, the Tenth Circuit has found that the Act covers all individuals subject to discrimination under any program or activity receiving federal financial assistance who may bring an employment discrimination claim based on the standards found in the ADA.

Here the Ninth Circuit agreed with the Tenth Circuit's selective interpretation of the statute. As such, employment discrimination claims are not limited to employer-employee relationships, and an independent contractor can assert an employment discrimination case under the Rehabilitation Act.

Fleming v. Yuma Regional Medical Center (9th Cir. 2009) 587 F.3d 938.

DISABILITY DISCRIMINATION/HARASSMENT

California Supreme Court Holds That The Same Evidence Can Support Claims for Both Harassment and Discrimination.

Charlene Roby was a customer service liaison for McKesson Corporation. She suffered from panic attacks which restricted her ability to perform her job. The Company had an attendance policy which placed particular emphasis on 24-hour advance notice for all absences, including medical absences. The policy operated to the disadvantage of employees like Roby who suffered from medical conditions that might require several unexpected absences in close succession. Roby's frequent absences created tension between her and her supervisor, Karen Schoener.

Schoener frequently made negative comments in front of other employees about Roby's body odor, even though Schoener knew that Roby's medication was causing the odor. Schoener would call Roby "disgusting" because of the sores and the excessive sweating caused by Roby's medical condition. She openly ostracized Roby in the office, refused to respond to Roby's greetings, and ignored her during staff meetings. She frequently reprimanded Roby in front of co-workers and excluded Roby from office parties. After Roby was absent on numerous occasions, the Company terminated her employment.

Roby sued the Company and Schoener for discrimination and harassment in violation of the Fair Employment and Housing Act (FEHA). The jury found in Roby's favor. The California Court of Appeal found there was insufficient evidence to support the jury's harassment verdict because the evidence had to be allocated either to the discrimination or the harassment claim, but could not support both claims. The California Supreme Court reversed, finding that evidence of a supervisor's personnel management decisions are admissible to prove harassment so long as the decisions were made to convey a harassing message.

The California Supreme Court has previously held that discrimination and harassment are separate and distinct wrongs under FEHA. A discrimination claim must be based on some official action taken by the employer - the exercise of personnel management authority properly delegated by an employer to a supervisory employee. On the other hand, harassment focuses on situations in which the *social environment* of the workplace becomes intolerable because the harassment communicates an offensive message to the harassed employee.

Although discrimination and harassment are separate wrongs, some official employment actions taken in furtherance of a supervisor's managerial role can also have a secondary effect of communicating a hostile message. Schoener was sending Roby a harassing message by shunning her during staff meetings and reprimanding her in front of co-workers. In addition, acts of discrimination can provide evidentiary support for a harassment claim by establishing discriminatory animus. Consequently, discrimination and harassment claims can have overlapping evidence.

Roby v. McKesson Corp. (2009) 47 Cal.4th 686.



■ SEXUAL HARASSMENT/ RETALIATION

Supervisor's Sporadic References To Employee's Attractive Appearance Are Insufficient To Support Harassment Claim; Retaliation Claim Fails Where Decisionmakers Were Unaware of Complaint.

Alicia Haberman worked as a sales representative for Cengage Learning, Inc., a textbook publishing company. In 2005, Eric Bredenberg, the Company's national sales manager, asked Haberman how she could look so pretty so early in the morning. He later told Haberman that a certain school administrator was "pretty hot for being an older woman." In 2006, Haberman's supervisor, Christina Pineda Kinsky, asked Haberman if she was dating Bredenberg because he had said that she was "drop dead gorgeous."

In February 2007, Bredenberg referred to Haberman as a gorgeous strawberry blonde. In March, he called Haberman from his cell phone while they were both parking for a convention, and he said he was coming right up behind her and that it felt pretty good. In March, Haberman began reporting to Rick Reed.

In April 2007, Bredenberg told Haberman that one of the textbook authors had the "hots" for her and asked whether she would ever go out with the author. In May, Bredenberg told Haberman that his grief counselor told him he should not make any changes for one year after the death of his wife, and Bredenberg said he just wanted to have sex without a relationship. He asked Haberman how she knew whether someone was good in bed. Bredenberg asked Haberman if she had any friends who just wanted to have sex.

In June, Reed counseled Haberman about her sales deficiency. In August, the Company president recommended placing Haberman on a performance improvement plan (PIP) because her sales had fallen short of the sales goal for the past two and a half years. As Haberman had a large potential sale pending, Reed decided to give Haberman until the end of September to improve her sales. In early September, Haberman complained to Reed that she was being harassed. By September 30, Haberman's sales were still very low. Consequently, Reed placed her on a PIP. In October, Haberman complained to the human resources department that she was being harassed, but she refused to provide spe-

cific details. The next day, Bredenberg told Haberman that a customer's contractor had the "hots" for her and wanted to date her. Haberman subsequently submitted an expense reimbursement request which included numerous expenses for personal charges. After Haberman removed the personal charges and resubmitted her request, Reed approved the request and Haberman was fully reimbursed.

Haberman sued the Company and Bredenberg for sexual harassment and retaliation in violation of the Fair Employment and Housing Act. The trial court granted summary judgment in favor of the defendants. The California Court of Appeal affirmed.

To establish a hostile work environment claim, an employee must show that the harassing conduct was severe enough or sufficiently pervasive to alter the conditions of employment. The Court found that Bredenberg's conduct was not sufficiently severe or pervasive to create a hostile work environment. Bredenberg made brief and isolated comments to Haberman over a two to three year period. He never propositioned her or even asked her out on a date. He also never threatened her or used explicit language in her presence. Although Bredenberg occasionally commented on her attractive appearance or informed Haberman that someone else had expressed interest in her, the Court found these incidents to be isolated, sporadic, and often trivial.

As for her retaliation claim, Haberman could not show a causal link between any adverse action and her harassment complaint. The Company president had recommended placing her on a PIP in August 2007 before she made her complaint. Although Haberman alleges that she complained to Pineda Kinsky in 2005 and 2006 about Bredenberg's alleged sexual harassment, it was undisputed that Pineda Kinsky never reported any such complaint. Thus, the individuals who made the decision to place Haberman on a PIP were unaware of any complaint before that decision was made.

Haberman v. Cengage Learning, Inc. (2009) ____ Cal.App.4th ____ [2009 WL 4693065].



LABOR RELATIONS

Public Employment Relations Board Lacks Jurisdiction Over Claim That County Violated Its Personnel Rules.

The County of San Bernardino announced it was hiring for a full-time library assistant position. Debra Roeleveld, who was a part-time library assistant with the County, interviewed for the position, but the County hired someone else. Roeleveld's supervisor advised Roeleveld about the hiring decision verbally, rather than in writing. When Roeleveld asked why she was not chosen, the County advised her that it chose a candidate with childhood education experience.

Roeleveld met with a representative from the Union about the hiring process. The representative asked Long for a copy of the rejection letter. When she responded that she did not receive one, the representative said the letter was necessary for the Union to start the grievance process. Roeleveld asked her supervisor for a written rejection letter, but the supervisor said that the County did not send written rejection letters.

Roeleveld filed an unfair practice charge with the Public Employment Relations Board alleging violation of the County's personnel rules and retaliation. The Board agent dismissed the charge because PERB lacks jurisdiction over claims based on alleged personnel rule violations, and Roeleveld's protected conduct occurred after she was not hired for the position. The Board adopted the dismissal.

PERB has jurisdiction over alleged violation of local rules adopted pursuant to the Meyers-Milias-Brown Act (MMBA). Roeleveld argued that the memorandum of understanding between the Union and the County, and the County's personnel rules, were local rules adopted pursuant to the MMBA. However, the MOU contains a grievance process which states that disputes arising under the MOU shall be settled by the Civil Service Commission in accordance with the appeal procedure in the personnel rules. In turn, the personnel rules are not local rules adopted pursuant to the MMBA because the MMBA governs local rules regarding relations between public agency employers and employee unions. And the County's personnel rules address relations between the County and individual employees. Thus, the personnel rules are not covered by the MMBA or PERB.

Roeleveld alleges that the County retaliated against her for union activity by failing to provide her a

copy of a rejection letter, which prevented her from filing a grievance. The personnel rules state that an appeal of any part of an examination must be filed within 30 days "after the date of mailing of examination results." Although the rules imply that written examination results are a prerequisite, the section does not explicitly state such a requirement. Roeleveld did not attempt to appeal the hiring decision. Because the unfair practice charge does not show that the Civil Service Commission would have rejected Roeleveld's appeal absent written examination results, the County's failure to provide her with a rejection letter was not an adverse action.

In addition, even if the County's failure to provide written documentation was an adverse action, there is no evidence of a retaliatory motive. The County refused to provide Roeleveld a rejection letter before and after she sought assistance from the Union. Consequently, Roeleveld could not contend that the timing of the County's conduct evidenced retaliatory motive.

Roeleveld v. City & County of San Bernardino (2009) PERB Dec. No. 2071M [33 PERC ¶176].

Note:

This decision makes clear that personnel or civil service rules are not subject to PERB jurisdiction unless adopted pursuant to the MMBA's negotiating process.

City's Letter To Union Which Included An Escalating Bargaining Proposal And Notice Regarding The City Charter's Impasse Arbitration Procedure Did Not Constitute Bad Faith Bargaining.

In June 2008, the City and County of San Francisco proposed to extend the memorandum of understanding (MOU) with the Union for one year, from July 1, 2009 to June 30, 2010, which meant that wages would not be increased during the one-year extension. The Union agreed in principle with the proposal. On November 19, 2008, the City advised the Union that it wanted to negotiate a successor MOU. The City also made a written bargaining proposal to the Union. Specifically, the City proposed that there would be "no new economic benefits" for a total of 18 months from July 1, 2009 through December 31, 2010. In the letter, the City reminded the Union to select a neutral arbitrator as called for under the City's charter, which sets forth review by an arbitration panel if there is a bargaining impasse. The charter requires the parties to designate their arbitration panel members no later than

January 20, 2009.

The Union filed an unfair practice charge with the Public Employment Relations Board alleging that the City engaged in bad faith bargaining in violation of the Meyers-Milias-Brown Act. The Board agent dismissed the charge for failure to state a *prima facie* case. The Board adopted the agent's dismissal.

A party engages in bad faith bargaining where the party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement. Where there is an accusation of bad faith bargaining, the Board looks at the totality of the accused party's conduct for indicia of bad faith bargaining.

The Union alleged that the City engaged in bad faith bargaining by making a single regressive proposal because the City's second proposal would freeze wages for a longer period of time than the original proposal which extended the existing MOU. However, even if the 18-month wage freeze proposal was a regressive proposal, the Board has held that only one indicator of bad faith bargaining is insufficient to demonstrate unlawful conduct.

The Union also claimed that the City compounded the pressure on the Union by requesting appointment of a neutral arbitrator to the arbitration panel even though the charter did not require the Union to make the designation for two months. But the Board has held that merely informing a union of its obligations under a local city charter is not indicative of surface bargaining.

Stationary Engineers Local 39 v. City & County of San Francisco (2009) PERB Dec. No. 2064M [33 PERC ¶160].

Union Had To Expressly Notify Agency Of Its Refusal To Negotiate Regarding Non-Mandatory Subjects Of Bargaining Before It Could State A Claim Against Agency For Conditional Bargaining.

The California Correctional Peace Officers Association and the State of California (Department of Personnel Administration) were negotiating a successor memorandum of understanding. The negotiations included non-mandatory subjects of bargaining that would require a waiver of the employees' statutory rights, such as the use of sick leave and Fair Labor Standards Act exemptions.

On August 22, 2007, the State issued its last, best, final offer (LBFO), which included these non-mandatory subjects of bargaining.

On August 31, the Union sent the State a letter stating, "Your current proposal has several sections that requires us to agree to waive state law for our members. That is not a legitimate effort towards an agreement." The letter also asked for further clarification regarding the LBFO's sections regarding use of sick leave and FLSA exemptions. In a September 5 letter to the State, the Union excluded the disputed sections and listed the 133 proposals the Union found acceptable from the LBFO. The State later implemented the LBFO.

The Union filed an unfair practice charge with PERB alleging that the State engaged in conditional bargaining in violation of the Dills Act state employee bargaining law. The Board agent dismissed the charge and PERB adopted the dismissal.

Parties may negotiate over the inclusion of non-mandatory subjects of bargaining. But a party may not legally insist upon the acceptance of such proposals if the Union has clearly expressed a refusal to further bargain over them. The Union must put the employer on notice of its opposition to further negotiate regarding a non-mandatory proposal. Here the Union fails to meet this notice requirement because its communications with the State did not put the State on notice that it opposed negotiations on the non-mandatory subjects. The Union expressed its belief that the State's proposals sought a waiver of state law, but did not communicate whether the Union would be willing to consider such proposals. In addition, the Union accepted some, but not all, of the State's proposal and requested clarification on other non-mandatory proposals. The Union's conduct does not communicate opposition to further negotiations and, in fact, could be construed as demonstrating a willingness to continue negotiations over these subjects.

California Correctional Peace Officers Ass'n v. State of California (Department of Personnel Administration) (2009) PERB Dec. No. 2081S [33 PERC ¶ ____].

Note:

A party may, but is not required to negotiate over non-mandatory subjects of bargaining, and may, but is not required to agree to non-mandatory subjects, nor submit them to impasse procedures. But the refusing party must clearly put the other party on notice of its refusal.

Existence of Employer-Employee Relationship Under The Meyers-Milias-Brown Act Is Determined By The Totality Of The Circumstances, And Not The Agency's Intent.

The Ventura County Medical Center (VCMC) oversees the County Hospital and its Ambulatory Care Department. Ambulatory Care provides outpatient primary care services via 11 clinics. Each clinic is operated by a private corporation. The clinics in turn enter into employment agreements with physicians to provide medical services at the clinics. In 2006, the Union representing the clinic physicians filed a petition for recognition with the County. The County refused to process the petition on the ground that the County is not the physicians' employer. The County's local rules specify that unit determinations may be appealed to the Civil Service Commission, but the Commission refused to process the Union's appeal.

The Union filed an unfair practice charge with PERB, alleging that the County violated its own local employer-employee relations rules by refusing to process the Union's appeal to the Civil Service Commission. The administrative law judge found that the County was a joint employer of the physicians and, consequently, covered by the Meyers-Milias-Brown Act (MMBA). PERB adopted the decision.

The MMBA applies to public agencies and their employees. When determining whether certain individuals are employees of an agency, PERB is not bound by the agency's intent or declarations made in contracts between the agency and a third party. Instead, PERB will conduct a joint employer analysis focused on the relationship between the County and the physician employees. Specifically, PERB considers whether the County retains the right to control both what shall be done and how it shall be done.

In this case, the County retained and exercised control in areas such as hiring practices, review of individual employment agreements, salaries, and specialty pay, time, base reduction, discipline, restrictions regarding patient care, and operational policies such as fees and dress code. Because the County retained control over the manner and method in which the clinic physicians performed their work, the County is a joint employer of the physicians. As such, PERB ordered the County to process the Union's recognition petition.

Union of American Physicians & Dentists v. County of Ventura (2009) PERB Dec. No. 2067M [33 PERC 166].

Employer's Rejection Of Probationary Employee Was Based On Poor Job Performance Rather Than Retaliation.

Michael Menaster worked for the State of California Department of Social Services (DSS). He quickly became the subject of numerous employee complaints concerning his behavior, including comments that he was intrusive, loud, gossiped, talked excessively, and made inappropriate and offensive comments to and about co-workers. Menaster also made numerous complaints to his Union representative about his working conditions. DSS placed him on administrative leave while it prepared to reject him from probation.

Menaster filed an unfair practice charge with PERB, alleging that the State retaliated against him. The administrative law judge found that the State did not violate Menaster's rights under the Dills State Bargaining Act and dismissed the complaint. The Board adopted the proposed decision.

To rebut Menaster's *prima facie* case of discrimination, the State provided substantial evidence that DSS placed Menaster on administrative leave because of his performance issues. Specifically, DSS showed the Department's history of counseling him regarding his problems with his co-workers.

An employee's protected activity does not insulate him from adverse actions by the employer. PERB will not review whether a discharge is based on just cause. PERB will only review whether the decision was made for reasons protected by the statutes administered by PERB. Here DSS consistently explained and documented its expectations and concerns with Menaster's performance prior to placing him on leave and making the decision to reject him from probation.

Menaster v. State of California (Department of Social Services) (2009) PERB Dec. No. 2072S [33 PERC ¶177].

LAYOFF HEALTH BENEFITS

COBRA Premium Reduction Extended Through February 2010.

As we reported in our March 2009 *Client Update*, 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. On December 19, the Department of Defense Appropriations Act, 2010 (2010 DOD Act) amended ARRA to extend the COBRA premium reduction.

Under the amendment, individuals who are involuntarily terminated between September 1, 2008 and February 28, 2010 qualify for the subsidy. Moreover, the premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months (instead of 9 months under the original ARRA). The Department of Labor recently published a fact sheet regarding the parameters of the COBRA subsidy

The fact sheet can be found at:
<http://www.dol.gov/ebsa/newsroom/fscobrapremiumreduction.html>

FAMILY AND MEDICAL LEAVE ACT

Employee Warned About Her Negative Job Performance Prior To Her Medical Leave Could Not Establish Claim For Retaliation.

Julie Stephens Long worked for the Teachers' Retirement System of the State of Illinois (TRS). As a payroll clerk, Long's job responsibilities included enrolling members in the electronic fund transfer (EFT) program and entering EFT information into a database. When she initially started with TRS, Long received positive performance evaluations. However, in June 2005, she missed 25% of her scheduled work days. In July 2005, she missed 40% of her scheduled days. In addition, contrary to her supervisor's direction, she failed to train employees from other departments on the EFT process. In late July 2005, Long's supervisor Marshall Branham told Long that he was withdrawing his recommendation that she receive a promotion.

In September 2005, Branham met with Long to discuss several errors Long had made in the EFT system and the negative impact her absenteeism had on her coworkers. Human Resources Director Gina Larkin later met with Branham and Branham's supervisor, Sally Sherman, to discuss Long's performance. Through the meetings, Larkin learned about the numerous errors Long had made and the various complaints that were made about her work. In October, TRS approved Long's request to take

intermittent leave under the Family and Medical Leave Act (FMLA) for her medical condition. Long informed TRS that her earliest absence related to her medical condition was on September 22.

In December and January, Long was absent 14 days that were not FMLA-related. In January 2006, Larkin met with Branham and Sherman again to discuss Long's continuing negative job performance. Larkin later reviewed Long's performance evaluations, TRS member complaints related to her work and the comments from Branham and Sherman. Larkin then met with TRS's executive director Jon Bauman twice regarding Long's job performance. Larkin recommended that Bauman, who had the final decisionmaking authority regarding personnel decisions, terminate Long. In February 2006, after reviewing Long's performance evaluations and discussing member complaints with Branham, Bauman decided to terminate Long.

Long sued TRS for retaliation in violation of the FMLA. The district court granted summary judgment in favor of TRS. The Seventh Circuit Court of Appeals affirmed.

The FMLA prohibits employers from discriminating against employees based on their having taken FMLA leave. To establish a retaliation claim, an employee must show a causal connection between his or her protected activity and an adverse action. Here Long could not demonstrate a causal connection between her FMLA leave and her termination because TRS had warned Long about her performance problems before she requested to take FMLA leave.

Long was also unable to show that TRS had any retaliatory animus because Bauman - the decision-maker - did not know about her FMLA leave. And, even assuming Branham had an unlawful motive, Bauman reached the decision to terminate Long after he reviewed Long's performance evaluations and the member complaints, and after he met with Larkin twice regarding Long's poor job performance. Thus, any retaliatory animus Barnham may have had did not taint Bauman's decision.

Long v. Teachers' Retirement System of the State of Illinois (7th Cir. 2009) 585 F.3d 344.



■ WAGE AND HOUR LAW

The Public Policy In Favor Of The Employer's Duty To Pay Overtime Wages Protects An Employee From Termination For Making A Good Faith But Mistaken Claim For Overtime.

Manuel Barbosa worked for IMPCO Technologies as a "cell leader" supervising several other carburetor assemblers. In June 2007, two of Barbosa's subordinates told him they were missing two hours of overtime on their paychecks. After Barbosa spoke with the employees, he thought he was also missing two hours of overtime. The time clock the Company previously used had made occasional errors, and Barbosa and the employees believed that the new time clock had also made a mistake. Barbosa spoke to his supervisor, who approved payment for the missing overtime wages. But the payroll administrator checked the security entrance gate reports which showed Barbosa and the others could not have worked the overtime that Barbosa claimed.

The operations manager met with Barbosa and asked him if he was sure he and his co-workers had worked the overtime he claimed. Barbosa said yes. When the operations manager showed Barbosa the gate report, Barbosa said he had been confused and offered to pay the money back. The Company terminated him for falsifying time records. None of the other employees in Barbosa's cell were terminated.

Barbosa sued the Company for wrongful termination in violation of public policy. After the end of Barbosa's case at trial, the trial court granted the Company's motion for nonsuit on the basis that Barbosa's evidence was insufficient to support a jury verdict in his favor. The California Court of Appeal reversed and remanded.

To maintain a wrongful termination claim, the employee must have been wronged in a way that affects more than his immediate interest. The matter must affect society at large and the public policy must be fundamental, substantial, and well established. Here the Court found that the duty to pay overtime wages is a well-established fundamental public policy affecting the broad public interest. Overtime wages support the public policy of fostering society's interest in a stable job market spreading employment throughout the work force by putting financial pressure on the employer.

Barbosa presented sufficient evidence that he had a reasonable good faith belief he was entitled to over-

time. The previous time clock system made mistakes in timekeeping and the new system had only been in place less than a month. His co-workers convinced him the overtime was unpaid, and he in turn convinced his supervisor. Thus, if Barbosa can prove to a jury that he had a reasonable good faith belief in his right to overtime and did not attempt to cheat the Company, he will be entitled to damages.

Barbosa v. Impco Technologies, Inc. (2009) 179 Cal.App.4th 1116, 101 Cal.Rptr.3d 923.

Note:

While under the Miklosy v. Regents of University of California, 44 Cal. 4th 876 (2008) case, public agencies cannot be sued for the common law claim of wrongful termination in violation of public policy, this case demonstrates that courts consider overtime laws to be a matter of fundamental public policy and might be expected to protect public employees who mistakenly make a claim in good faith.

ADMINISTRATIVE APPEALS

Civil Service Commission Lacks Jurisdiction Over Employee's Appeal Where Employee Retires During The Pendency Of Her Appeal.

Margaret Latham was an assistant nursing director for the County of Los Angeles Department of Health Services. In January 2004, the County suspended her for 30 days for misconduct. In September 2004, the County terminated her employment. Latham filed an appeal with the County Civil Service Commission challenging both employment decisions. Latham's administrative appeal hearing began in November 2005. In May 2006, before the Commission hearing officer issued a decision on Latham's appeal, Latham voluntarily retired. Latham did not advise either the Commission or the Department of her retirement. In September 2006, the Commission's hearing officer issued an extensive report which reduced the termination to a 30 day suspension.

The County asked the Commission to dismiss the appeal on the ground that the Commission had lost jurisdiction over the appeal when Latham retired. The Commission rejected the dismissal request and

largely adopted the hearing officer's report. The County filed a petition for writ of mandate challenging the Commission's decision. The trial court granted the writ petition. The California Court of Appeal affirmed.

Under the County Charter, the Commission does not have authority to hear a wage claim brought by a former employee. Although the Commission may initially have jurisdiction over a discharged employee's civil service claim, the employee's retirement divests the Commission of jurisdiction.

Latham argues her election to retire in May 2006 did not eliminate her claims that she should have kept her job, and therefore should have been paid, from September 2004, when the Department discharged her, to May 2006, when she began her retirement. The Court acknowledged that Latham's back pay issue remains unresolved, but found that, once Latham retired, the Commission was no longer the proper forum to decide the claim because the Commission lacked jurisdiction.

County of Los Angeles Department of Health Services v. Civil Service Commission of the County of Los Angeles (2009) ___ Cal.App.4th ___ [2009 WL 4881700].

PANDEMIC FLU

Occupational Safety And Health Administration Creates H1N1 Flu Safety Website And Publishes Fact Sheets For Employers And Workers.

The Occupational Safety and Health Administration (OSHA) recently released fact sheets for workers and employers on a new "Workplace Safety and H1N1" website. The website describes basic precautions for protecting employees against the H1N1 flu virus.

Among other things, the website includes guidance for non-health care employers. OSHA advises employers to encourage employees to stay at home, institute sick-leave and medical surveillance policies, implement infection control measures such as cough etiquette, implement social distancing policies, encourage vaccinations, prepare for school closures, and keep the workplace clean.

OSHA's H1N1 influenza website is available at <http://www.osha.gov/h1n1/index.html>





FIRM PROFILE
Grace Y. Chan
Associate

Grace Y. Chan, an associate in the San Francisco office, provides client representation and legal counsel to clients in matters pertaining to employment and labor law

Grace's professional experience has been particularly extensive in the litigation area. She has handled the preparation of witnesses, depositions and all aspects of discovery and trial preparation, law and motion proceedings, settlement negotiations, administrative hearings and trial work. Subject matters have included employment discrimination, the Fair Labor Standards Act and workers compensation issues.

Grace received her Juris Doctorate at The Catholic University of America, Columbus School of Law in Washington, DC. Grace received her Bachelor of Arts degree in English and American Literature from New York University. Grace is also admitted to practice in the District of Columbia.

While not practicing law, Grace enjoys traveling, reading and cooking.



Firm Publications

Jeffrey Freedman of our Los Angeles office authored the article, "Firefighters: Immunized to What Extent?" which appeared in the December 14, 2009 issue of the Los Angeles/San Francisco Daily Journal. The complete article can be read online at <http://www.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "firefighter".



We would like to congratulate **Connie Chuang** on her recent marriage to Charles Almond. Connie is an associate in the Los Angeles office. We wish them both many years of joy and happiness.

Conference Brochure and Online Registration Now Available



Join us February 25 & 26, 2010, in historic San Francisco, CA for the **12th Annual LCW Public Sector Employment Law Conference**.

The 2010 conference will be at the Hyatt Regency San Francisco located on the Embarcadero waterfront which overlooks San Francisco Bay.

Conference registration is now available online at www.lcwlegal.com.
To make your hotel reservations online: <https://resweb.passkey.com/go/LCWL2>

Train the Trainer Refresher

Teach Mandatory Harassment Training Become a Certified AB 1825 Trainer

Liebert Cassidy Whitmore is offering "Train the Trainer" refresher sessions to provide you with the necessary tools to continue conducting mandatory AB 1825 (Govt. Code Section 12950.1) training for your agency. As you know, a key component of AB 1825 compliance is the provision of preventing harassment training to all supervisory employees every two years and to new supervisors within 6 months of their assumption of a supervisory position.

San Francisco - March 11, 2010

Fresno - March 18, 2010

Los Angeles - March 26, 2010

Time: 9:00 a.m. - 12:00 p.m.
Location: Liebert Cassidy Whitmore Los Angeles Office
Cost: \$1,000 each or \$900 each if ERC Member

Registration:

Visit www.lcwlegal.com for more information and to download the registration form or to register online. 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

- January 13 **"Exercising Your Management Rights" and "Public Sector Employment Law Update"**
San Joaquin Valley ERC | Oakdale | Richard Whitmore
- January 13 **"Advanced FLSA" and "Leaves, Leaves and More Leaves"**
San Gabriel Valley ERC | Alhambra | Brian Walter
- January 14 **"12 Steps to Avoiding Liability" and "Embracing Diversity"**
Napa/Solano/Yolo ERC | Vacaville | Cynthia O'Neill
- January 14 **"Handling Grievances"**
LA County Management Attorneys (LACMA) Consortium | Los Angeles | Michael Blacher
- January 14 **"Discipline: Putting It into Practice"**
West Inland Empire ERC | Upland | James Oldendorph and Mark Meyerhoff
- January 15 **"Creating a Culture of Respect" and "From Model Plan to Your Plan: Developing Compliant EEO Plans That Work"**
Southern CA Community College Districts (CCD) ERC | Mission Viejo | Laura Schulkind
- January 15 **"Employee Due Process Rights and 'Skelly:' A Guide to Implementing Classified Employee Discipline" and "Managing Performance Through Evaluation"**
Central Coast Personnel Council (CCPC) | Santa Barbara | Pilar Morin
- January 20 **"Supervisory Skills for the First Line Supervisor/Manager"**
Central Valley ERC | Hanford | Frances Rogers
- January 20 **"Checking References: The Most Important Part of the Hiring Process"**
Gold Country ERC | Webinar | Kelly Tuffo
- January 21 **"Performance Management: Evaluation, Documentation and Discipline" and "Public Sector Employment Law Update"**
South Bay ERC | Gardena | Melanie Poturica
- January 27 **"A Guide to Labor Negotiations"**
North State ERC | Chico | Jack Hughes
- January 29 **"California Code of Regulations: Education Code and Title V" and "Sick and Disabled Employees"**
Central CA CCD ERC | Bakersfield | Peter Brown
- February 3 **"Advanced FLSA" and "Public Sector Employment Law Update"**
Ventura/Santa Barbara ERC | Santa Paula | Peter Brown
- February 3 **"Human Resources Academy"**
Bureau of Jewish Education Consortium | Los Angeles | Michael Blacher
- February 3 **"Performance Management: Evaluation, Documentation and Discipline" and "Public Sector Employment Law Update"**
San Mateo County ERC | Brisbane | Richard Whitmore
- February 4 **"Advanced FLSA" and "FLSA: New Developments and Hot Topics"**
East Inland Empire ERC | Fontana | Peter Brown
- February 4 **"Managing Performance Through Evaluation" and "Public Sector Employment Law Update"**
North San Diego County ERC | Carlsbad | Melanie Poturica
- February 4 **"The Meaning of At-Will, Part-Time and Contract Employment"**
Gateway Public ERC | Lynwood | Linda Jenson

February 5	"Leaves, Leaves, and More Leaves" and "The Disability Interactive Process" Northern CA CCD ERC Sacramento Laura Schulkind
February 5	"The Disability Interactive Process" Southern CA CCDs ERC Long Beach Michael Blacher
February 9	"Exercising Your Management Rights" and "Leaves, Leaves and More Leaves" Bay Area ERC Cupertino Jack Hughes
February 10	"12 Steps to Avoiding Liability" and "Prevention and Control of Absenteeism and Abuse of Leave" Los Angeles County Human Resources Consortium Alhambra Laura Kalty
February 10	"Performance Management: Evaluation, Documentation and Discipline" and "Public Sector Employment Law Update" Central Coast ERC Arroyo Grande Melanie Poturica
February 11	"Managing Leave Laws and the Discipline Process" San Diego ERC Carlsbad Michael Blacher
February 16	"Employee Due Process Rights and 'Skelly': A Guide to Implementing Public Employee Discipline" and "Public Sector Employment Law Update" Coachella Valley ERC Indio Melanie Poturica
February 18	"Discipline: Putting It into Practice" Imperial Valley ERC Imperial James Oldendorph
February 18	"Supervisory Skills for the First Line Supervisor/Manager" Orange County ERC Costa Mesa Donna Evans

Customized Training Presentations

January 5	"Managing the Marginal Employee" and "12 Steps to Avoiding Liability" County of Sonoma Santa Rosa Jack Hughes
January 6	"Disability Interactive Process" and "Conducting Investigations" County of Sonoma Santa Rosa Jack Hughes
January 13	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Fresno Gage Dungy
January 14	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Arcadia Jennifer Hong
January 19	"Workplace Security" and "FLSA" County of Sonoma Santa Rosa Jack Hughes
January 20	"Preventing Workplace Harassment, Discrimination and Retaliation" Fresno County Employment Opportunity Commission Fresno Shelline Bennett
January 22	"Ethics" Hartnell Community College District Salinas Laura Schulkind
January 26	"Supervisory Skills for the First Line Supervisor/Manager" City of Glendale Scott Tiedemann
January 26, 27, 28	"Preventing Workplace Harassment, Discrimination and Retaliation" Bakersfield College Bakersfield Laura Schulkind
January 26	"Managing the Marginal Employee" County of Ventura, Human Services Agency Ventura Donna Evans

- January 26, 27 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of South Pasadena | Laura Kalty
- January 27 **"Labor & Employment Relations Issues During Lean Economic Times"**
Employment Risk Management Authority (ERMA) | Ontario | Donna Evans
- January 28 **"Conflict of Interest and Ethics in Public Service"**
City of Beverly Hills | Donna Evans
- January 29 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of South Pasadena | Laura Kalty
- February 1 **"Safety"**
UC Berkeley Principal Leadership Institute | Berkeley | Laura Schulkind
- February 9,24 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Arcadia | Mark Meyerhoff
- February 9 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fresno | Shelline Bennett
- February 9 **"Preventing Workplace Harassment, Discrimination and Retaliation" and "Violence in the Workplace"**
City of El Segundo | Donna Evans
- February 17 **"Labor & Employment Relations Issues During Lean Economic Times"**
ERMA | Menlo Park | Jack Hughes
- February 18 **"Effective Disciplinary Practices" and "Drugs & Alcohol Issues"**
County of Sonoma | Santa Rosa | Jack Hughes
- February 22 **"Discipline"**
UC Berkeley Principal Leadership Institute | Berkeley | Laura Schulkind
- February 22 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
County of Sonoma | Santa Rosa | Jack Hughes

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.

- January 12 **"The Top 10 Pointers on Conducting an Effective Investigation"**
Professionals in Human Resources Association (PIHRA) Annual Legal Update | Garden Grove | Laura Kalty
- January 13 **"The Top 10 Pointers on Conducting an Effective Investigation"**
PIHRA Annual Legal Update | Ontario | Laura Kalty
- January 13 **"How Do Schools Avoid Practices Which Can Be Considered Collusion"**
Bureau of Jewish Education Heads of Day School Meeting | Encino | Michael Blacher
- January 13 **"Public Sector Employment Law Update"**
International Public Management Association for Human Resources | Riverside | Melanie Poturica
- January 14 **"Substance Abuse for Attorneys"**
Greater Inland Empire Municipal Lawyers Association Meeting | Colton | Melanie Poturica

- January 14 **"The Top 10 Pointers on Conducting an Effective Investigation"**
PIHRA Annual Legal Update | Universal City | Laura Kalty
- January 18 **"Emerging Legal Issues for Jewish Schools"**
North American Jewish Day School Conference | Teaneck, New Jersey | Michael Blacher
- January 21 **"Public Sector Employment Law Update"**
International Public Management Association (IPMA) - HR Chapter Meeting | Encinitas | Richard Whitmore
- January 23 **"Harassment and Social Media"**
The State Bar of California Section Educational Institute | Long Beach | Michael Blacher
- January 23 **"Wage and Hour Issues for Heads of School and Board Members"**
California Association of Independent Schools (CAIS) Trustee/School Head Conference | San Francisco | Brian Walter and Donna Williamson
- January 23 **"Annual Legal Update for California Independent Schools"**
CAIS Trustee/School Head Conference | San Francisco | Melanie Poturica and Donna Williamson
- January 27 **"Public Sector Employment Law Update"**
IPMA - HR Mother Lode Chapter | Roseville | Richard Whitmore
- January 28 **"Public Sector Employment Law Update"**
Redwood Empire Municipal Insurance Fund | Rohnert Park | Richard Whitmore
- January 28 **"Crisis Management: How to Approach Chaos in an Organized and Thoughtful Manner"**
Independent School Administrators and Business Officers Annual Seminar | Los Angeles | Michael Blacher and Melanie Poturica
- January 28 **"The Grievance Arbitration Process"**
National Public Employer Labor Relations Association (NPELRA) Academy II | Phoenix | Donna Williamson
- January 29 **"Labor and Employment Issues in Lean Economic Times"**
Northern California Municipal Human Resources Management Group Conference | Napa | Richard Whitmore
- January 29 **"Peace Officers Bill of Rights"**
Peace Officers Association of Los Angeles County Seminar | Los Angeles | Mark Meyerhoff
- February 5 **"Fair Labor Standards Act Hot Topics"**
Minnesota Public Employers Labor Relations Association | Minnetonka, MN | Peter Brown
- February 9 **"Prevention and Control of Absenteeism and Abuse of Leaves"**
National Public Employer Labor Relations Association (NPELRA) | Webinar | Peter Brown
- February 10 **"FLSA Hot Topics"**
Texas Public Employer Labor Relations Association | San Antonio | Peter Brown
- February 17 **"My Employee Filed a Lawsuit, What Now?"**
Public Agency Risk Managers Association (PARMA) Annual Conference | Sacramento | Shelline Bennett
- February 17 **"Personnel Rules Audits: Are Your Policies and Procedures in Mint Condition?"**
PARMA Annual Conference | Sacramento | Mark Meyerhoff

- February 18 **"Legal Eagles"**
Association of California Community College Administrators (ACCCA) Annual Conference | San Francisco | Michael Blacher, Mary Dowell, Pilar Morin, Eileen O'Hare Anderson and Laura Schulkind
- February 18 **"Preventing Harassment in the Workplace"**
NPELRA | Webinar | Mark Meyerhoff
- February 18 **"Public Agency Issues in Lean Times"**
California Society of Municipal Finance Officers | Los Angeles | Peter Brown
- February 18 **"Harassment and the Social Media"**
ACCCA Annual Conference | San Francisco | Michael Blacher
- February 18 **"Performance Improvement Plans and Last Chance Agreements"**
Southern California Public Labor Relations Association (SCPMA) Annual Conference | Lakewood | Scott Tiedemann
- February 18 **"Public Sector Employment Law Update"**
SCPMA Annual Conference | Lakewood | Richard Whitmore
- February 19 **"When a Campus is Threatened by Violence: What Administrators Can Do To Ensure Safety"**
ACCCA Annual Conference | San Francisco | Pilar Morin
- February 19 **"Ethics in Community College Governance and Administration"**
ACCCA Annual Conference | San Francisco | Mary Dowell
- February 22 **"Teacher, Coach, Volunteer: Wage and Hour Issues in Independent Schools"**
National Business Officers Association (NBOA) Annual Conference | San Francisco | Brian Walter and Donna Williamson
- February 24 **"Doing It Right: Cost Cutting and Reducing Liability in Lean Times"**
NBOA Annual Conference | San Francisco | Melanie Poturica and Donna Williamson
- February 25, 26 **Liebert Cassidy Whitmore Annual Public Sector Employment Law Conference** | San Francisco



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If you have any questions, call Ann DeGuilio at (310) 981-2000.

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