

# CLIENT UPDATE

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

February 2010

## WHISTLEBLOWER RETALIATION

### Employee's Whistleblower Complaint Based On Hearsay Which Is Later Found To Be False Can Still Be Found To Be A Protected Good Faith Disclosure.

David Ohton is a strength and conditioning coach at San Diego State University (SDSU). In 2003, he responded to an SDSU athletic department audit by submitting a report asserting various athletic department irregularities. Among other things, Ohton stated that a few of the boosters told him that the head football coach was extremely drunk the night before a game against Idaho and he had to be assisted to his hotel. The next day, Idaho beat SDSU even though SDSU was heavily favored to win. In August 2003, Ohton filed an internal administrative complaint alleging that the coach retaliated against him in violation of the California Whistleblower Protection Act (CWPA) because of his report. The football team decided to hire its own strength and conditioning coach rather than have Ohton coach the players. SDSU also changed Ohton's work hours, and he was specifically directed to be out of the weight room and off campus by 2:00 p.m. each day.

California State University (CSU) retained John Adler to investigate Ohton's complaints. After reviewing Adler's report, Vice-Chancellor Jackie McClain found that Ohton's disclosures were not made in good faith because they were based on faulty information and the boosters denied that the drunken incident occurred. In addition, although McClain concluded that Ohton's job modification was a result of a protected disclosure - specifically his refusal to voluntarily relinquish football responsibilities - McClain concluded that there was only minor retaliation.

Ohton filed a petition for writ of mandate arguing that CSU's investigation and findings were contrary to law and arbitrary and capricious. The trial court denied his writ petition. The California Court of Appeal reversed the judgment, finding that CSU applied an incorrect standard in evaluating whether Ohton's retaliation claims were made in good faith, and also failed to address the matter of discipline and punishment despite having found retaliation.

The CWPA states that a protected disclosure is any good faith communication that discloses or demonstrates an intention to disclose information that may evidence an improper governmental activity. Although the phrase "good faith communication" is not defined, the CWPA requires that a state employee file a written internal complaint with a sworn statement, under the penalty of perjury, that the contents of the complaint are true.

The Court found that a whistleblower's reliance on hearsay does not preclude a finding that the complaint was a good faith protected disclosure. Whether the disclosure is made in good faith is properly determined based on whether the complainant believed it was true or had reason to believe it was true at the time it was made. Moreover, even a post-investigation conclusion that the complaint was unfounded does not neces-

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## CLIENT UPDATE

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sarily mean the complaint was made in bad faith. Here CSU found that Ohton was not knowingly dishonest when he prepared his report. Consequently, his complaint was a good faith protected disclosure.

Finally, the Court concluded that CSU's final determination letter did not satisfactorily address Ohton's complaint because it failed to identify the retaliators and address discipline, as required by the CWPA. Although CSU found that Ohton's hours were restricted in retaliation for his protected disclosure, the determination letter failed to state whether any CSU employee who retaliated against Ohton was disciplined and, if not, why not.

*Ohton v. California State University of San Diego* (2009) \_\_\_ Cal.App.4th \_\_\_ [2010 WL 92455].

#### **Note:**

*Although the CWPA does not apply to local government employees, Government Code section 53296 et seq. provides similar protections for local government employees who are whistleblowers. A court would likely apply a similar analysis under section 53296 to determine if an employee's complaint was a protected disclosure made in good faith.*

## ■ RETALIATION

### **Compensatory And Punitive Damages Are Not Available For Retaliation Claims Brought Under The Americans With Disabilities Act.**

Tannislado Alvarado worked as a cook at Church's Chicken in Tucson, Arizona. He performed his work satisfactorily for approximately three and one-half years. One day Alvarado called Church's hotline to complain that his supervisor had made inappropriate comments about his age. Subsequently his supervisors began counseling and disciplining him unfairly. Alvarado called the hotline a second time, accusing his supervisor of retaliation, but the retaliation continued. The Cajun Operating Company, which owns the restaurant, eventually terminated his employment.

Alvarado, who has arthritis, sued the Company for retaliation in violation of the Americans with Disabilities Act (ADA). The district court granted the Company's motion precluding compensatory damages, punitive damages, and trial by jury. The Ninth Circuit Court of Appeals affirmed.

The ADA prohibits any person from discriminating against an individual because the individual has filed a charge of disability discrimination. It states that employees subject to retaliation may be entitled to reinstatement or any other equitable relief as the court deems appropriate. Although the ADA provides for compensatory and punitive damages for disability discrimination claims, the remedies for retaliation claims are limited to equitable relief. Consequently, Alvarado was not entitled to compensatory or punitive damages for his ADA retaliation claim. In addition, because the Seventh Amendment right to a jury trial does not apply to equitable claims and Alvarado's claim is limited to equitable relief, he was not entitled to a jury trial.

*Alvarado v. Cajun Operating Co.* (9th Cir. 2009) 588 F.3d 1261.

## ■ DISABILITY DISCRIMINATION

### **Employee With Limited Ability To Speak Continuously For Extended Periods While Under Stress Could Not Allege A Disability Under The Americans With Disability Act.**

Becky Becerril, who worked in the Pima County, Arizona Assessor's Office, suffered from a condition known as temporomandibular disorder, which is exacerbated by stress. In 2003, the County transferred her from the mobile home section to the public service section. The public service section can be stressful. As a reasonable accommodation, Becerril requested a transfer out of the public service section, but the County denied the request.

Becerril sued the County for disability discrimination in violation of the Americans with Disabilities Act, alleging that the County transferred her because of her disability. She also claimed that the County refused to engage in the interactive process after she had requested a reasonable accommodation. The district court granted summary judgment in favor of the County. The Ninth Circuit Court of Appeals affirmed.

The Court found that, even assuming Becerril could state a *prima facie* case of discriminatory reassignment, the County had several legitimate, nondiscriminatory reasons for the reassignment. The County reassigned Becerril because her co-workers complained about her alleged misconduct. Becerril argued that the fact that the County did not investi-

gate the alleged misconduct demonstrated that the County's stated reason was pretextual. The Court disagreed, however, because the County was concerned with the morale problem the allegations created, and not the allegations themselves.

Becerril alleged that her ADA disability was a physical or mental impairment that substantially limited one or more major life activities. However, she was not substantially limited in speaking because she was limited only in talking constantly, for a long time, and while under stress. She was not substantially limited in eating because eating hard foods is not of central importance to daily life, and an inability to eat hard foods is not substantially limiting. Finally, although she suffered from pain and grogginess, Becerril could not show that her intermittent symptoms substantially limited her ability to think and concentrate not just at work but outside of work as well.

*Becerril v. Pima County Assessor's Office* (9th Cir. 2009) 587 F.3d 1162.

### **Agency's Reliance On A Grievance Settlement Agreement Was A Legitimate, Nondiscriminatory Reason To Refuse To Promote Disabled Employee.**

Glenn Kersey was a bus operator for the Washington Metropolitan Area Transit Authority (WMATA). In 1989, WMATA terminated Kersey for misconduct and for medical disqualification from driving a bus. Kersey filed a grievance challenging the termination. In 1990, Kersey, the Union, and WMATA settled the grievance. The settlement agreement reinstated Kersey to a cleaner-shifter position and stated that "under no circumstance will he be permitted to operate an authority vehicle."

Soon thereafter, Kersey began attempting to apply for positions that required operating WMATA vehicles. For approximately five years, WMATA repeatedly prohibited Kersey from applying for these positions, citing the settlement agreement. In 1991, Kersey filed a series of complaints alleging that WMATA discriminated and retaliated against him by not allowing him to apply for a promotion. In 1992, WMATA and the Union had intermittent discussions about modifying the settlement agreement to permit Kersey to apply for positions that required driving. During this time, WMATA permitted Kersey to take tests for mechanic positions that required driving, but it ultimately denied him promotion to those positions based on the no-driving provision.

In 1996, Kersey sued WMATA for disability discrimination under the Rehabilitation Act. The district court granted summary judgment in favor of WMATA. The D.C. Circuit Court of Appeals affirmed.

If a plaintiff can establish a *prima facie* case of discrimination, the burden shifts to the employer to produce evidence of a legitimate, nondiscriminatory reason for its actions. Here WMATA refused to promote Kersey to positions which required driving because of the no-driving provision in the settlement agreement. In light of the explicit language in the settlement agreement, no reasonable jury could infer discriminatory intent from WMATA's reliance on it to deny Kersey a promotion.

Kersey argued that WMATA rescinded the agreement's no-driving restriction when it allowed him to test for positions which required driving. However there was no evidence of a clear and unequivocal waiver of this provision. WMATA allowed for Kersey to test for the positions while WMATA and the Union were considering a modification of the agreement to remove the no-driving position. But the parties did not ultimately make any changes and WMATA never waived its right to rely on the no-driving provision.

*Kersey v. Washington Metropolitan Area Transit Authority* (D.C. Cir. 2009) 58 F.3d 13.

## **FIRST AMENDMENT**

### **Where Employer's Investigations Of Employee's Misconduct Were Well-Founded, The Investigations And Resulting Action Were Not Adverse Employment Actions Or Retaliatory.**

Marvin Couch worked as a family doctor for Memorial Hospital of Carbon County in Wyoming. In 2001, he began to suspect that some of the staff physicians were using alcohol and illegal drugs. He voiced his concerns to the hospital's chief executive. He also reported his concerns to the Wyoming Board of Medicine. In addition, he began campaigning to implement a random drug testing policy for the hospital staff.

Also in 2001 the hospital investigated Couch and another doctor because of their antagonistic and unprofessional behavior toward each other. The hospital ultimately issued both doctors counseling letters regarding appropriate behavior and not making disparaging comments to each other. In 2003,

the hospital investigated Couch for fraudulent billing. After conducting an investigation, the hospital concluded that Couch had been billing for services that were not performed and recommended that he attend 30 hours of training and be suspended from call rotation for six months. In 2005, the hospital's medical staff performance assessment and improvement committee reviewed several of Couch's cases. Because a patient died while under his care, the committee recommended that Couch attend continuing medical education training.

Couch sued the hospital and various individuals under Section 1983 for First Amendment retaliation. He alleged that the hospital conducted investigations and implemented corrective actions in retaliation for his protected speech. He also claimed that the hospital's failure to reappoint him to a committee was retaliatory. The district court granted summary judgment in favor of the defendants. The Tenth Circuit Court of Appeals affirmed.

To assert a First Amendment retaliation claim, an employee must prove that his speech was a substantial or motivating factor in an adverse employment action. The employee must also show that the employer's conduct might have dissuaded a reasonable employee from exercising his First Amendment rights.

The Court found that the 2001 investigation into Couch's unprofessional behavior was not retaliatory because another doctor was also investigated and there was objective evidence of interpersonal conflicts between the two doctors. In light of these facts, the resulting letter of reprimand was not actionable conduct.

With respect to the non-reappointment to the medical committee, there was documented evidence that Couch was chronically absent from the committee meetings. He attended less than twenty percent of the meetings - far below the requirements for reappointment of privileges.

The Court found that an investigation of potential misconduct will generally not constitute an adverse employment action. Here the fraudulent billing investigation and the resulting discipline were not retaliatory because the investigation was well grounded on reasons unrelated to Couch's protected speech. Similarly, Couch could not show that the hospital's committee that reviewed his job performance and cases had any retaliatory motive.

*Couch v. Board of Trustees of the Memorial Hospital of Carbon County* (10th Cir. 2009) 587 F.3d 1223.

## ■ FAIR LABOR STANDARDS ACT

### Employee Not Entitled To Compensation For Time Spent Attending Required AA Meetings And Psychiatric Evaluations.

Keith Todd was a police officer for the Lexington Fayette Urban County Government (LFUCG). One day, while off-duty, Todd consumed alcohol and an unknown quantity of sleeping pills, and blacked out. He was transported to the hospital where he stayed for five days. After his discharge from the hospital, Todd attended a private alcohol treatment program.

As a result of the hospitalization, LFUCG required Todd to undergo a fitness for duty evaluation. The psychiatrist determined that Todd was fit to return to duty without restrictions subject to certain conditions. After the fitness for duty evaluation was complete, Todd met with his supervisors to discuss the psychiatrist's findings and his future with the police department. Among other things, Todd agreed to attend three AA meetings each week and meet with a psychiatrist of his choice every four months. He also agreed to submit documentation of these sessions with the police department. Todd attended the AA meetings and psychiatrist evaluations during non-work hours and at his own expense.

Todd sued LFUCG under the Fair Labor Standards Act for compensation for the time that he spent attending and traveling to and from AA meetings and psychiatric examinations. The Federal District Court for the Eastern District of Kentucky granted summary judgment in favor of LFUCG.

The Court applied a three step analysis to determine whether an activity constitutes "work" for purposes of the FLSA: (1) whether LFUCG required the activity; (2) whether the activity was necessarily and primarily for the benefit of LFUCG; and (3) whether the activity was an indispensable part of Todd's primary employment activities.

The Court found that LFUCG required Todd to attend the AA meetings and psychiatric evaluations because he was required to attend a specific number of counseling and AA sessions and required to provide documentation to prove his attendance at these meetings. And, most importantly, Todd's employment would have been adversely affected if he failed to attend any of the required sessions.

On the other hand, the Court found that Todd's par-

ticipation in the AA meetings and psychiatric evaluations were not necessarily and primarily for the benefit of LFUCG. Todd could attend the AA meetings that best met his needs. Moreover, he could see the psychiatrist of his choice and bore the costs of his treatments. In addition, the incident giving rise to the fitness for duty evaluation occurred while he was off-duty. Furthermore, the Court found no indication that LFUCG received any significant benefit from keeping Todd on-duty, especially because there was no evidence that his position was short-staffed so that a course of treatment that allowed for his retention would be primarily for LFUCG's benefit.

The Court also found that Todd's treatment was not an indispensable part of the primary activities of his employment as a police officer. Because he performed no police work while at AA meetings or psychiatric evaluations, these sessions themselves are not a primary and indispensable part of the duties of a police officer.

*Todd v. Lexington Fayette Urban County Government* (E.D. Ken. 2009) 2009 WL 4800052.

#### Note:

*Although we do not generally report on district court cases, this case is significant because it is not in line with the Seventh Circuit Court of Appeals' Sehie v. City of Aurora case we reported in our March 2006 Client Update. In Sehie, the Seventh Circuit found that attending required psychological counseling sessions was time spent in "physical and mental exertion" for the employer. As a condition of continued employment, the employer required the employee to attend the counseling sessions, presumably with the goal of having her return to the workforce, and thus benefit the employer. As such, the employee was entitled to compensation for all time spent complying with the employer's requirement that she attend the counseling sessions.*

## ■ PENSION REFORM

### Voter Initiatives Call For Limitations On The Pension Benefits Of Future Public Employees.

Signatures have begun to be solicited for ballot measures limiting the defined benefit retirement benefits of future state and local government

employees.

The "New Public Employees Benefits Reform Act [V-1]" amends the Constitution and provides that employees hired after July 1, 2011:

- ◆ Peace officers and fire fighters would receive 2.3% of their annual wage base multiplied by their years of service credit at age 58;
- ◆ Other public safety employees would receive 1.8% of their annual wage base multiplied by their years of service credit at age 60;
- ◆ All non-safety employees would receive 1.25% of their annual wage base multiplied by their years of service credit at age 67 (or between 66 and 67 years of age if born between 1943 and 1959);
- ◆ The benefits would only be paid if the employee worked for one or more public agencies for five consecutive years;
- ◆ Benefits would be capped at 75% of the employee's average annual wage base;
- ◆ No increases due to inflation would be payable before the employee has been retired for five years.

For local government employees, benefit payments higher than these limitations must be approved by the majority of voters in the local jurisdiction. For state employees it requires a bill passed by two-thirds in both the Assembly and the Senate.

The initiative requires employers and employees to annually contribute funds to retirement systems equal to at least the normal cost of benefits as estimated by the system's actuary. In the case of new employees required to contribute to social security, at least 2% of their base salary is required as contribution to their pension, and at least 4% for those not required to contribute to social security.

A second (alternative) initiative provides that benefits higher than those described above, must, in the case of local government employees, be approved by two-thirds (rather than a majority) of the voters, and for state employees by a three-fourths (rather than two-thirds) vote of both chambers.

Another initiative, titled the "Public Employees Pension Limitation Law", is a proposed statutory amendment. It provides that public employees hired after the date the measure is approved, limits annual pension benefits during a retiree's first year

to \$100,000. In subsequent years the pension can be adjusted for cost-of-living increases, but can never exceed \$162,500 a year. It would require a three-fourths vote of the Legislature or another ballot initiative to change these benefit levels.

The proposed initiatives must receive the requisite number of signatures by June 14, 2010, to qualify for the November 2010 ballot.

## ■ PERS RETIREMENT

### **PERS Releases Online Edition Of The New Public Agency Procedures Manual And The California Public Employees' Retirement Law.**

On January 4, the California Public Employees Retirement System (CalPERS) released the latest edition of its Public Agency Procedures Manual. The manual will be available exclusively online and will replace any previous editions. The manual contains important information regarding employee enrollment and benefits information.

Any updates to CalPERS policies and procedures will still be provided through CalPERS Employers eBulletins.

CalPERS also published the California Public Employees' Retirement Law (PERL) effective January 1, 2010.

To access a full copy of the Public Agency Procedures Manual, please visit <http://www.calpers.ca.gov/index.jsp?bc=/employer/er-forms-pubs/pubs/manuals/pa-ret-manual/home.xml>

The PERL is available online at [www.calpers.ca.gov](http://www.calpers.ca.gov).

## ■ LAYOFF BENEFITS

### **Department Of Labor Publishes New Information Regarding Amended ARRA Provisions Extending COBRA Subsidy.**

As we reported in our January 2010 *Client Update*, Congress extended the COBRA subsidy. Specifically, 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 an updated fact sheet, FAQs, flyers, and model notices regarding the revised COBRA subsidy. Plans subject to the federal COBRA provisions must provide the updated general notice to all qualified beneficiaries who experienced a qualifying event at any time between September 1, 2008 and February 28, 2010. Plan administrators must also provide notice to certain individuals who have already been provided a COBRA election notice that did not include information regarding the revised COBRA subsidy. Consequently, the DOL has published a model premium assistance extension notice which includes the updated information.

The updated fact sheet is available at <http://www.dol.gov/ebsa/newsroom/fsCOBRAPremiumreduction.html>

The FAQs for employees are available at <http://www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionEE.html>

The job loss poster is available at <http://www.dol.gov/ebsa/pdf/joblossposter2.pdf>

The flyer for employees is available at <http://www.dol.gov/ebsa/pdf/cobrastimulusflyer2.pdf>

The flyer for employers is available at <http://www.dol.gov/ebsa/pdf/cobrastimulusflyer1.pdf>

The flyer for employees on the application for review is available at <http://www.dol.gov/ebsa/pdf/distributionflyer09.pdf>

The model notices and information regarding which individuals should receive revised notices are available at <http://www.dol.gov/ebsa/cobramodelnotice.html>



## LABOR RELATIONS

### Where Employer's Finances Were Uncertain, Negotiators Did Not Engage In Bad Faith Bargaining Where They Agreed to Non-Economic Issues, But Did Not Present Or Respond To Any Economic Proposals.

From June through November 2008, Stationary Engineers Local 39 and the Department of Personnel Administration (DPA) began negotiating a successor collective bargaining agreement. The DPA negotiators initially stated that they had authority to negotiate over all issues. Sometime later, they told the Union that they had no authority to address economic proposals until after the State budget was passed. After the budget passed, the negotiators continued to claim they had no authority to negotiate over economic items. Nevertheless, during the 11 negotiation sessions the parties reached tentative agreement on several non-economic items.

On November 6, 2008, the Governor issued a letter to all State employees informing them of a projected \$11 billion revenue shortfall for the fiscal year. The letter detailed four measures that the Governor would be proposing to the Legislature: (1) one furlough day per month for 18 months; (2) elimination of two State holidays; (3) increased ability to work 4/10 workweeks; and (4) elimination of leave time from overtime calculation. The letter assured employees that the State would work closely with union leadership to achieve results in the least painful way possible.

The Union filed an unfair practice charge against the State, alleging that the DPA engaged in surface bargaining, delayed negotiations, and bypassed the Union by dealing directly with the employees. The PERB agent dismissed the charge, and the Board affirmed the dismissal.

A party engages in surface bargaining when 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. The Board found that the DPA's failure to present or respond to economic proposals did not constitute bad faith bargaining because the financial situation was uncertain. The DPA's failure to negotiate over economic proposals was justified by the fiscal climate. Moreover, the DPA and the Union had reached tentative agreement on a number of non-economic items, which evidenced the DPA's willingness to negotiate in good faith.

In addition, the DPA negotiators' statements midway through bargaining that they lacked authority to negotiate over economic items did not hinder the bargaining process. For example, the DPA did not attempt to renege on tentative agreements made by its negotiators. Furthermore, from the outset of negotiations, the DPA took the position that negotiations on economic items should be deferred until the amount of funds available for State employee compensation had been determined.

Finally, the Governor's letter to the employees was not an attempt to bypass the Union and negotiate directly with the employees. Employers may communicate with employees about labor relation matters as long as the communication does not contain a threat of reprisal or force, or promise of benefit. Here the letter had no such coercive element. Moreover, the letter specifically provides that the State would work with union leadership to achieve results in the least painful way possible.

*Stationary Engineers Local 39 v. State of California (Department of Personnel Administration) (2009) PERB Dec. No. 2078S [34 PERC 11.]*

### State Mediation And Conciliation Service To Begin Charging For Election Supervision, Arbitration, Training And Facilitation Services.

Like many agencies, the State Mediation and Conciliation Service (SMCS) has been adversely affected by the state's struggling fiscal situation. Consequently, in 2009, the Legislature amended the Labor Code to allow SCMS to charge for certain services. The SCMS is in the process of revising its regulations to implement the new law.

The SCMS will still provide its core service of collective bargaining dispute resolution at no charge. However, the SCMS will begin charging for its arbitration, election supervision, training and facilitation, and transit district representation services. Specifically, the new regulations propose that the SMCS charge arbitrators \$150 per year to serve on the SCMS panel, and \$50 to the party requesting an arbitrator list.

For election set-up and supervision services, rather than charge an hourly cost, the draft regulation proposes a schedule of flat fees based on the size of the affected bargaining unit. When elections are held, election services shall be reimbursed at between \$1000 and \$4000, depending on the size of the bargaining unit. When questions of representation are determined from card and/or petition checks, the fee will be between \$200 and \$1000, depending on

the size of the bargaining unit.

Under the proposed regulations, training and facilitation services will be charged at \$114 per hour. Similarly, transit district representation services will be \$114 per hour.

The tentative effective date for these reimbursement charges is July 1, 2010.

We will keep you posted regarding any further developments.

## ■ ARBITRATION

### **Arbitrator's Erroneous Ruling Upheld Under Courts' Deferential Standard Of Review Of Labor Arbitration Decisions.**

The American Postal Workers Union (APWU) represents postal clerks, and the National Postal Mail Handlers (NPMHU) represents mail handlers. In 1992, the two Unions and the Postal Service agreed on how to resolve disputes over which Union should perform certain work, known as jurisdictional disputes. The agreement provided for a dispute resolution process for these disputes, but stated that "no new disputes will be initiated ... by either union challenging jurisdictional work assignments in any operations as they currently exist...all local craft jurisdictional assignments which are not already the subject of a pending locally initiated grievance will be deemed as a proper assignment for that facility."

In 2001, a dispute arose over which employees were responsible for scanning foreign mail on the loading dock at the Postal Services' Oakland International Service Center. At the time, mail handlers performed that work. APWU filed two grievances claiming that clerks should perform the tasks in question. At arbitration, NPMHU and the Postal Service maintained that the grievances were not arbitrable because the assignment of work was made before 1992, and the 1992 Agreement barred grievances about such pre-1992 assignments. However, the arbitrator determined that the dispute was arbitrable because he read a "continuing violations" theory into the Agreement under which he could assess the appropriateness of certain pre-1992 assignments if they continued post-1992. The arbitrator later found in favor of APWU.

NPMHU sought to vacate the arbitrator's award on the ground that the arbitrator had erred in finding the dispute arbitrable. The district court opined that the arbitrator's decision on arbitrability was proba-

bly erroneous, but granted summary judgment in favor of APWU. Applying the courts' deferential standard of review of labor arbitration disputes, the court found no basis to vacate the award. The D.C. Circuit Court of Appeals affirmed.

Courts impose a very deferential standard for judicial review of labor arbitration decisions. The question is not whether the arbitrator erred. Instead, the court simply considers whether the arbitrator was "even arguably construing or applying the contract." This deferential standard applies to an arbitrator's decision regarding arbitrability of labor contract disputes as long as the parties have agreed to arbitration of that question.

The D.C. Circuit found that the arbitrator's decision was erroneous because the Agreement barred arbitration of grievances relating to pre-1992 work assignments. However, the Court also found that the arbitrator was at least arguably construing or applying the Agreement in reaching his decision. Consequently, the Court upheld the arbitration award.

*National Postal Mail Handlers Union v. American Postal Workers Union* (D.C. Cir. 2009) 589 F.3d 437.

## ■ ADMINISTRATIVE APPEALS

### **Employee's DFEH Retaliation Claim Was Not Precluded By Prior State Personnel Board Finding That Discipline Imposed Was Warranted.**

Cynthia George worked as an administrative law judge (ALJ) for the California Unemployment Insurance Appeals Board. At some point, she believed that male ALJs were receiving preferences in travel assignments. In November 2001, she filed a complaint with the Department of Fair Employment and Housing (DFEH) alleging sex discrimination in violation of the Fair Employment and Housing Act (FEHA). Soon thereafter, the Agency modified the travel assignment procedure to a standardized rotation.

In October 2002, George's supervisor, Betsy Temple, suspended George for a two-week period for various alleged acts of misconduct. In November 2003, Temple suspended George for three weeks for a number of separate allegations of misconduct. George appealed both suspensions. The first suspension was based on George arriving to work late and allegedly falsifying her time report. The second suspension was based on George harassing the clerical staff, improperly

refusing to handle a hearing and being insubordinate. The State Personnel Board found that the first suspension was unsupported, but the second suspension was just and proper. However, the Board held that the second suspension was too harsh and reduced it from three weeks to two weeks.

In July 2003, George filed a second DFEH charge claiming retaliation. In August 2003, George was suspended for two weeks. On administrative appeal, the Board reduced the discipline to a one-week suspension.

George sued the Agency for retaliation under FEHA. The Agency unsuccessfully moved for summary judgment on the grounds that the action was barred by the doctrines of *res judicata* and/or *collateral estoppel*. The jury later returned a verdict in George's favor. The Agency appealed the denial of summary judgment and the California Court of Appeal affirmed.

The doctrine of *res judicata* precludes a second suit between the same parties on the same cause of action. The primary right protected by the civil service system is the right to continued employment, while the primary right protected by FEHA is the right to be free from discrimination and retaliation. Thus the doctrine of *res judicata* does not preclude a FEHA action where an employee seeks review through an alternative administrative remedy available as a consequence of the employee's civil servant status.

The doctrine of *collateral estoppel* bars the party to a prior action from relitigating any issues finally decided against him or her in the earlier action. When the issue previously decided is a required element of the FEHA cause of action, the prior adjudication may have a preclusive effect on the claim, even if the entire claim is not barred, resulting in a dismissal of the FEHA claim. Here the State Personnel Board's findings do not preclude George's entire retaliation cause of action. The Board reversed one of the suspensions and reduced the other two because they were excessive. This leaves the question whether George was treated more harshly than other employees because she had challenged the ALJ travel policy as being discriminatory. In light of the relatively minor incidents used as justification for discipline, a finding that some of the collected incidents were sufficient to sustain a lesser discipline than imposed is not the equivalent of a finding that the discipline imposed was just, proper, and nonretaliatory.

*George v. California Unemployment Insurance Appeals Board* (2009) 179 Cal.App.4th 1475 [102 Cal.Rptr.3d 431].

## ■ PUBLIC MEETING LAW

### Committee Established Through Collective Bargaining And Implemented By Governing Board, Was Not Subject To The Ralph M. Brown Act.

The Los Angeles Community College District provides its employees with a comprehensive health and welfare benefits package. Most of the District's employees are represented by six Unions. Several years ago, each Union agreed to participate in a Masters Benefits Agreement (MBA), which was incorporated into the respective collective bargaining agreements. The MBA provides for the District and the Unions to participate in a Joint Labor Management Benefits Committee. The District drafted a Board rule convening the Committee as prescribed by the MBA. The Committee's purpose is to contain the costs of the District's health benefits program while maintaining and improving the quality of the benefits available to the employees. The Committee recommends the substitution of other plans, the selection of benefits consultants and providers, and changes to the District's health benefits budget.

The District asked the Attorney General for an opinion regarding whether the Committee is subject to the Ralph M. Brown Act. After conducting a fact-based analysis, the Attorney General concluded that the Committee was not required to comply with the Act.

The Brown Act requires that the legislative bodies of local agencies have most of their meetings open to the public. The Act's definition of a legislative body includes a "committee created by charter, ordinance, resolution, or formal action by a legislative body." However, here the Committee was created by the MBA and merely implemented by the Board's rule. The Committee was formed as a result of collective bargaining and, by monitoring the employees' health benefits, it plays a continuing role in the collective bargaining process. And labor-management negotiations conducted pursuant to the Meyers-Milias-Brown Act are not subject to the Brown Act.

Because the Committee was created through the collective bargaining process as memorialized in the MBA, it does not fall under the Brown Act's definition of a legislative body.

*Attorney General Opinion No. 08-806*, \_\_ Ops.Cal.Atty.Gen. \_\_; 2009 WL 5206064 (December 31, 2009).

## ■ EMERGENCY MEDICAL TECHNICIANS

### **New Regulations For Emergency Medical Technicians Require Criminal Background Checks, Subsequent Arrest Reports And Recommended Disciplinary Guidelines Effective July 1, 2010.**

In 2008, the Legislature enacted AB 2917 which requires all emergency medical technicians (EMTs) and Advanced EMTs to undergo a criminal background check. The new law also requires that the certifying entity and the Emergency Medical Services Authority (EMSA) receive subsequent arrest notifications from the Department of Justice (DOJ). On December 2, 2009, the Emergency Medical Services Commission approved the changes and additions to the regulations to implement these requirements and recommended guidelines for disciplinary orders and conditions of probation. The new requirements and regulations will be effective July 1, 2010.

The DOJ and FBI criminal background checks will be required for all EMTs certified with an agency for the first time after July 1. Current EMTs can be grandfathered out of the background check if the employer or certifying agency certifies that the EMT: (1) has not committed any sexually related offense under Penal Code section 290; (2) has not been convicted of murder, attempted murder or murder for hire; (3) has not been convicted of two or more felonies; and (4) is not on parole or probation for any felony.

Although the regulations are not effective yet, certifying agencies must take steps to have the background check and subsequent arrest report processes in place prior to July 1. EMSA advises agencies to have their governing bodies adopt a resolution authorizing the agency to obtain criminal history information for employment or certification purposes. The EMSA has provided a sample resolution for certifying agencies to use. Once adopted, these resolutions must be submitted to EMSA for approval by the DOJ and FBI. Some agencies currently obtain DOJ background checks, but the new law requires FBI and DOJ background checks. The EMSA has published criminal background check information to help certifying entities comply with the new requirements.

The EMSA's proposed recommended guidelines set forth detailed information regarding offenses which could jeopardize an EMT's certification and recom-

mended disciplinary action for the various offenses. The guidelines include maximum and minimum disciplinary actions for each type of offense, and language for model disciplinary orders.

More information about the EMT 2010 project can be found at:  
[http://www.emsa.ca.gov/about/EMT2010\\_Overview.asp](http://www.emsa.ca.gov/about/EMT2010_Overview.asp)

The EMSA's published information regarding criminal background checks and what agencies need to do to come into compliance before July 1 can be found at:

[http://www.emsa.ca.gov/about/files/EMT2010/DOJ\\_Information.doc](http://www.emsa.ca.gov/about/files/EMT2010/DOJ_Information.doc)

#### **Note:**

*The new law is consistent with the Firefighters Procedural Bill of Rights Act. Although the new requirements will change the terms and conditions of EMTs' employment, there is likely no need to meet and confer with unions about the changes because the law requires the agencies to provide the criminal background checks and receive subsequent arrest reports. However, agencies should be aware that, unlike with peace officers, Labor Code section 432.7 applies to EMTs and the employer or certifying agency would need to initiate its own independent investigation prior to disciplining employees for criminal misconduct. The agencies cannot act on the arrest information alone.*

## ■ ATTORNEY FEES

### **California Supreme Court Finds That A Court Can Deny A Prevailing Party, Who Recovers A Modest Recovery of \$11,500 Under The Fair Employment And Housing Act, The Party's Attorney Fees of \$871,000.**

On numerous occasions, Robert Chavez sued his employer, the City of Los Angeles, and three supervisors for various violations of the Fair Employment and Housing Act (FEHA) and his civil rights. His first superior court case was dismissed in 1999. In April 2000, Chavez's supervisor granted his request for a transfer. In May 2000, Chavez sued the City and his supervisors again in superior court. Shortly thereafter, Chavez's supervisor rescinded the order granting Chavez's request to transfer to another division. In August 2000,

Chavez sued the City in federal court for alleged violation of his civil rights. Chavez's superior court case was dismissed and the federal court dismissed Chavez's federal claims.

In 2005, Chavez went to trial with claims of discrimination, harassment, and retaliation in violation of the FEHA. The jury found that the temporary rescission of Chavez's transfer request was retaliatory and awarded Chavez \$1,500 in economic damages and \$10,000 in noneconomic damages. After trial, Chavez's attorney moved for approximately \$871,000 in attorney fees as the prevailing plaintiff under FEHA. The trial court denied the motion. Chavez appealed. The California Court of Appeal reversed and remanded, finding that Chavez's entitlement to fees should be determined under FEHA. And FEHA's cost-shifting statute entitles a prevailing plaintiff to attorney fees. The California Supreme Court reversed the Court of Appeal.

Code of Civil Procedure Section 1033 provides that when a plaintiff has obtained a judgment for money damages in an amount that could have been recovered in a limited civil case (\$25,000 or less), but the plaintiff did not bring the action as a limited civil case and thus did not take advantage of the cost and time saving advantages of limited civil case proce-

dures, Section 1033 gives the trial court discretion to deny, in whole or in part, the plaintiff's recovery of litigation costs. Under FEHA, absent special circumstances that would render a fee award unjust, a prevailing plaintiff is entitled to attorney fees.

The Court found that in exercising its discretion under Section 1033 to grant or deny litigation costs, including attorney fees, to a plaintiff who has recovered FEHA damages in an amount that could have been recovered in a limited civil case, the trial court must give due consideration to the policies and objectives of FEHA and determine if denying attorney fees is consistent with those policies and objectives. If so, the plaintiffs' failure to take advantage of the time and cost saving features of the limited civil case procedures may be considered a special circumstance that would render a fee award unjust. In determining whether a FEHA action should have been brought as a limited civil case, the trial court should evaluate the entire case in light of the information that was known, or should have been known by the plaintiff's attorney when the action was initially filed and as it developed.

*Chavez v. City of Los Angeles* (2010) \_\_\_ Cal.4th \_\_\_ [2010 WL 114941].

## §

# 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](http://www.lcwlegal.com).  
To make your hotel reservations online: <https://resweb.passkey.com/go/LCWL2>

# Train the Trainer Seminars

## Teach Mandatory Harassment Training Become a Certified AB 1825 Trainer

**Los Angeles - April 20, 2010**  
**San Francisco - April 21, 2010**  
**Fresno - April 28, 2010**

**Time:** 9:00 a.m. - 4:00 p.m.  
**Location:** Liebert Cassidy Whitmore Offices  
**Cost:** \$1,500 each or \$1,350 each if ERC Member

## Already Certified???

### Train the Trainer Refresher

Need to be re-certified as a 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.

**San Francisco - March 11, 2010**  
**Fresno - March 18, 2010**  
**Los Angeles - March 26, 2010**

**Time:** 9:00 a.m. - 12:00 Noon  
**Location:** Liebert Cassidy Whitmore Offices  
**Cost:** \$1,000 each or \$900 each if ERC Member

#### **Registration:**

Visit [www.lcwlegal.com](http://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](mailto:ASanzone-Ortiz@lcwlegal.com) or (310) 981-2051.



## Firm Publications

**Brianne Marriott** of our Fresno office authored the article, "Clearing the Haze: Medical Marijuana and Employees" which appeared in the January 22, 2010 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 "marijuana".

**Michael Blacher** and **Lauren Liebes** of our Los Angeles office authored the article, "Court Rules on Enforceability of Arbitration Clause Included in Student Enrollment Agreement" which appeared in the December issue of the NAIS (National Association of Independent Schools) E-Bulletin. The complete article can be read online at <http://www.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "arbitration".



**FIRM PROFILE**  
**Judith Islas**  
**Of Counsel**

For more than 20 years, Judith has practiced in labor, education and employment law. Although Judith is based out of our Los Angeles office, she also works out of her home office in San Diego.

Judith has an extensive background in all types of employment litigation at the trial and appellate levels, in both state and federal courts, including discrimination, harassment, discipline and wrongful termination, and other employment based claims on behalf of public entities including school districts and community college districts and universities. She represents employers in administrative proceedings before the DFEH and EEOC, wage and hour disputes before the Division of Labor Standards Enforcement, and disciplinary proceedings before arbitrators and Boards and Commissions.

Prior to joining Liebert Cassidy Whitmore, Judith was a partner in a national labor and employment law firm. Judith began representing public sector employers at Liebert, Cassidy & Frierson, LCW's predecessor. Judith has conducted management training programs on a wide variety of personnel, labor, discrimination and education issues, including a number of sexual harassment programs. She is experienced in drafting employment manuals and personnel policies, and has handled workplace investigations and teacher termination cases.

Judith earned her Juris Doctorate at Martin Luther King Jr. School of Law at the University of California at Davis and her Bachelor of Arts, magna cum laude, from the University of California at Los Angeles.

While not practicing law, Judith likes to hike, read, play scrabble and hang out with her two children.



***Congratulations...*** Asha Shins and Aaron Criswell welcomed the arrival of their son, Alexander on January 21, 2010. Asha is an Administrative Assistant in the San Francisco office. We wish them much happiness.

## MANAGEMENT TRAINING WORKSHOPS

# Firm Activities

## Consortium Workshop Training

February 3	<b>"Human Resources Academy"</b> Bureau of Jewish Education Consortium   Los Angeles   Michael Blacher
February 3	<b>"Public Sector Employment Law Update" and "Performance Management: Evaluation, Documentation and Discipline"</b> San Mateo County ERC   Brisbane   Richard Whitmore
February 3	<b>"Advanced FLSA" and "Public Sector Employment Law Update"</b> Ventura/Santa Barbara ERC   Santa Paula   Peter Brown
February 4	<b>"FLSA: New Developments and Hot Topics and Advanced FLSA"</b> East Inland Empire ERC   Fontana   Peter Brown
February 4	<b>"Public Sector Employment Law Update" and "Managing Performance Through Evaluation"</b> North San Diego County ERC   Carlsbad   Melanie Poturica
February 4	<b>"The Meaning of At-Will, Part-Time and Contract Employment"</b> Gateway Public ERC   Lynwood   Linda Jenson
February 5	<b>"Leaves, Leaves, and More Leaves" and "The Disability Interactive Process"</b> Northern CA Community College Districts (CCDs) ERC   Sacramento   Laura Schulkind
February 5	<b>"The Disability Interactive Process"</b> Southern CA CCDs ERC   Long Beach   Michael Blacher
February 9	<b>"Exercising Your Management Rights" and "Leaves, Leaves and More Leaves"</b> Bay Area ERC   Cupertino   Jack Hughes
February 10	<b>"Prevention and Control of Absenteeism and Abuse of Leave" and "12 Steps to Avoiding Liability"</b> Los Angeles County Human Resources Consortium   Alhambra   Laura Kalty
February 10	<b>"Performance Management: Evaluation, Documentation and Discipline" and "Public Sector Employment Law Update"</b> Central Coast ERC   Arroyo Grande   Melanie Poturica
February 10	<b>"Family and Medical Care Leave Acts" and "Advanced Labor Negotiations Roundtable"</b> Sonoma/Marin ERC   Rohnert Park   Richard Bolanos
February 11	<b>"Managing Leave Laws and the Discipline Process"</b> San Diego ERC   Carlsbad   Michael Blacher
February 16	<b>"Employee Due Process Rights and 'Skelly': A Guide to Implementing Public Employee Discipline" and "Public Sector Employment Law Update"</b> Coachella Valley ERC   Indio   Melanie Poturica
February 18	<b>"Discipline: Putting It into Practice"</b> Imperial Valley ERC   Imperial   Frances Rogers
February 18	<b>"Supervisory Skills for the First Line Supervisor/Manager"</b> Orange County ERC   Costa Mesa   Donna Evans
March 2	<b>"Advanced Labor Negotiations Roundtable and Advanced FLSA"</b> North San Diego County ERC   Oceanside   Peter Brown
March 2	<b>"Annual Review of Your School's Employment Handbook and Rules"</b> Bay Area Jewish Schools Consortium   Palo Alto   Donna Williamson and Michael Blacher

March 3	<b>"Supervisory Skills for the First Line Supervisor/Manager"</b> North State ERC   Red Bluff   Frances Rogers
March 3	<b>"The Disability Interactive Process" and "Sick and Disabled Employees"</b> Napa/Solano/Yolo ERC   Vacaville   Richard Bolanos
March 3	<b>"Labor Code 101 for Public Agencies" and "Advanced FLSA"</b> South Bay ERC   Manhattan Beach   Peter Brown
March 4	<b>"Finding the Facts: Disciplinary and Harassment Investigations"</b> Gateway Public ERC   Norwalk   Connie Chuang Almond
March 5	<b>"Creating a Culture of Respect" and "California Code of Regulations: Education Code and Title V"</b> Bay Area CCD ERC   Kentfield   Laura Schulkind
March 5	<b>"Finding the Facts: Disciplinary and Harassment Investigations" and "Crisis Management - How to Approach Chaos in an Organized and Thoughtful Manner"</b> Central Coast Personnel Council (CCPC) Consortium   Santa Barbara   Michael Blacher
March 10	<b>"Personnel Issues: Hiring, Reference Checks and Personnel Records and Files"</b> Sonoma/Marin ERC   Rohnert Park   Jack Hughes
March 10	<b>"A Guide to Labor Negotiations"</b> San Gabriel Valley ERC   Alhambra   Steve Berliner
March 10	<b>"Discipline: Putting It into Practice"</b> Gold Country ERC   Elk Grove   Suzanne Solomon
March 11	<b>"Supervisory Skills for the First Line Supervisor/Manager Part I"</b> LA County Management Attorneys Consortium   Los Angeles   Donna Evans
March 12	<b>"Creating a Culture of Respect" and "Hiring the EEO Way"</b> Central CA CCD ERC   San Luis Obispo   Laura Schulkind
March 12	<b>"Exercising Your Management Rights"</b> Southern CA CCDs ERC   Ventura   Bruce Barsook
March 17	<b>"Finding the Facts: Disciplinary and Harassment Investigations"</b> Orange County ERC   Anaheim   Laura Kalty
March 18	<b>"Legal Aspects of Violence in the Workplace" and "Issues and Challenges Regarding Drugs and Alcohol in the Workplace"</b> West Inland Empire ERC   Pomona   Brian Walter
March 18	<b>"The Disability Interactive Process" and "Annual Audit of Your Personnel Rules"</b> San Joaquin Valley ERC   Ripon   Gage Dungy
March 19	<b>"Employee Due Process Rights and 'Skelly': A Guide to Implementing Public Employee Discipline" and "Performance Management: Evaluation, Documentation and Discipline"</b> Humboldt County ERC   Arcata   Jack Hughes
March 19	<b>"Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce" and "12 Step to Avoiding Liability"</b> Northern CA CCD ERC   Sacramento   Laura Schulkind
March 24	<b>"The Disability Interactive Process" and "Prevention and Control of Absenteeism and Abuse of Leave"</b> Ventura/Santa Barbara ERC   Thousand Oaks   Laura Kalty
March 24	<b>"Public Meeting Law (the Brown Act) and the Public Records Act" and "Advanced FLSA"</b> Central Coast ERC   San Luis Obispo   Peter Brown

March 24 **"Managing Employee Injuries, Disability and Occupational Safety"**  
Central Valley ERC | Clovis | Doug Bray

March 25 **"Supervisory Skills for the First Line Supervisor/Manager"**  
NorCal ERC | San Ramon | Kelly Tuffo

### **Customized Training Presentations**

February 1 **"Safety"**  
UC Berkeley Principal Leadership Institute | Laura Schulkind

February 2 **"Harassment, Discrimination and Diversity"**  
USDA Forest Service | Willows | Jack Hughes

February 3 **"Preventing Workplace Harassment, Discrimination and Retaliation"**  
Yorba Linda Water District | Placentia | Donna Evans

February 3 **"Legal Issues Update"**  
Orange County Probation Department | Santa Ana | Scott Tiedemann

February 5 **"Preventing Workplace Harassment, Discrimination and Retaliation"**  
City of Manhattan Beach | Jennifer Hong

February 8 **"Preventing Workplace Harassment, Discrimination and Retaliation"**  
City of Santa Monica | Connie Chuang Almond

February 9 **"Preventing Workplace Harassment, Discrimination and Retaliation" and "Violence in the Workplace"**  
City of El Segundo | Donna Evans

February 9 **"Preventing Workplace Harassment, Discrimination and Retaliation"**  
City of Fresno | Shelline Bennett

February 11 **"Preventing Workplace Harassment, Discrimination and Retaliation"**  
Entertainment Partners | Burbank | Mark Meyerhoff

February 11 **"Preventing Workplace Harassment, Discrimination and Retaliation"**  
City of Cupertino | Cynthia O'Neill

February 17 **"Labor & Employment Relations Issues During Lean Economic Times"**  
Employment Risk Management Authority | Menlo Park | Jack Hughes

February 17 **"Guide for Supervisors on Preventing Workplace Harassment, Discrimination and Retaliation"**  
Sierra View District Hospital | Porterville | Gage Dungy

February 18 **"Effective Disciplinary Practices" and "Drugs & Alcohol Issues"**  
County of Sonoma | Santa Rosa | Jack Hughes

February 22 **"Preventing Workplace Harassment, Discrimination and Retaliation"**  
County of Sonoma | Santa Rosa | Jack Hughes

February 22 **"Discipline"**  
UC Berkeley Principal Leadership Institute | Laura Schulkind

February 23 **"Supervisory Skills for the First Line Supervisor/Manager"**  
City of San Bernardino | Mark Meyerhoff

February 23 **"Supervisory Skills for the First Line Supervisor/Manager"**  
City of Santa Monica | Donna Evans

February 24	<b>"Preventing Workplace Harassment, Discrimination and Retaliation"</b> City of Arcadia   Jennifer Hong
March 2	<b>"Code of Ethics"</b> Orange County Superior Court   Santa Ana   Mark Meyerhoff
March 4	<b>"Preventing Workplace Harassment, Discrimination and Retaliation"</b> City of Glendale   Jennifer Hong
March 4	<b>"Supervisory Skills for the First Line Supervisor/Manager"</b> City of Santa Monica   Donna Evans
March 8	<b>"Special Education"</b> UC Berkeley Principal Leadership Institute   Laura Schulkind
March 9	<b>"Preventing Workplace Harassment, Discrimination and Retaliation"</b> Orange County Superior Courts   Santa Ana   Laura Kalty
March 11	<b>"Discrimination Law: FEHA/ADA" and "Hiring Legally &amp; Effectively"</b> County of Sonoma   Santa Rosa   Jack Hughes
March 11	<b>"Train the Trainer: Refresher"</b> Liebert Cassidy Whitmore   Los Angeles   Cynthia O'Neill
March 12	<b>"Guide for Supervisors on Preventing Workplace Harassment, Discrimination and Retaliation"</b> County of San Luis Obispo   Laura Kalty
March 12	<b>"Conflicts of Interest"</b> State Center Community College District   Bass Lake   Shelline Bennett
March 15, 23	<b>"Preventing Workplace Harassment, Discrimination and Retaliation"</b> City of Walnut Creek   Jack Hughes
March 18	<b>"Train the Trainer: Refresher"</b> Liebert Cassidy Whitmore   Fresno   Shelline Bennett
March 18	<b>"Ethics in Public Service"</b> Bay Area Air Quality Management District   San Francisco   Jack Hughes
March 22	<b>"Managing Performance Through Evaluations" and "Managing the Marginal Employee"</b> Dublin San Ramon Services District   Dublin   Jack Hughes
March 22	<b>"Preventing Workplace Harassment, Discrimination and Retaliation"</b> City of Fresno   Gage Dungy
March 22	<b>"Harassment"</b> UC Berkeley Principal Leadership Institute   Laura Schulkind
March 26	<b>"Train the Trainer: Refresher"</b> Liebert Cassidy Whitmore   Los Angeles   Laura Kalty

### **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](mailto:info@lcwlegal.com).

February 5	<b>"Fair Labor Standards Act Hot Topics"</b> Minnesota Public Employers Labor Relations Association   Minnetonka   Peter Brown
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- February 8 **"Labor Relations Issues"**  
Mosquito and Vector Control Association of California Trustee Training | Sacramento | Richard Bolanos and Deborah Glasser
- 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 **"Performance Improvement Plans and Last Chance Agreements"**  
Southern California Public Labor Relations Association (SCPMA) Annual Conference | Lakewood | Scott Tiedemann
- February 18 **"Preventing Harassment in the Workplace"**  
NPELRA | Webinar | Melanie Poturica
- February 18 **"Harassment and the Social Media"**  
Association of California Community Administrators (ACCCA) Annual Conference | San Francisco | Michael Blacher
- February 18 **"Public Agency Issues in Lean Times"**  
California Society of Municipal Finance Officers | Los Angeles | Peter Brown
- February 18 **"Public Sector Employment Law Update"**  
SCPMA Annual Conference | Lakewood | Richard Whitmore
- February 18 **"Legal Eagles"**  
ACCCA Annual Conference | San Francisco | Michael Blacher, Mary Dowell, Pilar Morin, Eileen O'Hare Anderson and Laura Schulkind
- 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 Conference** | San Francisco |
- March 3 **"12 Steps to Avoiding Liability"**  
California Special Districts Association Education Workshop | Sacramento | Morin Jacob
- March 5 **"What You Need To Know About Local Government Law"**  
Special Districts Institute (SDI) Governance Seminar | Huntington Beach | Mark Meyerhoff
- March 6 **"Supervisory Skills"**  
SDI Governance Seminar | Huntington Beach | Donna Evans

March 10	<b>"ADA and the Interactive Process"</b> Employer Advisory Council of Fresno County Breakfast Seminar   Fresno   Shelline Bennett
March 11	<b>"Legislative and Case Law Update"</b> County Counsels Association of California Employment Law Conference   Monterey   Richard Whitmore
March 12	<b>"Employment Law Issues for Public Attorneys"</b> County Counsels Association of California Employment Law Conference   Monterey   Melanie Poturica
March 12	<b>"Labor Relations in Local Government and Negotiating Contract Changes"</b> California State Association of Counties Institute for Excellence   Oakland   Richard Bolanos and Richard Whitmore
March 12	<b>"Evaluations and Discipline"</b> California Law Enforcement Association of Records Supervisors Meeting   Fresno   Frances Rogers
March 22	<b>"Protecting Privacy in a Sea of Data"</b> California Community College Chief Information Service Officers Annual Meeting   Ontario   Connie Chuang Almond
March 24	<b>"Public Sector Labor Relations Update"</b> Center for Collaborative Solutions Annual Conference   Anaheim   Bruce Barsook
March 30	<b>"Exercising Your Management Rights"</b> California Special Districts Association Education Workshop   Sacramento   Richard Whitmore



# LIEBERT CASSIDY WHITMORE

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