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CLIENT UPDATE

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

April 2010

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SEXUAL HARASSMENT/DISABILITY DISCRIMINATION/RETALIATION

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

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

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

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

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

Lopez then quit her job claiming intolerable working conditions, and sued the County for 17 separate causes of action. By the time the case was submitted to the jury, there were four separate causes of action: sexual harassment, failure to accommodate a disability, failure to engage in the interactive process and retaliation. After

CLIENT UPDATE

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a five week trial, the jury found in favor of the County on all causes of action.

GENDER/DISABILITY DISCRIMINATION

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

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

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

Assuming that Johnson could establish a *prima facie* case of gender discrimination, the County offered legitimate reasons for its failure to hire Johnson, specifically that Bogott was better qualified and Johnson lacked the requisite academic qualifications. The burden was then on Johnson to show that the County's reasons were pretext.

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

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

In addition, Johnson asserted that her multiple sclerosis substantially limited her ability to work. But the evidence suggested just the opposite. Johnson was a highly competent employee at the time of the challenged hiring decision with excellent performance reviews. As long as a plaintiff maintains a satisfactory level of job performance, her working ability cannot be so limited to constitute a disability under the ADA.

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

AGE DISCRIMINATION

EEOC Publishes New Proposed Age Discrimination In Employment Act Regulations On Employer Affirmative Defense.

The Equal Employment Opportunity Commission recently published new regulations to the Age Discrimination in Employment Act (ADEA). Specifically, the proposed rule defines the "reasonable factors other than age" (RFOA) defense available to employers. The changes are intended to reflect the U.S. Supreme Court's *Smith v. Jackson* and *Meacham v. Knolls Atomic Power Laboratories* decisions.

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

The EEOC offers a non-exhaustive list of relevant considerations in determining whether an employment practice is reasonable for purposes of the RFOA defense. Those considerations are: whether the practice and its implementation are "common business practices"; the extent to which the factor is related to the employer's stated business goal; whether the employer took steps to define the factor accurately and apply it fairly; whether the employer assessed the adverse impact of the practice on older workers; the severity of harm to older individuals; and whether the employer had other options available and why it selected the option it did.

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

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

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

RETALIATION

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

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

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

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

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

The Court found that a reasonable employee in the employees' position may well be dissuaded from participating in a discrimination investigation if he knew that in retaliation, he would be disciplined (though innocent) for failing to arm a security system that is needed to protect vulnerable residents

and/or that his work schedule would be changed such that he would have to work alone at a facility more dangerous and threatening than the facility at which he usually worked.

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

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

RETALIATION/FIRST AMENDMENT

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

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

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

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

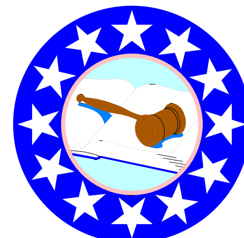
To establish a retaliation claim under the Rehabilitation Act, an employee must show that: (1) she engaged in a protected activity; (2) she suffered a materially adverse action; and (3) a causal connection between the protected activity and the adverse action.

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

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

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

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



FIRST AMENDMENT

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

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

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

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

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

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

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

Fairchild v. Liberty Independent School District (5th Cir. 2010) ___ F.3d ____ [2010 WL 607100].

Note:

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

INDEPENDENT CONTRACTORS

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

The IRS is engaged in a three year program addressing a perceived tax shortfall in the collection of employment taxes due to misclassification of employees as independent contractors. It can be expected that the State will be apprised of any IRS misclassification actions.

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

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

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

Note:

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

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

LABOR RELATIONS

District Was Required To Bargain Regarding Transfer Of Unit Work And Changes In Negotiable Past Practices, But Not The Assignment Of Work Contemplated In The Job Description.

Various Unions filed unfair practice charges with PERB against the Desert Sands Unified School District for violations of the Educational Employment Relations Act (EERA). The administrative law judge found that the District failed to negotiate in good faith on all four claims. The Board affirmed except as to one claim.

Health Technicians Duties

The District employed several classifications to assist students with physical disabilities. Paraeducators and health technicians would both assist students with toileting or diapering needs. Health technicians, but not paraeducators, could assist students with catheterizations. In 2002, the District began reassigning toileting duties from health technicians to paraeducators, and catheterization duties to school nurses. The District then laid off all of the health technicians.

In general, a transfer of work from employees in one bargaining unit to employees in another is negotiable. In addition, the transfer of work from one classification to another within the same bargaining unit is also negotiable. However, where unit and non-unit employees perform overlapping duties, an employer does not violate its duty to negotiate merely by increasing the quantity of work which non-unit employees perform and decreasing the quantity of work which unit employees perform. Notably, this exception does not apply where as a result of the transfer: (1) unit employees cease performing duties that they previously performed, or (2) non-unit employees begin to perform duties that were previously exclusively performed by unit employees.

The Board found that the District's transfer of toileting and other personal assistance duties from the health technicians to the paraeducators, and transfer of catheterizations and other invasive procedures to school nurses outside the bargaining unit were negotiable. Although the health technicians shared duties with the nurses and the paraeducators, the critical issue was that, as a result of the lay off, the health technicians' duties ceased to be performed by health technicians. Therefore, the District breached its duty to bargain by failing to negotiate the transfer of work.

Use of Charter Buses

The District had a policy which required the use of school buses for field trips. The District changed the policy to delete the provision stating that the general rule required the exhaustion of appropriate District vehicles and/or drivers prior to the use of charter buses. The District then added language

including non-District-owned vehicles to the list of "appropriate District vehicles" and authorizing the superintendent to approve exceptions to the policy.

The Board found that the District violated its duty to bargain in good faith regarding the change in policy. The change in policy permitted the District to assign charter buses without first considering the availability of District buses and drivers. As a result, the District could have booked charter buses even if District buses and drivers were available. This reduction of work is a matter within the scope of representation.

Behind-the-Wheel Training

Bus drivers were required to receive classroom instruction and behind-the-wheel training to renew their certificates to drive school buses. Some of the behind-the-wheel training was conducted during the driver's regular work hours. The District paid employees for their classroom training time. During labor negotiations, the District proposed to pay the drivers for four of the ten hours of behind-the-wheel training time. The Union refused, arguing that the District had a past practice of paying employees for all ten hours of behind-the-wheel training time. The District asserted that to the extent that it had previously paid for ten hours of behind-the-wheel training time, it never made a conscious decision to do so. The District subsequently stopped paying for behind-the-wheel training time.

The Board held that the Union established a past practice by showing that, for at least several years, numerous employees were compensated for the 10 hours of training, in addition to the 10 hours of classroom instruction. Moreover, some of the employees received their behind-the-wheel training during regular work hours. Thus, it was not plausible that the District was unaware of its own practice, and the District had an obligation to negotiate the change in policy.

Bus Mechanic Duties

Danny Pizan was the lead vehicle equipment mechanic in the transportation department. His duties included reviewing the bus drivers' daily reports and assessing their notations of mechanical failures. Pizan would then determine the mechanic to whom the work should be assigned. In 2001, Pizan was demoted and the task of assigning work fell on the mechanics. The work was redistributed by assigning each mechanic responsibility for the maintenance and repair of a group of the District's vehicles. Each mechanic was required to maintain maintenance logs for their buses. The Union contends that the change impacted the employees' hours of work and was subject to negotiation.

The direction of the work force and the determination of the work to be performed by employees is generally a managerial prerogative and not subject to bargaining. So long as the employer assigns tasks that apply to tasks that are reasonably understood to be among the duties of the classification as established in the job description, there is no obligation to bargain.

Here the District changed the manner in which the duties of the mechanics were assigned. Thus, the mechanics took a more active role in reviewing daily bus reports, diagnosing and prioritizing bus repairs, writing up work orders, and ordering the parts for their assigned buses. Even assuming these duties were new, they were clearly contemplated by the mechanics' job descriptions and, therefore, not within the scope of representation.

California School Employees Ass'n v. Desert Sands Unified School District (2010) PERB Dec. No. 2092 [34 PERC 39].

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

Chris Lewis, Scott Lipscomb Edelen, and Savannah Morgan were members of the California Statewide Law Enforcement Association. After the expiration of a collective bargaining agreement (CBA) containing a "maintenance of membership" clause, the members filed withdrawals from membership with the Union. The maintenance of membership clause stated that once employees join the Union, they must remain members for the duration of the CBA and members could only withdraw from membership during the 30 days prior to June 30, 2008 - the expiration date of the CBA.

Because the Union had not yet completed negotia-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARBITRATION

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

The San Francisco Housing Authority's Memorandum of Understanding (MOU) states that seniority by classification applies in layoffs. An employee with more seniority may bump an employee with less seniority in the same classification or in a lower classification in the same classification series. A temporary employee may not bump a regular permanent employee, regardless of his/her seniority.

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

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

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

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

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

San Francisco Housing Authority v. SEIU Local 790 (2010) ___ Cal.App.4th ____ [2010 WL 779241].

Note:

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

Arbitration Provision Requiring The Arbitrator To Render An Award In Accordance With California Law Does Not Evidence An Agreement For An Expanded Scope Of Judicial Review.

Kenny Gravillis entered into an agreement with Coldwell Banker Brokerage in connection with the purchase of a home. The purchase agreement included an arbitration provision which stated that any dispute or claim arising from the Agreement would be decided by neutral, binding arbitration; and that the arbitrator must render an award in accordance with substantive California law. After he purchased the house, Gravillis discovered that the house had extensive structural damage that rendered it uninhabitable.

Gravillis sued Coldwell Banker for failing to disclose the house's defects. Coldwell Banker filed a motion to compel arbitration, which the trial court granted. The arbitrator found in favor of Gravillis and awarded him almost $400,000 in damages and arbitral costs. The trial court granted Gravillis' petition to confirm the award, and denied Coldwell Banker's petition to vacate the award. Coldwell Banker appealed. The California Court of Appeal affirmed.

Coldwell Banker argued that the arbitrator misinterpreted California law when he found that Coldwell Banker breached its fiduciary duty to Gravillis. Absent certain rare circumstances, a court generally will not review an arbitration award for any substantive errors of law. The Court found that an arbitration provision requiring the arbitrator to render an award in accordance with California substantive law does not, by itself, mandate review of the award on the merits. Expanded review is a marked departure from arbitration as a speedy and relatively inexpensive means of dispute resolution and will not be implicitly attributed to the parties.

The Court also found that the award of arbitral costs was lawful. Although the Agreement was silent regarding the apportionment of costs, the parties agreed to use ADR Services for the arbitration, and ADR Services' rules allow for an arbitrator to award arbitral expenses to one party.

Gravillis v. Coldwell Banker Residential Brokerage Co. (2010) 182 Cal.App.4th 503.

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

The police Union filed a grievance against the Metropolitan Police Department in Washington D.C. for the Department's failure to pay police officers overtime worked during a special event. The Union's grievance sought overtime payment and liquidated damages under the Fair Labor Standards Act. The grievance erroneously alleged a violation of Article 30, Section 2 of the collective bargaining agreement (CBA), which was not in effect, rather than Article 30, Section 1, which

required the Department to pay officers overtime in compliance with the FLSA.

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

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

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

FAMILY AND MEDICAL LEAVE ACT

Where Contract With Teacher To Also Serve As A Coach Required Him To Complete Season To Receive His Full Coaching Supplement, School's Failure To Pay The Supplement During The Time He Was On Leave Was Not Unlawful.

Milton Harris was a teacher and the head boys' varsity basketball coach in the Metropolitan Nashville School System in Tennessee. For each year he coached, he received a 12% coaching supplement. He received the supplement at the beginning of the school year regardless of when the season began. The coaching contract stated that he would have to complete the season to receive the full supplement and would be required to pay back any supplement not earned.

Harris reported for school in August 2003 and then, shortly thereafter, suffered a heart attack. He was on FMLA leave until January 2004. During his absence, the assistant coach, Marlon Simms, coached the team. Approximately half of the basketball season was over when Harris returned from leave. The School reinstated Harris to head coach, but would only pay him half of the 12% coaching supplement and began "recouping" overpayments made while Harris was on leave.

Harris sued the District under the FMLA for failure to fully restore his full 12% coaching supplement upon reinstatement. The district court awarded Harris $3,084.77 (the amount of the full 12% coaching supplement that he did not receive for the 2003-2004 season) and liquidated damages. The Sixth Circuit Court of Appeals reversed.

The FMLA requires that an employee returning from FMLA leave be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

Under state law, Harris's position as a teacher was protected by tenure and his position as a coach was protected by whatever contract he had with the Board to perform coaching duties, but not by tenure. The coaching contract required that the coach complete the season to receive the full supplement and reimbursement of any part of the sup-

plement not earned.

Under the coaching contract, Harris was not entitled to the coaching supplement for the period when he did not coach. The School's failure to suspend the biweekly payment of the coaching supplement during Harris's leave should not make the correction of the error after his return from leave a violation of the FMLA.

Harris v. Metropolitan Government of Nashville and Davidson County, Tennessee (6th Cir. 2010) 594 F.3d 476.

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

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

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

In a case of first impression, the Ninth Circuit followed the Fourth, Fifth and the Tenth Circuits in finding that, under the FMLA, front pay is an equitable remedy that must be determined by the court, both as to the availability of the remedy and the amount of any award. Front pay is awarded at the court's discretion only if the court determines that reinstatement is inappropriate, such as where no position is available or the employer-employee relationship has been so damaged by animosity that reinstatement is impracticable. Consequently, it makes sense that the availability of the front pay and the amount of front pay should be decided by the court. The Court also found that the district court's front pay award of $267,000 was supported by substantial evidence.

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

Traxler v. Multnomah County (9th Cir. 2010) ___ F.3d ____ [2010 WL 669251].

FAIR LABOR STANDARDS ACT

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

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

Facts of the Case

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

Before he left for the first job in the morning,

Rutti would log onto a handheld computer device provided by the Company that informed him of his jobs for the day, map his routes to the assignments, and prioritize the jobs. He also completed some minimal paperwork at home. During the day, Rutti recorded information about the installations he performed on a portable data terminal (PDT) provided by the Company. At the end of the day, Rutti was required to upload data about his day's work. He then would have to connect the PDT to a modem at home to transmit the information. Sometimes he would have to make more than one attempt to successfully transmit the information. He could upload the data any time after the work day between 7:00 p.m. and 7:00 a.m.

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

Pre-Shift Activities

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

Post-Shift Activities

On the other hand, Rutti's daily post-shift PDT transmissions to the Company appear to have been part of the regular work of the employees in the ordinary course of business and are necessary to the business and performed primarily for the benefit of the employer. Even if the PDT transmissions took only five to ten minutes, there was sufficient evidence that technicians often would have to come back to the system to ensure that the transmission was successful, and, if not, send it again. There was also evidence of frequent transmission failures. Moreover, the aggregate amount of time and the regularity of the additional work suggest that the transmissions were performed as part of the regular work of the employees in the ordinary course of business. Thus, material issues of fact existed as to whether the PDT transmissions were *de minimis*.

Commuting Time - FLSA

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

Commuting Time - California Law

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

Rutti v. Lojack Corp. (9th Cir. 2010) ___ F.3d ____ [2010 WL 699946].

Note:

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

EMPLOYER LIABILITY

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

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

Del Rosario's job duties included responding to customer complaints and visiting customers' facilities to gain information and/or maintain customer relations. Consequently, if a customer called with quality concerns, Del Rosario would accompany a sales engineer to the site to answer any technical questions. Although he usually went with a sales engineer who would drive, Del Rosario would sometimes drive his own car if no sales engineer was available. The Company reimbursed him for his mileage. During his 16 years of employment, Del Rosario only used his own car to visit customers approximately 10 times.

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

Employers are vicariously liable for tortious acts committed by employees during the course and scope of their employment. Generally employers are exempt from liability for tortious acts committed by employees during their daily commute to and from work. However, an exception to this rule arises where the use of the car gives some incidental benefit to the employer. The exception can only apply if the employee has agreed to make the vehicle available as an accommodation to the employer and the employer has reasonably come to rely upon its use and to expect the employee to make the vehicle available on a regular basis while still not requiring it as a condition of employment.

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

Lobo v. Tamco (2010) 182 Cal.App.4th 297.

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

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

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

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

Diaz v. Carcamo (2010) 182 Cal.App.4th 339.

COUNCIL MEMBER TRAVEL EXPENSES

City May Provide Council Members A Vehicle Allowance Instead Of Reimbursement For Actual Vehicle Expenses.

Government Code section 1223 permits city council members to contract directly with the city for a vehicle allowance for travel expenses. Government Code sections 53232.2 and 53232.3, which were enacted in 2005, establish requirements for reimbursement of city council members' travel expenses if a local agency reimburses council members for expenses incurred in the performance of official duties. It has been suggested that because the reimbursement statutes were enacted after Section 1223, they control the issue and it is no longer lawful for a city to provide council members with a vehicle allowance. The Attorney General opined that a city may provide a vehicle allowance to its city council members in lieu of reimbursing actual vehicle expenses after such expenses are incurred.

The reimbursement statutes do not expressly prohibit a city from paying a council member through a vehicle allowance. The statutes merely state requirements applicable *when* and *if* a city reimburses a council member for actual expenses occurred. In addition, the Legislature is presumed to have been aware of Section 1223 when it enacted the reimbursement statutes and the Legislature did not repeal Section 1223. Consequently, it is improper to construe the reimbursement statutes as impliedly nullifying the allowance statute.

If an agency chooses to reimburse elected officials for actual and necessary expenses incurred, then the agency must follow the reimbursement statutes. However, in lieu of reimbursing elected officials for actual vehicle expenses, the agency may provide the officials with a vehicle allowance.

Attorney General Opinion No. 08-405, __ Ops.Cal.Atty.Gen. __; 2010 WL 602676 (February 18, 2010).

LAYOFF BENEFITS

COBRA Premium Reduction Extended, Again, to March 31, 2010.

On March 2, 2010, President Obama signed the Temporary Extension Act of 2010 amending the American Recovery and Reinvestment Act of 2009 (ARRA). The amendment provides for premium reductions for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit.

To qualify, individuals must experience a COBRA qualifying event that is the involuntary termination of a covered employee's employment. The involuntary termination must generally occur during the period that began September 1, 2008 and ended on March 31, 2010.

The Temporary Extension Act also contains a significant change in regard to COBRA continuation coverage resulting from a reduction in hours. An "assistance eligible individual" now includes a qualified beneficiary if the initial qualifying event with respect to the COBRA continuation coverage consists of a reduction in hours (during the period from September 1, 2008, through March 31, 2010), and such qualifying event is followed by an involuntary termination of employment (during the period from March 2, 2010, through March 31, 2010). The premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months.

A full copy of the Temporary Extension Act of 2010 can be found at:
http://www.dol.gov/ebsa/pdf/HR4691.pdf

The Department of Labor has issued a fact sheet regarding the COBRA subsidy, including the temporary extension, which can be found at:
http://www.dol.gov/ebsa/newsroom/fscobrapremiumreduction.html

Updated model notices can be found at:
http://www.dol.gov/ebsa/COBRAmodelnotice.html

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**

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.

Firm Publications

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

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

Profile:

Employment Relations Consortiums

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

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

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

> **"These workshops are very helpful. I continue to refer to the workbooks when counseling and training staff."** -- Central Valley ERC
>
> **"Good examples and great overview."** -- Napa/Solano/Yolo ERC
>
> **"Presenter was knowledgeable and well spoken. Information was presented in an effective manner, clear and concise."** -- Gateway Public ERC
>
> **"As always, LCW has excellent speakers. Their knowledge in the topics is outstanding."** -- Imperial Valley ERC

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

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

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

Management Training Workshops

Firm *Activities*

Consortium Workshop Training

April 1 **"Supervisory Skills for the First Line Supervisor/Manager"**
Imperial Valley ERC | Imperial | Donna Evans

April 1 **"Managing Performance Through Evaluation"**
Gateway Public ERC | Lakewood | Laura Kalty

April 1 **"Leaves, Leaves and More Leaves"** and **"Public Sector Employment Law Update"**
East Inland Empire ERC | Fontana | Melanie Poturica

April 7 **"Issues and Challenges Regarding Drugs and Alcohol in the Workplace"**
Gold Country ERC | Webinar | Richard Whitmore

April 8 **"Sick and Disabled Employees"** and **"Family and Medical Care Leave Acts"**
Monterey Bay ERC | Morgan Hill | Morin I. Jacob

April 8 **"Supervisory Skills for the First Line Supervisor/Manager Part II"**
Los Angeles County Management Attorneys Consortium | Los Angeles | Donna Evans

April 8 **"Public Sector Employment Law Update"** and **"Exercising Your Management Rights"**
San Diego ERC | La Mesa | Richard Whitmore

April 13 **"Preventing Workplace Harassment, Discrimination and Retaliation"** and **"Ethics in Public Service"**
Coachella Valley ERC | Cathedral City | Scott Tiedemann

April 14 **"Public Sector Employment Law Update"** and **"Legal Aspects of Violence in the Workplace"**
Bay Area ERC | Los Altos | Richard Whitmore

April 15 **"Discipline: Putting It into Practice"**
South Bay ERC | Carson | Mark Meyerhoff

April 15 **"Discipline: Putting It into Practice"**
Orange County ERC | Costa Mesa | Scott Tiedemann and Tim Owen

April 20 **"Leaves, Leaves and More Leaves"** and **"Family and Medical Care Leave Acts"**
San Mateo County ERC | Colma | Cepideh Roufougar

April 21 **"Discipline: Putting It into Practice"**
San Gabriel Valley ERC | Alhambra | Donna Evans and Tim Owen

April 22 **"Employee Due Process Rights and 'Skelly': A Guide to Implementing Public Employee Discipline"** and **"Principles for Public Safety Employment"**
NorCal ERC | San Ramon | Todd Simonson

April 23 **"Retaliation"** and **"12 Steps to Avoiding Liability"**
Southern CA Community College Districts (CCDs) ERC | San Diego | Pilar Morin and Judith Islas

April 27 **"Handling Grievances"** and **"Labor and Employment Relations Issues During Lean Economic Times"**
Mendocino County ERC | Ukiah | Jack Hughes

April 28 **"Managing Leave Laws"** and **"The Discipline Process"**
North State ERC | Red Bluff | Morin I. Jacob

April 28 **"Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce"** and **"Employees and Driving"**
Los Angeles County Human Resources Consortium | Alhambra | Mark Meyerhoff

April 30	**"Advanced Investigations of Harassment and Complaints"** and **"Human Resources Academy II for Community College Districts"** Central CA CCDs ERC | Fresno | Mary Dowell & Shelline Bennett
April 30	**"Reductions in Staffing"** and **"Checking References: The Most Important Part of the Hiring Process"** Bay Area CCDs ERC | Oakland | Alison Neufeld
May 4	**"Wage and Hour Issues Affecting Independent Schools"** Bay Area Jewish Schools Consortium | San Francisco | Donna Williamson
May 5	**"Legal Issues for Negotiators"** and **"Finding the Facts: Disciplinary and Harassment Investigations"** Gold Country ERC | Citrus Heights | Jack Hughes
May 6	**"Supervisory Skills for the First Line Supervisor/Manager"** East Inland Empire ERC | Fontana | Donna Evans
May 6	**"Prevention and Control of Absenteeism and Abuse of Leave"** and **"Preventing Workplace Harassment, Discrimination and Retaliation"** West Inland Empire ERC | Diamond Bar | Laura Kalty and Camille Townsend
May 12	**"Managing Performance Through Evaluation"** and **"Annual Audit of Your Personnel Rules"** Coachella Valley ERC | Indian Wells | Brian Walter and Lauren Liebes
May 12	**"Embracing Diversity"** and **"Preventing Workplace Harassment, Discrimination and Retaliation"** Bay Area ERC | Palo Alto | Laura Schulkind
May 12	**"Employee Due Process Rights and 'Skelly': A Guide to Implementing Employee Discipline"** and **"12 Steps to Avoiding Liability"** Central Valley ERC | Kerman | Shelline Bennett
May 13	**"FLSA: New Developments and Hot Topics"** and **"Leaves, Leaves and More Leaves"** San Diego ERC | Chula Vista | Peter Brown
May 13	**"Preventing Workplace Harassment, Discrimination and Retaliation"** Gateway Public ERC | Long Beach | Donna Evans
May 13	**"A Supervisor's Employment Relations Primer"** Monterey Bay ERC | Morgan Hill | Kelly Tuffo
May 13	**"Prevention and Control of Absenteeism and Abuse of Leave"** Los Angeles County Management Attorneys Consortium | Los Angeles | Jennifer Hong
May 14	**"Advanced Investigations of Harassment Complaints"** Southern CA CCDs ERC | Torrance | Mark Meyerhoff
May 18	**"Supervisory Skills for the First Line Supervisor/Manager"** North San Diego County ERC | San Marcos | Laura Kalty
May 19	**"Introduction to Public Service"** and **"Privacy Issues in Our Technological World"** San Mateo County ERC | San Mateo | Jack Hughes
May 20	**"Retirement Issues for California's Public Employers"** and **"Preventing Workplace Harassment, Discrimination and Retaliation"** Orange County ERC | Cypress | Steve Berliner and Frances Rogers
May 20	**"Prevention and Control of Absenteeism and Abuse of Leave"** and **"Annual Audit of Your Personnel Rules"** NorCal ERC | Pleasant Hill | Jack Hughes
May 26	**"Handling Grievances"** and **"Embracing Diversity"** Ventura/Santa Barbara ERC | Santa Barbara | Donna Evans

May 26 **"Employee Due Process Rights and 'Skelly': A Guide to Implementing Public Employee Discipline"** and **"Retirement Issues for California's Public Employers"**
Sonoma/Marin ERC | Rohnert Park | Cepideh Roufougar

May 27 **"Family and Medical Care Leave Acts"** and **"The Disability Interactive Process"**
Humboldt County ERC | Fortuna | Morin I. Jacob

Customized Training Presentations

April 5,7, 27 **"FBOR"**
City of Vallejo Fire Department | Vallejo | Todd Simonson

April 7 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
West County Wastewater District | Richmond | Jack Hughes

April 8 **"How to Respond to Employment References"**
San Diego French American School | La Jolla | Judith Islas

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

April 12 **"Certificated Evaluation"**
UC Berkeley Principal Leadership Institute | Berkeley | Laura Schulkind

April 13 **"Exercising Your Management Rights"** and **"Absenteeism Prevention"**
County of Sonoma | Santa Rosa | Jack Hughes

April 16 **"Sexual Harassment/Hostile Workplace Training"**
San Jose/Evergreen Community College District | San Jose | Laura Schulkind and Kelly Tuffo

April 20 **"Train the Trainer: Harassment Prevention"**
Liebert Cassidy Whitmore | Los Angeles | Donna Evans

April 21 **"Train the Trainer: Harassment Prevention"**
Liebert Cassidy Whitmore | San Francisco | Suzanne Solomon

April 21 **"The Disability Interactive Process"**
Monterey County | Salinas | Jack Hughes

April 23 **"Embracing Diversity"**
USDA Forest Service | Willits | Jack Hughes

April 26 **"Families in Crisis"**
UC Berkeley Principal Leadership Institute | Berkeley | Laura Schulkind

April 27 **"Ethics in Public Service"** and **"The Brown Act"**
Yorba Linda Water District | Placentia | Donna Evans

April 28 **"Collective Bargaining"**
Labor Relations Information System - LRIS | Las Vegas | Richard Whitmore

April 28 **"Train the Trainer: Harassment Prevention"**
Liebert Cassidy Whitmore | Fresno | Shelline Bennett

April 29 **"Ethics in Public Service"** and **"Public Sector Employment Law Update"**
California Joint Powers Risk Management Authority | Santa Rosa | Richard Whitmore

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

May 1 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fresno | Gage Dungy

May 4 **"Discipline: Putting It Into Practice"**
County of Ventura, Human Services Agency | Ventura | Donna Evans and Tim Owens

May 6 **"Performance Evaluations"**
El Camino Community College District | Torrance | Mary Dowell

May 7 **"Collective Bargaining Negotiations Training Seminar"**
The California Collegiate Brain Trust and Liebert Cassidy Whitmore | Los Angeles | Jean Malone and Mary Dowell

May 12 **"12 Steps to Avoiding Liability"** and **"Managing the Marginal Employee"**
County of Sonoma | Santa Rosa | Jack Hughes

May 13 **"The Meaning of At-Will, Part-Time and Contract Employment"** and **"Managing Leave Laws and the Discipline Process"**
City of Beverly Hills | Mark Meyerhoff

May 14 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
County of Sonoma | Santa Rosa | Jack Hughes

May 17 **"FMLA"**
City of Brentwood | Jack Hughes

May 18 **"Legal Issues Regarding Hiring"**
City of Glendale | Mark Meyerhoff

May 18 **"Labor & Employment Relations Issues During Lean Economic Times"**
Employment Resource Managment Association | Novato | Jack Hughes

May 21 **"FLSA"**
Soledad Police Department | Cepideh Roufougar

May 26 **"Supervisory Skills for the First Line Supervisor/Manager"**
City of San Bernardino | Mark Meyerhoff

Speaking Engagements

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

April 9 **"Administering Overlapping Laws: Disability Discrimination, FMLA, Workers Comp, and Disability Retirement"**
California District Attorneys Association Management & Leadership Conference | Sacramento | Jack Hughes

April 14 **"Understanding Employee Privacy and Confidentiality Issues"**
California Special Districts Association Education Workshop | Sacramento | Morin Jacob

April 15 **"Public Sector Employment Law Update"**
County Counsels Association of California (CCAC) Annual Conference | Monterey | Melanie Poturica

April 15 **"Personnel Issues: Hiring, Reference Checks, Personnel Records and Files"**
Central Valley Public Personnel Management Association | Fresno | Shelline Bennett

April 15 **"Reduction in Employee Benefits"**
CCAC Annual Conference | Monterey | Steven Berliner

April 20 **"FMLA/CFRA"**
California Public Employee Relations Seminar | Oakland | Morin Jacob

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

May 7	**"Addressing Substance Abuse for Attorneys"** League of California Cities City Attorneys Conference | Santa Barbara | Cynthia O'Neill
May 13	**"The Do's and Don'ts of Ethics for Legal Professionals"** CCAC Health and Welfare Conference | Monterey | Morin Jacob
May 18	**"Engaging in the Interactive Process"** Human Resource Association of Central California Meeting | Fresno | Shelline Bennett
May 21	**"Labor Negotiations Panel"** California Counsel of School Attorneys (CCSA) Spring Workshop | Sacramento | Bruce Barsook
May 21	**"Big Issues: Furloughs, Retiree Benefits, PERS/STRS, FLSA and Working with Boards"** CCSA Spring Workshop | Sacramento | Brian Walter
May 21	**"Community Colleges"** CCSA Spring Workshop | Sacramento | Eileen O'Hare Anderson
May 21	**"Case Law Update"** CCSA Spring Workshop | Sacramento | Laura Schulkind
May 28	**"Interagency Collaboration"** Municipal Managers Association of Southern California Annual Conference | Santa Barbara | Steven Berliner

The ***Client Update*** is available via e-mail. If you would like to be added to the e-mail distribution list, please send your name, agency, address, city, state, zip, phone number, fax number and e-mail address to info@lcwlegal.com. *Please note: by adding your name to the e-mail distribution list, you will no longer receive a hard copy of the* ***Client Update****.*

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