

CLIENT UPDATE

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

May 2010

LABOR RELATIONS

County's Unilateral Implementation of Changes Which Were Reasonably Contemplated In Its Last, Best and Final Offer, Although Not Identical, Did Not Violate the Meyers-Milias-Brown Act.

The County of Sonoma and the Union were negotiating a successor memorandum of understanding (MOU). The negotiations focused on three areas - health benefits, equity adjustments to salaries, and cost of living adjustments. The parties reached impasse and then proceeded to mediation pursuant to the County's Employee Relations Ordinance. The mediation sessions were unsuccessful. Consequently, the County implemented changes substantially similar to its last, best and final offer.

The Union filed an unfair practice charge with the Public Employment Relations Board alleging that the County violated its duty to bargain in good faith under the Meyers-Milias-Brown Act. The administrative law judge dismissed the charge, and the Board affirmed.

An employer's unilateral change in terms and conditions of employment prior to reaching an impasse in negotiations or completion of statutory impasse resolution procedures is a *per se* violation of the statutory duty to bargain in good faith. Once impasse has been reached and the parties have completed the statutory impasse resolution procedures, the employer may implement changes reasonably contemplated within its last, best and final offer. The employer does not have to implement changes identical with its last offer. But the unilateral adoptions must be reasonably comprehended within the pre-impasse proposals.

Here the County completed the statutory impasse resolution procedure - mediation - and implemented changes substantially similar to the County's previous proposals. The only differences were: (1) the County incorporated existing language from the previous MOU, and (2) the County changed the employee dental insurance contribution language from \$9.00 in the County's proposals to \$11.00, consistent with the previous MOU language. The Board found that these minor changes were reasonably comprehended within the County's pre-impasse proposals.

Sonoma County Law Enforcement Ass'n. v. County of Sonoma (2010) PERB Dec. No. 2100M [34 PERC 54].

CONTENTS

Labor Relations	1
Fair Labor Standards Act	4
Privacy	5
Disability Discrimination	6
Pregnancy Disability Leave	6
Whistleblower Retaliation	7
Due Process	7
Background Checks	8
Layoff Benefits	9

DEPARTMENTS

Firm Profile	9
New To The Firm	10
Firm Publications	10
Firm Activities	11

CLIENT UPDATE

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

©2010 Liebert Cassidy Whitmore

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

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

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

www.lcwlegal.com

Press Release Held To Constitute a Prohibited Bypassing Of The Exclusive Representative.

This Public Employment Relations Board case reflects one of the many proceedings arising out of issues regarding the inadequate funding of San Diego City's retirement system.

Under the terms of their labor agreement, employees represented by the San Diego Fire Fighters, Local 145, were given the option of purchasing up to five years of retirement service credit at cost. Subsequently the City determined that the San Diego City Employees Retirement System had grossly underestimated the cost of the credits. The City Attorney thereupon filed an action in court to seek to reverse the effects of the under pricing.

The City Attorney took further action, which is the subject of the PERB charge. The City Attorney's Office issued a press release which referred Local 145 employees to a form on the internet with which they could voluntarily rescind their prior purchase of a service credit. Local 145 filed a charge with the PERB asserting that the City Attorney's office had violated its duty to bargain in good faith when it bypassed Local 145 as the exclusive representative and negotiated directly with the employees.

The City Attorney argued that its communication was not seeking a change in the labor agreement, did not constitute negotiations, but merely called the employees' attention to a mistake made in the implementation of the agreement.

The majority of the Board did not buy it. The Board concluded that the City Attorney's action disregarded the agreement's language that expressly authorized the employee purchases at a price set by the Retirement System. Thus the direct suggestion to employees to waive their right under the agreement by rescinding their service credit purchases constituted prohibited bypassing of the exclusive representative in violation of the Meyers-Milias-Brown Act.

San Diego Firefighters Local 145, I.A.F.F. v. City of San Diego (Office of the City Attorney) (2010), PERB Dec. No. 2103 [34 PERC ___].

Under the Collective Bargaining Agreement, University Was Prohibited From Unilaterally Transferring a Major Portion of the Job Duties of a Bargaining Unit Position to a Non-Unit Position.

The University of California and the Union representing clerical and other administrative support employees had a collective bargaining agreement (CBA) which stated that, "In the event the University determines that a position or title should be reclassified or designated for exclusion from the unit, or the University intends to replace a major portion of a bargaining unit position with a position in a classification outside of the unit, the University must notify the Union at least 30 days prior to the proposed implementation." In its first charge, the Union alleged that in 2005, several bargaining unit members resigned and the University gave their job duties to employees in classifications outside of the bargaining unit.

The Union also alleged that in 2005, Fredda Olivares held a 50 percent time unit position as an administrative assistant II at a dormitory facility. She handled duties at the reception desk, prepared residential rooms for occupancy, conducted room inventories, and handled parking. She left her position in April 2005, during a hiring freeze. Consequently, the University hired Sharleisha Henderson to a non-Unit 50 percent, student position. Henderson's primary duty was taking inventory of vacated dorm rooms, but she also performed some parking permit issuance duties and note-taking for meetings. After the hiring freeze was over, the University posted an opening for an administrative assistant II position and ultimately selected Henderson for it.

The Union filed an unfair practice charge against the University for violating the Higher Education Employer Employee Relations Act (HEERA). The administrative law judge ruled in favor of the Union. The Public Employment Relations Board affirmed.

The University argued that the CBA only required notice to the Union when there is a formal request for reclassification that would result in an incumbent leaving the bargaining unit by virtue of the reclassification. But the Board found that the University was required to give the Union notice and an opportunity to meet and confer when: (1) a

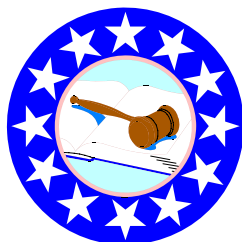
position should be reclassified; (2) a position should be designated for exclusion from the unit; or (3) when the University intends to replace a major portion of a bargaining unit position with a position in a classification outside of the unit.

A University's unilateral change violates HEERA if: (1) the employer breached or altered the parties' written agreement or past practice; (2) such action was taken without giving the Union notice or an opportunity to bargain over the change; (3) the change was not merely an isolated breach of the contract, but amounts to a change of policy (i.e., has a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members); and (4) the change in policy concerns a matter within the scope of representation.

The Board found that the University had transferred a major portion of the duties of unit members to employees outside of the unit. The University's conduct constituted a repudiation of the policy contained in the MOU. And the University intended to apply its narrow interpretation of the MOU provision in future cases. Consequently, this was a change in policy within the scope of representation.

However, the University did not breach the MOU with respect to Henderson's student position. While Henderson worked in the student position, she performed some duties beyond those normally associated with student employees, but there was no evidence that she performed more than 50 percent of the duties of an administrative assistant in her capacity as a student employee. Moreover, the University did not intend to replace a major portion of the administrative assistant position. The position remained open during the hiring freeze and was promptly filled when the freeze was lifted.

Coalition of University Employees v. Regents of the University of California (Davis) (2010) PERB Dec. No. 2101H [34 PERC 55].



Legislature Approves Assembly Bill 155 Limiting The Ability Of Local Agencies To File For Bankruptcy Without Approval Of The State.

Last year public employee unions, particularly the firefighters, pushed Assembly Bill 155, Mendoza. It required local agencies to get permission from the otherwise obscure California Debt and Investment Advisory Commission before being able to seek bankruptcy protection in federal court. The measure was in reaction to the Vallejo bankruptcy, which, in the course of its proceedings, set aside some labor agreements. The measure was approved in short order by the Assembly, but then was bottled up in the Senate Local Government Committee. The reason was that one of the Committee's three democrats - Lois Wolk - joined the two republicans in voting "no" on the Bill.

Surprise. AB 155 came back to life in the current session of the Legislature. The reason: Darrell Steinberg, President Pro Tem of the Senate, replaced Lois Wolk with another democrat who adhered to the party line. As expected, this time the Senate Local Government Committee voted in favor of the measure. As of this writing, AB 155 is in the Senate Appropriations Committee. It is expected that it will be up to the Governor to sign or veto the Bill.

We'll keep you posted.

Court Employees Who Could Show That Independent Contractors Were Paid Almost Twice As Much As They Were Stated a *Prima Facie* Violation of the Trial Court Interpreter Employment and Labor Relations Act.

Essam Elmahgoop, an interpreter, is an intermittent part-time employee for the San Francisco Superior Court. In May 2006, he was offered a half-day assignment in the Monterey County Superior Court. Elmahgoop would only agree to accept the assignment if he was paid for a full day plus mileage reimbursement. The court refused to pay him the full day rate of \$265.04. Consequently, Elmahgoop declined the assignment, and the court hired a non-certified contract interpreter, Samir Rizkallah, who was paid \$500 for the half-day assignment.

In August 2006, the Monterey Superior Court requested Elmahgoop's services for a two-day trial. Elmahgoop said he would accept the assignment if the court would pay for him to stay overnight. The court refused to pay for the overnight accommodations and Elmahgoop declined the assignment. The court hired Rizkallah, who was paid \$125 per hour, as compared to the employee rate of \$33.14 per hour.

Ted Kim is also an intermittent interpreter employee for the San Francisco Superior Court. In June 2006, Kim was offered a half-day assignment at Sonoma County Superior Court. Kim wanted the full-day rate of \$265.04, but the court would only pay him at the half-day rate, despite three to four hours of travel time. Kim declined the assignment. The court hired an independent contractor and paid her \$500 plus round trip mileage.

The Union filed an unfair practice charge against the superior courts for violating the Trial Court Interpreter Employment and Labor Relations Act when they provided more favorable terms and conditions of employment to independent contractors than they did to court employees. The Public Employment Relations Board agent dismissed the claim for failure to state a *prima facie* case. The Board reversed.

The Court Interpreter Act states that hiring independent contractors with lesser duties or more favorable conditions is a violation of the statute if it is done for the purpose of discouraging interpreters from applying for pro tempore employment with the trial court. The Board held that to establish a *prima facie* violation, the charging party must establish that: (1) an independent contractor was afforded lesser duties or more favorable working conditions than an employee interpreter was (or would have been) afforded; and (2) the employer applied the disparate treatment for the purpose of discouraging independent contractors from applying for temporary employee interpreter jobs. With respect to the second element, there must be a substantial disparity in the duties or working conditions between employee interpreters and independent contractors, plus some other factual circumstances that suggest unlawful motive.

Here the Board found that Elmahgoop and Kim both stated *prima facie* cases because the trial court paid independent contractors almost twice as much as either employee would have received. Thus, the court clearly afforded more favorable

working conditions to independent contractors than it did to the employees. Also, based on the magnitude of the disparity, plus the fact that the court allegedly unilaterally changed its premium pay policies for employees but not for independent contractors, the Board found there was sufficient evidence of unlawful motive.

California Federation of Interpreters-TNG/CWA v. Region 2 Court Interpreter Employment Relations Committee (2010) PERB Dec. No. 2099I [34 PERC 54].

■ FAIR LABOR STANDARDS ACT

Public Safety Employers Are Not Required to Give Employees Notice Prior to Establishing a 7(k) Work Period.

In April 1985, the Town of Framingham, Massachusetts issued a memo stating that the Town was declaring a 24 day work period for police and fire personnel pursuant to section 207(k) of the Fair Labor Standards Act and that the declaration would be effective beginning on April 13, 1986. The Town addressed the memo to the publicly available personnel file maintained by the Town's governing board and circulated the memo to the police chief, fire chief, personnel director, and town counsel.

A group of police officers sued the Town for failure to pay overtime in violation of the FLSA. The district court granted partial summary judgment in favor of the Town, finding that the Town had established a 207(k) work period. The First Circuit Court of Appeals affirmed.

The 207(k) exemption is a partial FLSA exemption for law enforcement and fire protection personnel. It allows for the public agency to raise the average number of hours public safety personnel can work without triggering the overtime requirement. Before a public employer may qualify for the limited public safety exemption, two things must be true: (1) the employees at issue must be engaged in fire protection or law enforcement within the meaning of the statute and (2) the employer must have established a qualifying work period. Assuming these conditions are satisfied,

the employer can simply start paying its employees under section 207(k), although the employer may opt to pay its employees more than section 207(k) mandates without forfeiting the benefits of the exemption.

The First Circuit rejected the officers' argument that the Town was required to give the affected employees notice in order to establish a 207(k) work period. The FLSA does not have such a notice requirement, and there is no requirement that an employer formally state its intention or obtain an agreement in advance to pay employees under section 207(k).

Calvao v. Town of Framingham (1st Cir. 2010) 599 F.3d 10.

Department of Labor Will Now Only Issue Administrator Interpretations Instead of Opinion Letters.

On March 24, the United States Department of Labor, Wage and Hour Division (DOL) announced that it would no longer issue fact-specific opinion letters regarding wage and hour issues. The DOL will only respond to requests for opinion letters with references to statutes, regulations, interpretations and cases that are relevant to the specific request but without an analysis of the specific facts presented. Instead, the DOL will periodically publish "Administrator Interpretations" which will set forth a general interpretation of the law and regulations, applicable across-the-board to all those affected by the provision in issue.

The DOL believes that this will be a much more efficient and productive use of resources than attempting to provide definitive opinion letters in response to fact-specific requests submitted by individuals and organizations, where a slight difference in the assumed facts may result in a different outcome.

This is a fundamental shift in how the DOL operates in that the DOL has issued opinion letters to employers for decades. In addition, because the DOL will no longer issue opinion letters to specific employers, employers will no longer be able to ask the DOL to verify that it is in compliance with the law.

■ PRIVACY

City Officials Entitled To Qualified Immunity on Employees' Claim That Recording of All Phone Calls on City Phone Lines Violated Their Constitutional Rights.

The City of Providence, Rhode Island, built a new Public Safety Complex to house its police and fire stations. The Complex's telephone system recorded all phone calls. The police department had told its employees that all calls would be recorded, but the fire department did not notify the fire personnel about the recordings.

A group of police and fire personnel sued the City, the Communications Director and other City officials under Section 1983 for violation of their rights under the Fourth Amendment prohibiting unreasonable searches, and violation of the state's wiretapping laws. The district court denied the defendants' motion for summary judgment based on qualified immunity. The jury found in favor of the employees. On appeal, the First Circuit Court of Appeals reversed the summary judgment ruling.

Officials are entitled to qualified immunity unless (1) the facts demonstrate that there was a violation of a constitutional right, and (2) the right at issue was clearly established at the time of the alleged misconduct. The First Circuit found that the employees did not have a clearly established Fourth Amendment right to not have phone calls made at work recorded.

The Court also found that the City was entitled to judgment as a matter of law because the employees' calls were not recorded pursuant to any official policy or custom as required under Section 1983. The recordings only occurred at a single building and for a period of eight months. This incident was insufficient to show a well-settled custom or practice.

Walden v. City of Providence (1st Cir. 2010) 596 F.3d 38.

Note:

Would the result have been the same under California law? Penal Code Section 632, the wire tapping law, makes it a crime to record or eavesdrop on any confidential communication, including a private conversation or telephone

call, without the consent of all parties to the conversation. A confidential communication is a conversation in which one of the parties has a reasonable expectation that no one is listening in or overhearing the conversation. While the facts in this case did not involve conversations, but rather recordings of incoming calls that may at a subsequent time be responded to over the fire department phone system by fire department employees, California's constitutional protection of the right to privacy (Article I, Sec. 1), and assuming that fire department employees were found to have had a reasonable expectation of privacy, the result on the privacy issue might have been different had the case occurred in California.

■ DISABILITY DISCRIMINATION

Disciplinary Termination of Police Chief for Drinking and Driving While Off-Duty Was Not Unlawful Disability Discrimination.

Charles Budde was the police chief for the Kane County Forest Preserve District in Illinois. While off duty one day, he decided to drive home after having several glasses of wine. He rear-ended another vehicle and injured the driver and the passenger. His blood alcohol level was almost three times the legal limit. Consequently Budde's driver's license was revoked. And the District terminated his employment.

Budde sued the District for disability discrimination in violation of the Americans with Disabilities Act based on his alcoholism. The district court granted summary judgment in favor of the District. The Seventh Circuit Court of Appeals affirmed.

To state a disability discrimination claim, a plaintiff must first establish that he is a qualified individual with a disability. A qualified individual with a disability is someone who (1) satisfies the requisite skill, experience, education, and other job-related requirements of his employment position, and (2) can perform the essential job functions with or without reasonable accommodation.

Budde could not perform the essential job functions. Violation of a workplace rule, even if it is caused by a disability, is no defense to discipline. Here Budde's misconduct violated the District's rules prohibiting officers from being publicly intoxicated and prohibiting officers from violating public laws. In addition, the District had a general order stating that the ability to operate a vehicle is an essential job function, and Budde was unable to lawfully operate a vehicle. Accordingly, the District terminated Budde because of his misconduct, and not due to discrimination.

Budde v. Kane County Forest Preserve (7th Cir. 2010) 597 F.3d 860.

■ PREGNANCY DISABILITY LEAVE

The Fair Employment and Housing Commission Publishes Proposed Regulations Regarding Pregnancy Disability Leave.

On April 16, the Fair Employment and Housing Commission (FEHC) issued an initial draft of revised regulations regarding California's Pregnancy Disability Law (PDL). The FEHC is seeking written comments on the proposed regulations through June 2. The proposed regulations do not contain many significant substantive changes. The changes primarily clarify the language of the existing regulations. Some of the regulations have been revised to conform with the recent changes to the federal Family and Medical Care Leave Act (FMLA) regulations.

The most significant change is that the FMLA and California Family Rights Act (CFRA) regarding intermittent leaves and reduced leave schedules will now be applied to the PDL. This will potentially allow disabled pregnant employees to take off more PDL time than before as employees will be able to use their PDL in hourly increments and not simply in weeks.

Moreover, the FEHC also revised the regulations to reflect a pregnant woman's right to reasonable accommodation to reflect the 2000 legislative change adding pregnancy as a disability under the Fair Employment and Housing Act, which

includes a reasonable accommodation requirement.

A copy of the proposed regulations can be found at:

http://www.fehc.ca.gov/act/pdf/pregnancyregulations/TEXT_OF_PREGNANCY_REGS.pdf

■ WHISTLEBLOWER RETALIATION

The California Supreme Court to Decide When a Whistleblower Retaliation Complaint Is "Satisfactorily Addressed" Under the California Whistleblower Protection Act.

In our **February 2010 Client Update**, we reported on the *Ohton v. California State University of San Diego* case where the California Court of Appeal determined that an employee's complaint constituted a good faith protected disclosure under the California Whistleblower Protection Act (CWPA).

David Ohton is a strength and conditioning coach at San Diego State University (SDSU). In 2003, Ohton filed an internal administrative complaint alleging that the coach retaliated against him in violation of the CWPA after he reported alleged misconduct by the football coach. The football team subsequently 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. In addition, although McClain concluded that there was minor retaliation, CSU did not address the matter of discipline or punishment.

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. On March 30, the California Supreme Court agreed to review the case. Specifically, the California Supreme Court deferred any further action in the case pending consideration and disposition of a related issue in *Runyon v. Board of Trustees of California State University*.

The issues in *Runyon* include the standard that governs the determination whether the employee's internal complaint has been "satisfactorily addressed" (section 8547.12, subd. (c)) by the California State University.

Ohton v. California State University of San Diego (2009) ___ Cal.App.4th ___; 103 Cal.Rptr.3d 665, cert. granted March 30, 2010, ___ Cal. 4th ___ [2010 WL 1540114].

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.

■ DUE PROCESS

Employee Could Not State a Liberty Interest Claim Where the Individual Defendants Did Not Publicly Disclose Stigmatizing Statements About Him.

Gerald Covell was the director of the Illinois Deaf and Hard of Hearing Commission. The Commission terminated his employment in 2003 without a name clearing or appeal hearing. Covell claims that the Commissioners disclosed that he was terminated for viewing pornographic material on a state-issued computer during work hours and altering his time sheets.

Covell sued the Commissioners under Section 1983 alleging that they violated his property and liberty interest rights. The district court found that the Commissioners were entitled to qualified immunity. The Seventh Circuit Court of Appeals affirmed.

To show a legitimate expectation of continued

employment, a plaintiff must show a specific ordinance, state law, contract or understanding limiting the ability of the state to discharge him for good cause. The state law stated that the Director "shall serve at the pleasure of the Commission."

Consequently, Covell was an at-will employee and was not entitled to an appeal hearing after the Commission terminated his employment.

In order to prevail on a liberty interest claim, a plaintiff must show that (1) he was stigmatized by the defendant's conduct, (2) the stigmatizing information was publicly disclosed, and (3) he suffered a tangible loss of other employment opportunities as a result of public disclosure. Covell could not show that the Commissioners themselves disseminated the stigmatizing information to the public. It was insufficient for Covell to show that some Commission employee released the information.

Covell v. Menkis (7th Cir. 2010) 595 F.3d 673.

■ BACKGROUND CHECKS

Employers May Not Use Information from "Megan's Law" Website As a Basis for Not Hiring Applicant.

William Mendoza submitted an application for employment. The Company hired ADP Screening and Selection Services, Inc. (SASS) to conduct a pre-employment background check on Mendoza. As part of its investigation, SASS accessed the Megan's Law website which identifies registered sex offenders. The Company did not hire Mendoza as a result of the information SASS obtained from the Megan's Law website.

Mendoza sued SASS for violation of Penal Code section 290.46, which prohibits the use of any information that is disclosed on the Megan's Law

website for purposes relating to employment. SASS filed a motion to strike the complaint. The district court granted the motion, and the California Court of Appeal affirmed.

The Court found that Section 290.46 was intended to create liability for damages against employers who use information disclosed on the Megan's Law website as a basis for an employment decision. The statute does not create a cause of action against an employment-screening business which reproduces or republishes information.

Mendoza v. ADP Screening and Selection Services, Inc. (2010) 182 Cal.App.4th 1644 [___ Cal.Rptr.3d ___].

■ LAYOFF BENEFITS

COBRA Premium Subsidy Extended to May 31, 2010.

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

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

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





FIRM PROFILE
Timothy R. Owen
Of Counsel

Timothy Owen is a senior litigator with over twenty-five years of experience trying cases to juries in California and New York. Most recently, Tim successfully defended a municipality in a jury trial in Los Angeles involving a discrimination and retaliation suit by a fired employee.

Before joining the Los Angeles office of LCW, Tim represented companies as lead trial counsel in complex business litigation and high-exposure product liability cases. Tim's trial experience includes defense of professional negligence and insurance bad faith claims, as well as unfair business practices suits.

Tim has taught continuing education for much of his career, sharing his invaluable courtroom experience with how juries view cases, and providing practical advice on avoiding common mistakes that lead to liability exposure. Tim's teaching experience will further enhance the firm's extensive management training.

Timothy earned his Juris Doctorate from Vermont Law School and his Bachelor of Arts from Colgate University, New York.

When not practicing law, Timothy enjoys skiing, fishing, and reading.



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**.*

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

New to the Firm

Liebert Cassidy Whitmore Welcomes Two New Associates

Alison Carrinski joins LCW's San Francisco Office. Alison advises and represents public sector clients in the areas of employment law and labor relations. Before joining Liebert Cassidy Whitmore, Alison was a Benefits Advisor for the United States Department of Labor. Alison can be contacted at (415) 512-3000 or emailed at acarrinski@lcwlegal.com.

Sang-Jin (SJ) Nam joins LCW's Fresno Office. SJ has extensive background representing and advising school and college districts, and some local agencies, in all aspects of employment, labor and education law. He is also experienced in handling special education and student expulsion as well as business and facilities. SJ can be contacted at (559) 256-7800 or emailed at sjnam@lcwlegal.com.



Firm Publications

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

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

Steven Berliner and **Camille Townsend** of our Los Angeles office co-authored the article, "H1N1 in the Workplace: 'Go Home'" which appeared in the February issue of the California Public Employee Relations Journal (CPEER). The complete article can be read online at <http://www2.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "H1N1".

Jeffrey Freedman of our Los Angeles office authored the article, "New Jersey Company Unlawfully Accesses Employee's E-mails" which appeared in the April 27, 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 "Jersey".

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Workshop Training

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	"Preventing Workplace Harassment, Discrimination and Retaliation" West Inland Empire ERC Diamond Bar Laura Kalty
May 6	"Prevention and Control of Absenteeism and Abuse of Leave" West Inland Empire ERC Diamond Bar Laura Kalty and Camille Townsend
May 12	"Embracing Diversity" and "Preventing Workplace Harassment, Discrimination and Retaliation" Bay Area ERC Palo Alto Laura Schulkind
May 12	"Annual Audit of Your Personnel Rules" and "Managing Performance Through Evaluation" Coachella Valley ERC Indian Wells Brian Walter and Lauren Liebes
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	"A Supervisor's Employment Relations Primer" Monterey Bay ERC Morgan Hill Kelly Tuffo
May 13	"Preventing Workplace Harassment, Discrimination and Retaliation" Gateway Public ERC Long Beach Donna Evans
May 13	"Prevention and Control of Absenteeism and Abuse of Leave" LA County Management Attorneys Consortium Los Angeles Jennifer Hong
May 14	"Advanced Investigations of Harassment Complaints in Community College Districts" Southern CA Community College Districts (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	"Privacy Issues in Our Technological World" and "Introduction to Public Service" San Mateo County ERC San Mateo Jack Hughes
May 20	"Retirement Issues for California's Public Employers" Orange County ERC Cypress Steve Berliner and Frances Rogers
May 20	"Annual Audit of Your Personnel Rules" and "Prevention and Control of Absenteeism and Abuse of Leave" NorCal ERC Pleasant Hill Jack Hughes
May 20	"Preventing Workplace Harassment, Discrimination and Retaliation" Orange County ERC Cypress Frances Rogers

- May 26 **"Retirement Issues for California's Public Employers" and "Employee Due Process Rights and 'Skelly': A Guide to Implementing Public Employee Discipline"**
Sonoma/Marin ERC | Rohnert Park | Cepideh Roufougar
- May 26 **"Embracing Diversity" and "Handling Grievances"**
Ventura/Santa Barbara ERC | Santa Barbara | Donna Evans
- May 27 **"The Disability Interactive Process" and "Family and Medical Care Leave Acts"**
Humboldt County ERC | Fortuna | Morin I. Jacob
- June 3 **"Privacy Issues in the Workplace"**
Gateway Public ERC | Santa Fe Springs | Pilar Morin
- June 4 **"Disability Discrimination, Family and Medical Care Leave Acts, Workers' Compensation and Disability Retirement: Administering Overlapping Laws"**
Central Coast Personnel Council | Santa Barbara | Peter Brown and Doug Bray
- June 16 **"Managing Leave Laws and the Discipline Process"**
Orange County ERC | Anaheim | Peter Brown

Customized Training Presentations

- 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
- May 6 **"Performance Evaluations"**
El Camino Community College District | Torrance | Mary Dowell
- May 7 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Redwood Empire Municipal Insurance Fund (REMIF) | AM - Fortuna & PM - Arcata | Jack Hughes
- 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, 27 **"Preventing Workplace Harassment, Discrimination and Retaliation" and "Violence in the Workplace"**
City of El Segundo | Scott Tiedemann
- May 17 **"FMLA"**
City of Brentwood | Jack Hughes
- May 18 **"Labor & Employment Relations Issues During Lean Economic Times"**
Employment Risk Management Authority | Novato | Jack Hughes
- May 18 **"Legal Issues Regarding Hiring"**
City of Glendale | Mark Meyerhoff
- May 26 **"Supervisory Skills for the First Line Supervisor/Manager"**
City of San Bernardino | Mark Meyerhoff

May 26	"Legal Aspects of Violence in the Workplace" Dublin San Ramon Services District AM- Dublin & PM - Pleasanton Jack Hughes
May 27	"Preventing Workplace Harassment, Discrimination and Retaliation" REMIF Ukiah Jack Hughes
June 1	"Preventing Workplace Harassment, Discrimination and Retaliation" and "Violence in the Workplace" City of El Segundo Scott Tiedemann
June 3	"Guide for Supervisors on Preventing Workplace Harassment, Discrimination and Retaliation" City of Fontana Jennifer Hong
June 8, 9	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Inglewood Laura Kalty
June 10	"Disability Discrimination" Monjaras & Wismeyer Group Oxnard Peter Brown
June 10, 11	"Preventing Workplace Harassment, Discrimination and Retaliation" Town of Truckee Jack Hughes
June 11	"Freedom of Speech and Right to Privacy" Labor Relation Information System - LRIS Las Vegas Mark Meyerhoff
June 15	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Fresno Gage Dungy
June 16	"Handling Grievances" and "Preventing Discrimination" County of Sonoma Santa Rosa Jack Hughes
June 22	"A Supervisor's Employment Relations Primer" Dublin San Ramon Services District Dublin Jack Hughes
June 28	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Chico Jack Hughes

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.

May 1	"Preparing for Negotiations: Collective Bargaining Values & Strategies" Community College League of California 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	"Public Sector Employment Law Update" Western Region Intergovernmental Personnel Assessment Council Marina del Rey Peter Brown
May 6	"Social Networking or Notworking?" ACWA Spring Conference Monterey Pilar Morin
May 7	"POBR/FBOR" California State Bar Association Annual Public Sector Conference Sacramento Richard Kreisler

May 7	"Workplace Substance Abuse: Identification & Management from a Legal Perspective" League of California Cities City Attorneys Conference Santa Barbara Cynthia O'Neill
May 7	"Free Speech in the Public Sector" California State Bar Association Annual Public Sector Conference Sacramento Bruce Barsook
May 11	"A Practical Guide to Applying FBOR" California Fire, EMS, and Disaster Conference - Fire Chief's Summit Palm Springs Richard Kreisler
May 13	"The Do's and Don'ts of Ethics for Legal Professionals" County Counsels' Association of California Health and Welfare Conference Monterey Morin Jacob
May 18	"Engaging in the Interactive Process" Human Resource Association of Central California Fresno Shelline Bennett
May 18	"Managing Your Costliest Asset - Human Resources" Association of Chief Business Officials Spring Conference Sacramento Peter Brown
May 21	"Community Colleges" California Counsel of School Attorneys (CCSA) Spring Workshop Sacramento Eileen O'Hare Anderson
May 21	"Labor Negotiations Panel" CCSA Spring Workshop Sacramento Bruce Barsook
May 21	"Case Law Update" CCSA Spring Workshop Sacramento Laura Schulkind
May 21	"Big Issues: Furloughs, Retiree Benefits, PERS/STRS, FLSA and Working with Boards" CCSA Spring Workshop Sacramento Alison Neufeld
May 28	"Interagency Collaboration" Municipal Managers Association of Southern California Annual Conference Santa Barbara Steven Berliner
June 11	"Hiring and Keeping Great Employees" Special Districts Association San Diego Judith Islas
June 16	"12 Steps to Avoiding Liability" California Special Districts Association (CSDA) Education Workshop Ontario Laura Kalty
June 16	"Trial and Deposition Testimony" Independent Cities Risk Management Authority Meeting Downey Melanie Poturica and Mark Meyerhoff
June 18	"Social Media and Harassment in the Workplace" Riverside County Bar Association Meeting Riverside Michael Blacher
June 23	"Understanding the Brown Act and Your Responsibilities" CSDA Workshop Goleta Mark Meyerhoff



LIEBERT CASSIDY WHITMORE

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

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

Copyright ©2010, LIEBERT CASSIDY WHITMORE

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

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