

Education Matters

News and Developments in Labor Relations and Education Law for School and Community College District Administration

October 2009

CONTENTS

OUR TOP STORY

Teacher Evaluation 1

EMPLOYMENT

Employee Discipline 2
 Labor Relations 4
 Arbitration 5
 Sex Discrimination 6
 Religious Discrimination 7
 National Origin Discrimination 8
 Disability Discrimination 8
 Qualified Immunity 9
 Family and Medical Leave 11
 Administrative Procedures Act 12
 First Amendment 13
 Due Process 14
 Military Leave Rights 15
 Computer Abuse 15

STUDENTS

School Closures Due to
 Pandemic Flu 16
 First Amendment 18

Save the Date 20
 Congratulations 21
 New to the Firm 22
 Firm Publication 22
 Compliant EEO Plans 23
 Mandatory Harassment
 Training 23
 Train the Trainer 24
 Bid and Contract Documents 25
 Firm Activities 26

Education Matters

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OUR TOP STORY

TEACHER EVALUATION

Governor Signs SB 19, Removing Prohibition on Use of State Data on Student and Teacher Progress for Purposes of Pay, Promotion, Sanction, Personnel Evaluation or Other Employment Decisions.

The Federal American Recovery and Reinvestment Act (ARRA) provides approximately \$4.35 billion in funding called "Race to the Top" (RTTT) funding. The purpose of the funding, which is awarded on a competitive basis, is to encourage states to improve their education systems. In order to be eligible for the funding states must submit applications, and have applications approved at two phases of the competitive process. In addition, states must have "no statutory or regulatory barriers to linking data about student growth and achievement to teachers for the purposes of teacher and principal evaluation."

In order to meet the latter requirement, the California Legislature has enacted legislation to delete a provision in the Education Code which prohibited linking data to teacher progress for purposes of "pay, promotion, sanction, personnel evaluation or other employment decisions." (Education Code section 10601.5, subd. (c).) Governor Schwarzenegger signed the bill on October 11, 2009. Based on the amended statute, data from the California Longitudinal Teacher Integrated Data Education System (CALTIDES) and California Longitudinal Pupil Achievement Data System (CALPADS) can now be used to pay, promote, or evaluate teachers.

The amendment to the Education Code does not guarantee that California will receive the \$815 million in RTTT funding for which it is eligible. The State must demonstrate that it has a comprehensive plan for reform, integrating the following four reform areas provided by the Department of Education:

- ◆ Adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace;
- ◆ Recruiting, developing, retaining, and rewarding effective teachers and

Liebert Cassidy Whitmore Announces Next Managing Partner

For more information please see the full article on page 21.

principals;

- ◆ Building data systems that measure student success and inform teachers and principals how they can improve their practices; and
- ◆ Turning around our lowest-performing schools.

Race To The Top Factsheet, <http://www.ed.gov/programs/racetothetop/factsheet.html>

EMPLOYMENT

EMPLOYEE DISCIPLINE

Court of Appeals Holds That School District Could Terminate Certificated Employee for Failure to Obtain English Learner Certification.

State law requires all public school students who are not fluent in English to be taught by teachers who have been certified to teach English learners. To meet this requirement, the Ripon Unified School District adopted a rule requiring all of its teachers to become certified to teach English learners (EL certification). It also entered into an agreement with the teachers' union to impose the requirement, and to pay for the cost of the training and provide an additional stipend. According to the terms of the agreement, failure to comply would result in termination.

Theresa Messick was the only music teacher at Ripon High School, and the only employee who refused to obtain EL certification. The District terminated her employment, but an administrative law judge determined that the District lacked the authority to impose the requirement to obtain EL certification on Ms. Messick. The District sought to have the ALJ's determination overruled, and the trial court did so. Messick appealed.

The appeals court began its opinion by laying out the requirements for EL certification. The Education Code requires that students are to be taught English as rapidly and effectively as possible. A child not proficient in English is

designated as an English learner (EL). These students are initially taught English under a specialized curriculum, but then are moved into regular classrooms once sufficiently fluent. They continue to be designated EL until they have reached a proficiency level equal to native English speakers. The state's Department of Education monitors and sanctions school districts who assign EL students to a teacher who is not certified to teach such students.

In May 2002, the California Department of Education determined that the District was out of compliance with state law because it had assigned EL students to classes taught by teachers who were not EL certified. The District responded by creating an EL plan, which required all certificated staff choose one of three options: 1) obtain EL certification by December 30, 2005; 2) resign; or 3) be terminated. Certificated employees who chose option one were required to sign a written commitment to obtain EL certification. The District agreed to pay for training offered by the county office of education, and provide the employees with an additional \$400 stipend.

Messick refused to sign the written commitment to obtain EL certification, but also refused to resign. In January 2006, after repeated attempts to get Messick to sign the written agreement, the District began termination proceedings. The District filed a written statement of charges charging her with unprofessional conduct, evident unfitness and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed by the Board of Education or the governing board of the District.

Messick argued that the District could not terminate her on the basis of her failure to obtain EL certification because the Legislature preempted the District's action by various statutes. Before addressing Messick's arguments, however, the Court of Appeals first noted that the Education Code is permissive. That is, Education Code section 35160 generally provides a school district with "all authority necessary to fulfill its purposes except as expressly limited by statute." To this end, the Legislature has ceded substantial discretionary control to local school districts.

Messick argued that the Legislature did not require teachers to obtain EL certification as

part of their credential until 2003. (Thus, those already in possession of a credential were not required to obtain EL certification to maintain the credential.) The Court held that this was irrelevant, as the issue was whether the District had the right to impose the requirement on teachers, not whether the Legislature required Messick to obtain EL certification. Rather, the Court held, "unless there is a law that prohibits the District's action, Education Code section 35160 clearly authorizes it."

The Court looked to the Education Codes which govern teacher termination. One ground for termination is "persistent violation of, or refusal to obey, reasonable regulations prescribed by the District." Thus, the Court held, if the District's requirement that all teachers obtain EL certification was lawful, then the requirement was a lawful ground upon which to initiate termination proceedings against Messick.

Messick argued that the District's requirement was unlawful because it conditioned the use of her credential on her obtaining EL certification. The Court disagreed, holding that the credential was not affected by the requirement. Messick's credential did not guarantee her employment or tenure, nor did it preempt the District from conditioning her employment. She remained authorized to teach music at any District which would hire her, and, thus, the District's requirement did not alter the terms of her credential. As stated by the Court, "[s]tate credentialing law does not prevent the District from requiring a teacher to satisfy additional certification requirements in order to continue in employment."

Messick next argued that Education Code section 45033 prohibits a District from reducing a teacher's salary if the teacher fails to meet additional education requirements imposed by the District. Messick claimed that the District violated this statute by terminating her, which would cut her salary entirely. The Court did not agree. The Court looked at the plain language of the statute, and noted that its intent was to apply only to salaries, not termination or dismissal, and that separate sections of the Code apply to terminations and dismissals.

Finally, Messick claimed that the District impermissibly bargained the issue with the teacher's union. The Court held that the issue

was within the scope of negotiations, as it was a matter reasonably related to hours, wages and conditions of employment. And, even if it was not within the scope of negotiation, the District still had the right under the Educational Employment Relations Act to consult with the union on the topic.

Messick's final argument was that the agreement altered the causes and procedures for dismissing a certificated employee, which may not be negotiated. The Court disagreed, and instead held, "[t]he District's action only added a regulation. It did not alter the statutory causes and procedures for dismissal..."

Governing Board of Ripon Unified School Dist. v. Commission on Professional Competence (2009) --- Cal.Rptr.3d ----, 2009 WL 3088417.

Appeals Court Reverses Trial Court's Denial of Employee's Petition to Set Aside Employee's Written Reprimand Because the Trial Court Had Not Exercised Its Independent Judgment in Reviewing the Evidence.

Cesar Wences is a Los Angeles Police Department officer. On April 3, 2005, he was off-duty at home in the City of Long Beach. Over the course of several minutes, a woman, later identified as Edie Rodriguez, repeatedly called Wences' residence to speak with a relative who lived with Wences and his family. Wences repeatedly told Rodriguez that the relative was not home. During the last call, Rodriguez told Wences' wife, "You don't know who you're f**king with. I know where you live. I'm going to get my homeboys and homegirls to go f**k you up." Wences did not consider the threat to be credible at the time.

Approximately 45 minutes later, Wences' wife told him that there were four people outside throwing "stuff" at his truck. Without looking out the window to assess the situation, Wences grabbed his personal firearm and stepped outside. Wences held his gun at a low ready position and approached the suspects. Rodriguez began advancing on Wences' wife and made stabbing motions with what appeared to be a knife, but later turned out to be a fork. Wences fired a single warning shot into the grass near

Rodriguez and she fled. The three other suspects were taken into custody.

The Los Angeles Police Department convened a mandatory Use of Force Review Board and found that Wences' discharge of the firearm was "in policy," but that the drawing and exhibiting of his firearm prior to the shooting was "out of policy." The Department gave Wences a written reprimand for utilizing unauthorized tactics and inappropriately drawing his weapon in connection with the off duty shooting. Wences appealed the administrative decision, but the Chief of Police upheld the reprimand. Wences filed a petition for writ of mandate under Code of Civil Procedure section 1094.5 to set aside the sustained charges of misconduct against him and the official reprimand. Applying the substantial evidence standard, the superior court denied the petition. The California Court of Appeal reversed and remanded, ordering the superior court to apply the independent review standard.

Section 1094.5 governs judicial review by administrative mandate of any final decision or order rendered by an administrative agency. A trial court's review of an adjudicatory administrative decision is subject to two possible standards of review depending upon the nature of the right involved. If the administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence. Along with examining the administrative record for errors of law, the trial court would conduct an independent review of the entire record to determine whether the weight of the evidence supports the administrative findings. On the other hand, if the administrative decision does not substantially affect a fundamental vested right, the trial court's review is limited to determining whether the administrative findings are supported by substantial evidence.

A right may be deemed fundamental on either or both of two bases: (1) the character and quality of its economic aspect; or (2) the character and quality of its human aspect. Here the trial court applied the substantial evidence test because it found that the administrative decision did not deprive Wences of any property or employment right, and does not affect him financially. However, the Court of Appeal disagreed.

In determining whether the Department's disciplinary action substantially affected a fundamental vested right, the court must focus on the nature of the right itself. Wences' right to his employment as a non-probationary peace officer is vested and fundamental. Although the administrative decision did not affect Wences financially, the reprimand may be considered by the Department in future personnel and disciplinary decisions and may adversely affect Wences' future opportunities for career advancement. As such, it implicates a right that is important to Wences in his life situation even in the absence of an immediate economic impact.

Wences v. City of Los Angeles (2009) 177 Cal.App.4th 305 [99 Cal.Rptr.3d 199].

LABOR RELATIONS

Union's Failure to Request Negotiations After District Advised Union of Proposed Policy Waived Union's Right to Negotiate Over the Policy After It Was Implemented.

On May 25, 2006, the Metropolitan Water District advised the various employee organizations of proposed revisions to the District's operating policies. One of the revisions was to the long-term vehicle assignment policy. The revised policy allowed for the District to terminate vehicle assignments at any time and required affected employees to immediately return the vehicles to the District. The District's memorandum advised the unions to contact the District if they had any questions or comments regarding the proposed revisions.

Between May 25, 2006 and June 16, 2008, the Union representing the supervisors never requested to meet and confer about the policy. The District implemented the policy on October 12, 2006. On June 16, 2008, the District notified the Union that it was terminating the long-term vehicle assignments of some supervisory unit members pursuant to the policy. The Union requested to meet and confer over both the decision to take away the vehicles and the effects of such a decision. The District declined the Union's bargaining demand, citing the Union's failure to request to

meet and confer before the policy was implemented.

The Union filed an unfair practice charge alleging that the District failed to meet and confer in good faith. The PERB agent dismissed the charge. On appeal, PERB affirmed the dismissal.

A refusal to bargain is not an unfair practice if the refusing party had no duty to bargain. When an employer gives a union written notice of a proposed change to a matter within the scope of representation and provides reasonable opportunity to meet and confer over the change before implementation, the union's failure to request bargaining constitutes a waiver of its right to meet and confer over the change.

Here the District gave the Union written notice of its intent to adopt the long-term vehicle assignment policy almost five months before it was implemented. Although the District's memorandum did not specifically express a willingness to meet and confer over the changes, the memorandum did invite any questions or comments. Furthermore, once an employer gives appropriate notice of a proposed change, it is not required to invite bargaining. Consequently, the Union's failure to request to meet and confer over the proposed policy constituted a waiver of its right to bargain over the decision. The Union also waived its right to bargain over the effects of the decision because any effects of the policy were foreseeable when the District issued its memorandum.

Metropolitan Water District Supervisors' Ass'n v. Metropolitan Water District of Southern California (2009) PERB Dec. No. 2055M [___ PERC ___].

ARBITRATION

A Challenge to Arbitrability Based on a Charge That the Agreement's Arbitration Provision Is Unconscionable Is for the Court, and Not the Arbitrator, to Decide.

Antonio Jackson worked for Rent-A-Center. He sued Rent-A-Center for race discrimination

and retaliation. Rent-A-Center moved to dismiss and compel arbitration based on an arbitration agreement Jackson signed when he was initially hired. The agreement provided that "the Arbitrator...shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement...".

Jackson argued that the Agreement was substantively unconscionable because it contained one-sided coverage and discovery provisions and specified that the arbitrator's fee was to be equally shared; and further, that it was procedurally unconscionable because the form contract was presented to him as a non-negotiable condition of employment.

The district court granted Rent-A-Center's motion to dismiss and to compel arbitration. The court found that the Agreement to Arbitrate clearly provides the arbitrator with the exclusive authority to decide whether it was enforceable.

The Ninth Circuit Court of Appeals reversed. The Court noted that the Supreme Court has held that, as a matter of arbitration law, in the case of challenges to the validity of a contract as a whole, but not specifically to its arbitration provision, the challenge to the contract's validity should be considered by an arbitrator and not a court. However, when the challenge is to the validity of the arbitration provision within a larger contract, a court decides the preliminary question of the validity of the arbitration provision.

Here Jackson challenges the validity of a free-standing Agreement to Arbitrate on the basis that it is unconscionable. The Court held that a court must decide the threshold question of arbitrability when an arbitration agreement is challenged as unconscionable.

Jackson v. Rent-A-Center West, Inc. (9th Cir. 2009) ___ F.3d ___ [2009 WL 2871247].



SEX DISCRIMINATION

Female Pilot Denied Retraining Opportunities Given to Male Pilots Established a *Prima Facie* Sex Discrimination Case.

Tiffany Nicholson was a pilot for Cape Air. In 2004, she was one of eight pilots selected to launch the company's new service out of Guam. She was the only female among the eight pilots. One of the other pilots was Chuck White, with whom Nicholson had previously had a year long sexual relationship. The Company used two-pilot ATR 42 airplanes for the new Guam service. Because these planes were new to Cape Air's operations, all eight pilots received training on the ATR 42s. One of the training topics was crew resource management (CRM), which consists of communication and cooperation skills that enable the pilots and crew to ensure safety. During the training, two male pilots failed their check rides in the simulator. They were retrained to proficiency and passed on their second attempt. Nicholson passed all phases of training, including an "excellent" score in the CRM section.

After the pilots began flying the new routes, Nicholson's supervisors reported that she had communication and cooperation problems. One of the supervisors said that she had a "machismo" attitude and refused to provide assistance requested by her copilots. White refused to fly several scheduled flights with Nicholson, claiming that the tension in the cockpit made it unsafe. He later admitted that he had concerns about flying with Nicholson because of their prior relationship. Russell Price, Cape Air's Regional Administrator, formulated a plan to observe Nicholson's CRM skills in-flight. While observing Nicholson, Price twice removed her because of her inability to communicate effectively. The Company issued an action form prohibiting Nicholson from flying ATR 42s. The Company later terminated her.

Nicholson sued the Company alleging sex discrimination in violation of Title VII. The district court granted summary judgment in favor of the Company. The Ninth Circuit Court of Appeals reversed.

To establish a *prima facie* case of discrimina-

tion, a plaintiff must show that: (1) she belongs to a protected class; (2) she was qualified for the position; (3) she was subject to an adverse employment action; and (4) similarly situated individuals outside her protected class were treated more favorably. Then, the burden shifts to the employer to set forth a legitimate, nondiscriminatory reason for the action. Then, the burden shifts back to the employee to show that the employer's stated reason was a pretext for discrimination. Here the Company asserted that Nicholson was not qualified for the position and no similarly situated individuals were treated more favorably.

The Ninth Circuit disagreed because subjective job qualifications should not be considered at the first phase of the burden shifting analysis. CRM skills are a subjective qualification. Nicholson was also able to show that two similarly situated male pilots were treated more favorably. When two male pilots failed the check rides portion of the training, the Company provided them extensive retraining and a second opportunity to pass that portion of the training. On the other hand, when Nicholson was performing deficiently, Price merely observed her flying. Price's observations were not equivalent to retraining because he did not offer any constructive criticism. The Company argued that CRM skills and piloting skills are not comparable. However, there was evidence that the Company treated CRM as a particular skill that can be retrained and refined, just like piloting skills. Consequently, the two male pilots were similarly situated.

Although the Company asserted that Nicholson was suspended from the ATR program due to her CRM deficiencies, Nicholson presented evidence of irregularities in her disciplinary proceedings. The Company procured letters complaining about Nicholson from other pilots. In addition, sex-related remarks about her machismo attitude and White's inability to work with Nicholson because of their prior sexual relationship suggest that the Company's nondiscriminatory reason for the adverse action could have been pretextual.

Nicholson v. Hyannis Air Service, Inc. (9th Cir. 2009)
 ___ F.3d ___ [2009 WL 2857198].



RELIGIOUS DISCRIMINATION

Court of Appeal Upholds Jury Verdict Where Evidence Adequate to Support Jury's Conclusion.

Youssef Bouamama, who is Moroccan and Muslim, worked as a technical support representative for Go Daddy Software, Inc.. He was later promoted to the position of inbound sales manager. The Company hired Craig Franklin as the Director of Call Center Operations. Franklin reorganized the department and eliminated Bouamama's position along with 14 others. Franklin created four new sales supervisor positions that employees, including Bouamama, could apply for.

Franklin had previously asked Bouamama about his national origin and his religion. When Bouamama told Franklin that he was Muslim and from Morocco, Franklin said, "You know, you're lucky that I like you." Bouamama's other supervisor, Brett Villeneuve, had also previously asked about Bouamama's national origin and religion. On another occasion, Bouamama overheard Villeneuve make disparaging remarks about Muslim people. Bouamama complained to Heather Slezak from the Human Resources Department about the conduct two or three times, including an April 7, 2003 complaint. On April 9, Franklin, Villeneuve, and Slezak sat on the panel that hired for the sales supervisor positions. They did not select Bouamama. Employees who were denied the sales supervisor position were given the option to return to a sales representative position or "walk away." On April 14, Bouamama walked by Franklin's office and Franklin said "come here, f**k," while Villeneuve and Slezak were in his office. On April 17, the Company terminated Bouamama's employment.

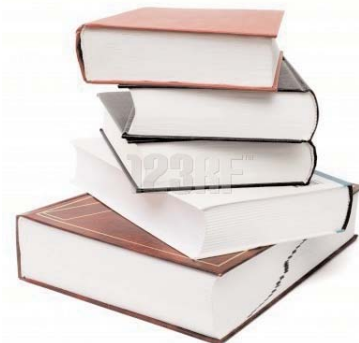
On behalf of Bouamama, the Equal Employment Opportunity Commission sued the Company in federal district court alleging national origin and religious discrimination in violation of Title VII. The jury found in favor of Bouamama and awarded him monetary damages. The district court denied the Company's motion for judgment as a matter of law based on insufficient evidence. The Ninth Circuit Court of Appeals affirmed.

If there is evidence adequate to support the jury's conclusion, a court must deny a motion for judgment as a matter of law, even if it is also possible to draw a contrary conclusion. Here the Company argued that there was insufficient evidence to show that Bouamama complained to Slezak about discrimination. The Ninth Circuit found that there was substantial evidence to support the verdict because, although Slezak testified that there were no complaints, Bouamama testified that he complained to Slezak two or three times about the discriminatory comments. The jury could have found that Bouamama's testimony was more credible than Slezak's.

The Company also asserted that a complaint about an isolated incident is not protected activity because an isolated incident does not constitute discrimination under Title VII. But here Bouamama testified that he complained two or three times about discriminatory comments and there was at least one other incident he did not report. Thus, he was not merely complaining about an offhand comment or an isolated incident.

Finally, the Company argued that there was no evidence that Slezak told Franklin about Bouamama's complaints. However, the Court held that the jury could have reasonably found that Franklin and Slezak were both aware of the protected activity, and their termination of Bouamama was in response to that activity in light of the testimony that Slezak, Villeneuve, and Franklin talked about the sales supervisor candidates a few days after Bouamama made his last complaint about Franklin's discriminatory comments.

EEOC v. Go Daddy Software, Inc. (9th Cir 2009) ___ F.3d ___ [2009 WL 2882839].



NATIONAL ORIGIN DISCRIMINATION

Polish Teacher Could Take Her National Origin Discrimination Case to Trial Where School Administrator Had Made Disparaging Comments About Polish People.

Anna Darchak is a Polish bilingual teacher who had a one-year contract with the Chicago Public Schools. Darchak noticed that the Hispanic students were receiving better treatment than the Polish students and she approached Principal Rosalva Acevedo with her concerns. Acevedo responded that "Hispanic students are better than Polish students and deserve more than Polish people. If you don't want to do whatever I tell you to do, you can leave my school." Shortly thereafter, Acevedo gave Darchak a "cautionary notice," charging her with insubordination for refusing to follow the teaching schedule. When Darchak confronted Acevedo about the notice, Acevedo replied, "I brought you to this school and you stupid Polack pushed the teachers against me."

Acevedo assigned Darchak to a classroom with several native Spanish speakers. Darchak complained to Acevedo and Acevedo's supervisors that her assignment to the classroom violated the federal No Child Left Behind Act because she was not qualified to teach in a bilingual Spanish classroom. Acevedo subsequently recommended that the Board of Education not renew Darchak's one-year contract. The Board accepted the recommendation, and Darchak was terminated.

Darchak sued the Board for national origin discrimination in violation of Title VII and First Amendment retaliation under Section 1983. The district court granted summary judgment in favor of the Board. The Seventh Circuit Court of Appeals affirmed as to the First Amendment retaliation claim, but reversed as to the national origin discrimination claim.

The Seventh Circuit found that Darchak's deposition testimony regarding Acevedo's derogatory remarks about Polish people, combined with Acevedo's subsequent adverse actions, were sufficient evidence of discrimination to with-

stand summary judgment.

Darchak v. City of Chicago Board of Education (7th Cir. 2009) ___ F.3d ___ [2009 WL 2778227].

DISABILITY DISCRIMINATION

In Upholding Employer's Motion for Summary Judgment, D.C. Circuit Court of Appeals Finds That ADA Amendments Were Not Retroactive.

Floyd Lytes worked for the District of Columbia Water and Sewer Authority as a plant operator. He injured his back while at work in 2000 and required corrective surgery. In 2003, the Authority ordered Lytes to appear for a functional capacity evaluation (FCE). The doctor found that Lytes had mild restricted standing and walking tolerances and limitations in squatting, bending, ladder climbing, and overhead reaching. Based on progressive improvement, in September 2003, the doctor upgraded Lytes to light duty with limitations imposed primarily to avoid recurring injury to Lytes's spine. In December 2003, the Authority informed Lytes that he was medically disqualified from returning as a plant operator and he was terminated.

Lytes sued the Authority claiming disability discrimination in violation of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the Authority on the basis that Lytes was not disabled when he was refused accommodation and discharged. The D.C. Circuit Court of Appeals affirmed.

In 2008, the Congress enacted the ADA Amendments Act of 2008 (ADAA) in order to reinstate a broad scope of protection under the ADA. Congress delayed the effective date of the ADAA to January 1, 2009. Lytes's claim would have greater viability under the ADAA, but the D.C. Circuit found that the ADAA does not apply retroactively. By delaying the effective date of the ADAA, Congress clearly indicated the statute would apply only prospectively as of January 1, 2009. There is a presumption that statutes do not apply retroactively, and Congress gave no clear indication that it intended ADAA to apply retroactively.

Lytes must show that he was substantially limited because his condition either prevented him from or significantly restricted him in lifting, bending, performing manual tasks, or working at the time of his discharge. But his opposition to the motion for summary judgment had contained only one paragraph about his general restrictions on work and "life chores." He failed to cite to any supporting evidence. Moreover, Lytes's opposition admits that he had progressive improvement and by April 2001 he could perform life chores he previously could not perform. Thus, no reasonable jury could find that Lytes suffered a severe long-term limitation in bending when compared to an average person.

Lytes v. DC Water and Sewer Authority (D.C. Cir. 2009) 572 F.3d 936.

QUALIFIED IMMUNITY

Public Officials Who Engaged in Plan to Replace White Managers With African-American Managers Were Not Entitled to Qualified Immunity.

Vernon Jones, who is African-American, was elected to be the Chief Executive Officer of DeKalb County, Georgia. Jones publicly announced his plan to have more African-American County administrators. To accomplish this goal, Jones and his administration implemented an aggressive restructuring program, focusing on the County's Parks and Recreation Department.

Becky Kelley, a white female, was the Director of the Parks Department. Jones made continuing efforts to limit her responsibilities. He forced her to hire a less qualified African-American applicant, Marilyn Drew, instead of a white applicant for a deputy director position. After Drew was hired, Jones demoted Kelley to a position with virtually no responsibilities. Meanwhile, Jones promoted Drew to Kelley's position. Kelley ultimately resigned.

Once Drew became director, she openly treated Michael Bryant, a white male deputy director, differently from black employees. She excluded Bryant from meetings and declined to allow him input into matters for which he was

responsible, while seeking increased input from African-American managers. Drew also failed to provide him adequate support staff and equipment to perform his job. Finally, Drew required white managers to make appointments to speak with her, while she maintained an open door policy for African-American managers.

Jones precluded John Drake, a white male assistant director, from applying for the director position. Drew then undermined Drake's authority with the deputy directors, removed many of his job responsibilities, and excluded him from having any input into the Department's operations.

Finally, Herbert Lowe, an African-American, was the Deputy Director of Strategic Management and Development. He refused to participate in the Jones administration's plan to eliminate the white managers and replace them with African Americans. Consequently, Jones moved Lowe's office to Jones' executive suite. Drew then hired Marvin Billups, an African American as the Deputy Director of Strategic Management and Development - the same position as Lowe. Drew later named Billups Deputy Director of Recreation Services, but Billups performed the same duties as when he was the Deputy Director of Strategic Management and Development. Jones' executive assistant, Richard Stogner, then drafted a 2004 budget proposal eliminating Lowe's position. Jones and the Board of Commissioners later approved the budget. Lowe resigned instead of accepting a lower paying position.

Kelley, Bryant, and Drake sued the County, Jones, Drew, and Stogner for race discrimination in violation of Section 1981 and the Equal Protection Clause. The district court refused to grant the defendants qualified immunity and refused to grant legislative immunity to Stogner. The Eleventh Circuit Court of Appeals affirmed the ruling refusing to grant qualified immunity, but reversed the ruling denying legislative immunity to Stogner.

A public official is not entitled to qualified immunity if he or she violated a constitutional right and the constitutional right was clearly established. The Court found that Kelley, Bryant, and Drake could each establish that the defendants created a hostile work environment in violation of their constitutional rights. The harassing behavior they endured was sufficient-

ly severe or pervasive to alter the conditions of their employment. The defendants were not entitled to qualified immunity because reasonable officials would have known that discriminating against county managers based on their race was unlawful.

However, the Eleventh Circuit found that Stogner was entitled to absolute legislative immunity for drafting the budget proposal that eliminated Lowe's position. Although Stogner was not himself a legislator, the immunity is justified and defined by the functions it protects and serves, and not by the person. The elimination of a public employment position is a legislative act. Consequently, regardless of Stogner's motives, he was entitled to legislative immunity with respect to the development of the 2004 budget.

Bryant v. Jones (11th Cir. 2009) 575 F.3d 1281.

Managers Who Transferred Employee After He Testified In Favor of an Inmate at a Parole Hearing Did Not Violate a Clearly Established Employee Right.

In 2002, Ronald Matrisciano was promoted to Assistant Deputy Director of the Illinois Department of Corrections (IDOC). Prior to his promotion, he was responsible for ensuring that inmate Harry Aleman was safely transferred from the federal prison system to the Joliet IDOC facility in 2000. Aleman had previously been acquitted of murder charges, but it was later discovered that he had bribed the judge presiding over his murder trial. Aleman was retried and convicted for murder and sentenced to 100 to 300 years in prison. Aleman was housed for six months after his transfer. During that time, Matrisciano visited the Joliet facility two or three times a month to address inmates' concerns regarding the facility, and he met with Aleman during those visits.

In 2002, Aleman and his family asked Matrisciano to speak at a parole hearing before the Prisoner Review Board on Aleman's behalf. Matrisciano told the IDOC Director and Associate Director of his intent to testify at a Prisoner Review Board hearing. Matrisciano used a personal day to testify before the Board.

Although he said he was not at the hearing in his capacity as Assistant Deputy Director, he said his testimony was based on his professional opinion, and he signed a prepared statement with his title. A few days later, the Director said that Matrisciano had "screwed up" and ordered that he be transferred to oversee the final construction phases of a new facility. Matrisciano's job title and salary remained the same, but his duties and responsibilities changed.

Matrisciano sued the Director and the Associate Director for First Amendment retaliation. The district court granted summary judgment in favor of the defendants. The Seventh Circuit Court of Appeals affirmed, finding that they were entitled to qualified immunity.

To determine if a government official is entitled to qualified immunity, the court considers: (1) whether a constitutional right had been violated, and (2) whether the right was clearly established at the time of the alleged violation. The Court here found that the individual defendants did not violate a clearly established right.

A policy making employee can be discharged when that individual has engaged in speech on a matter of public concern in a manner that is critical of superiors or their stated policies. But here, although Matrisciano was a policy maker, his speech did not criticize his superiors, the IDOC, or any of the IDOC's policies.

For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Aleman was an infamous prisoner and Matrisciano voluntarily made his first Prisoner Review Board comments on behalf of Aleman, without any special knowledge of Aleman's daily behavior in custody, such as a prison guard might be able to provide. There are no cases which would put the Director or Associate Director on notice that reassigning Matrisciano for testifying at Aleman's parole review hearing violated a clearly established constitutional right of Matrisciano. As such, they were entitled to qualified immunity.

Matrisciano v. Randle (7th Cir. 2009) 569 F.3d 723.

FAMILY AND MEDICAL LEAVE

The FMLA Prohibits Employers From Considering Employee's Use of Protected Leave When Making an Employment Decision.

Eunice Hunter was a custodian for the Valley View Local Schools. From 2003 to 2005, she took intermittent periods of FMLA leave while she underwent three rounds of surgery for injuries resulting from a car accident. In 2005 she returned from her third round of surgery with permanent restrictions of no lifting, pushing, or pulling more than ten pounds; and no climbing stairs or ladders. The District placed Hunter on unpaid medical leave based on her medical restrictions and excessive absenteeism for the previous four years.

Hunter sued the District for retaliation in violation of the FMLA. The District filed a motion for summary judgment. In opposition, Hunter presented deposition testimony from the District superintendent who testified that Hunter's use of FMLA leave was one of two reasons she placed Hunter on involuntary leave. Nevertheless, the district court granted summary judgment to the District. The Sixth Circuit Court of Appeals reversed.

The FMLA prohibits an employer from interfering with an employee's use of his or her FMLA rights, or from retaliating against an employee for exercising his or her FMLA rights. Employers cannot use the taking of FMLA leave as a negative factor in employment actions; nor can FMLA leave be counted under "no fault" attendance policies. Consequently, the Sixth Circuit found that the FMLA, like Title VII, authorizes claims in which an employer bases an employment decision on both permissible and impermissible factors.

The superintendent's testimony provides direct support for Hunter's FMLA retaliation claim because she admitted that Hunter's involuntary leave was based in part on her "excessive absenteeism," and the District included Hunter's FMLA leaves when reviewing her attendance record.

The District argued that it placed Hunter on involuntary leave because she was unable to

perform the functions of her job. However, the superintendent admitted that the medical restrictions were not the only basis for the involuntary leave decision. Thus, summary judgment for the District was erroneous because a trier of fact must decide whether the District would have taken the same employment action against Hunter even if she had not taken the FMLA leave.

Hunter v. Valley View Local Schools (6th Cir. 2009) ____ F.3d ____ [2009 WL 2601863].

Employee Who Was Ineligible for Leave Under the FMLA But Claimed that the Employer Told Her She Could Take the Leave, Could Not Assert a Claim for Retaliation After She Was Terminated.

Kathleen Nagle worked for the Acton-Boxborough Regional School District in Massachusetts as a part-time school monitor. In January 2004, Nagle requested to use Family and Medical Leave Act (FMLA) leave to care for her ailing husband. At the time of her request, she had only worked 554 hours in the preceding 12 months. To be eligible for FMLA leave, an employee must have worked at least 1,250 hours in the preceding 12 month period. But Nagle claims that George Frost, the District's deputy superintendent, told her that she could take FMLA leave. Nagle returned in April 2004 and sent Frost a letter thanking him for allowing her to take FMLA leave. He never responded to the letter.

In February 2005, Nagle took another eight weeks of FMLA leave to care for her husband. When she returned, she sent Frost another letter thanking him for granting her FMLA leave. He did not respond. Nagle claims that Frost told her she could take another FMLA leave if necessary, and she took more FMLA leave in May 2005. The District terminated Nagle's employment in July 2005 because the District had completed construction work on a new building and no longer needed monitors in the parking lots. Frost denies ever telling Nagle that she could take FMLA leave.

Nagle sued the District for retaliation in violation of the FMLA. The district court granted

summary judgment in favor of the District. The First Circuit Court of Appeals affirmed.

An employee cannot be discharged for exercising his or her FMLA rights. Nagle admits that she was not eligible for FMLA leave, but argues that the District was estopped from denying her coverage because Frost allegedly told Nagle that she could take FMLA leave.

The First Circuit declined to apply equitable estoppel because anyone can claim, without any confirming proof, that some official or clerk misinformed the person about his or her legal rights. The public has a general interest in having the same rules enforced against everyone. Here Nagle has nothing in writing to confirm that any misrepresentation was made to her. Although the revised FMLA regulations require an employer to provide written rulings regarding FMLA decisions upon request, the new regulation does not apply to this case.

Nagle v. Acton-Boxborough Regional School District (1st Cir. 2009) 576 F.3d 1.

ADMINISTRATIVE PROCEDURES ACT

Administrative Law Judge's Proposed Decision Is Adopted Where Agency Failed to Order Transcript Within 100 Days of Rejecting Decision.

Clarence Alexander retired in 1969 from state employment. After he died, his wife filed a claim with the California Public Employees Retirement System asserting that it miscalculated Alexander's retirement benefits. CalPERS denied the claim and she appealed. An administrative law judge (ALJ) issued a proposed decision in favor of Mrs. Alexander awarding her more than \$6 million.

Under the Administrative Procedures Act (APA), within 30 days after the case is submitted, the ALJ must prepare a proposed decision in a form that may be adopted by the agency as the final decision. Within 100 days of receipt by the agency of the ALJ's proposed decision, the agency may take one of a variety of actions, including rejecting the proposed decision and deciding the case upon the record, including

the transcript, or upon an agreed statement of the parties. If an agency elects to reject the decision and decide the case upon the record, the agency must issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to reject the decision and decide the case upon the record, and has ordered a transcript of the proceedings before the ALJ, the agency shall issue its final decision not later than 100 days after receipt of the transcript.

Here CalPERS received the ALJ's proposed decision on May 4, 2006, and on June 21, 2006, well within the 100-day limit, voted to reject the proposed decision and decide the matter itself based on the administrative record, including the transcripts. CalPERS also decided to seek an opinion from the Legislative Counsel about the relevant retirement formulas. Because it did not know how long it would take to get the opinion and it knew that the 100 day period for a decision would begin to run once it received the transcript, CalPERS intentionally delayed ordering the transcript. CalPERS did not order the transcript until November 13, 2006. As permitted by the APA, CalPERS exercised its ability to extend the 100 day period to issue a decision by 30 days due to special circumstances.

As Mrs. Alexander had in the meantime passed away, her estate filed a petition for writ of mandate, seeking a stay of proceedings and asserting that the proposed decision be deemed adopted. The superior court granted the petition. The California Court of Appeal affirmed, finding that CalPERS's failure to order the transcript within 100 days of rejecting the proposed decision resulted in an adoption of the proposed decision.

The APA gives an agency 100 days to issue a decision after it rejects a proposed decision. Because the agency should not be prejudiced for ordering a transcript, if the agency orders a transcript of the proceedings, the agency has 100 days from receipt of the transcript to issue its decision. The Court of Appeal found that this extension only applies if the agency has ordered the transcript within 100 days of rejecting the ALJ's decision. This timeframe reflects the desire for a timely hearing and resolution of administrative proceedings. If there was no time limit for ordering a transcript, an agency could reject a proposed decision within 100

days of receipt of the decision and then sit on the case indefinitely before ordering a transcript and starting the 100 day period for issuing a decision.

Matus v. Board of Administration of California Public Employees' Retirement System (2009) ___ Cal.App.4th ___ [99 Cal.Rptr.3d 341].

FIRST AMENDMENT

Employee Fired After Reporting Alleged Corruption States a Claim for First Amendment Retaliation.

Sandra Valentino worked as a secretary for the Village of South Chicago Heights. She became skeptical of the Mayor's hiring practices after the Mayor hired a water inspector with no prior public works experience, and who told Valentino that he was hired because he was a "vote getter" for the Mayor and an active supporter of his campaign for office. The Village employed several of the Mayor's friends and relatives, including the Mayor's son-in law, three children, and Village Administrator Paul Petersen's three family members. Valentino became suspicious that the Village was "ghost payrolling" these individuals - that is, that the Village paid them salaries for hours that they did not actually work.

Valentino expressed her concerns regarding the nepotism to William Bramanti, the future head of Citizens Against Corruption. Bramanti then submitted a series of requests pursuant to the Freedom of Information Act for copies of the time cards and sign-in sheets for the Mayor's associates and relatives. Petersen initially denied the request, and then told another employee that Valentino "is going to get her butt canned," ostensibly because of her relationship with Bramanti. The Mayor ultimately overruled Petersen and released certain time records to Bramanti.

Meanwhile, Valentino began to make copies of the daily sign-in sheets in part to verify her suspicions regarding "ghost payrolling" and in part to determine if the Village was unfairly docking her pay when she was tardy, while not docking the pay of other Village employees. On February 28, 2003, Bramanti sent a letter to the citizens of the Village accusing the Mayor

of "ghost payrolling" his relatives. The next business day, Petersen searched Valentino's desk and found copies of the employee sign-in sheets. Petersen then fired Valentino for "theft" of the sign-in sheets.

Valentino sued the Village for First Amendment retaliation. The district court granted summary judgment in favor of the Village. The Seventh Circuit Court of Appeals reversed.

To establish a *prima facie* case of unlawful First Amendment retaliation, Valentino would need to establish that: (1) she engaged in constitutionally protected speech; (2) she suffered a deprivation likely to deter her from exercising her First Amendment rights; and (3) her speech was a motivating factor in her employer's adverse action. The Court found that her speech was protected because her comments to Bramanti strongly implicate the public concerns of government corruption and waste caused by "ghost payrolling." The circumstantial evidence also suggests that her speech was a motivating factor for her termination. Petersen knew about Valentino's relationship with Bramanti and he surreptitiously searched her desk right after Bramanti sent the letter to the citizens. Moreover, Petersen told another employee that Valentino was going to get fired.

Although the Village asserts that Valentino was fired for her "theft" of the office sign-in sheets, their stated reason is specious. The Village claimed that they were worried that the theft could lower office morale, foster identity theft, or constitute an invasion of the employees' privacy. However, the Court found that Valentino did not actually steal anything. She simply photocopied the sign-in sheets and stored them. The sign-in sheets were publicly displayed in the office and the Village had already released some of the information to Bramanti. Consequently, the copying of the sign-in sheets could not be an invasion of privacy. Moreover, Petersen singled out Valentino's desk to be searched immediately after Bramanti sent his letter to the citizens of the Village. These factors suggest that the Village's proffered reason for Valentino's termination was merely pretext for First Amendment retaliation, and summary judgment was inappropriate.

Valentino v. Village of South Chicago Heights (7th Cir. 2009) 575 F.3d 664.

DUE PROCESS

Employee's Due Process Rights Were Not Violated Where The Same Official Who Was Involved in Proposing the Termination Presided Over The Employee's Administrative Appeal.

Jerry Riggins was a police sergeant in Louisville, Colorado. In 2004, he experienced a psychiatric episode during which he complained that someone was after him, his hotel room was bugged, and there was a computer chip implanted in his head. The City placed him on administrative leave. In September 2004, Riggins' psychiatrist gave the City a report stating that Riggins was able to return to work, but that he would recommend a separate fitness for duty exam. The psychiatrist also stated that Riggins would likely be on medication for at least another six months, and, if Riggins discontinued his medications prematurely, he might risk a recurrence of his previous delusional symptoms.

The City hired a psychologist to conduct a fitness for duty examination. The psychologist said that Riggins was fit to return to duty, but that his return needed to be done in a carefully planned program with close supervision in order to monitor and assess his abilities to function safely and effectively as a police officer. However, a psychiatrist advised the City to use caution in having an employee who is taking anti-psychotic medications return to duty. Based on the various reports, Police Chief Bruce Goodman determined that Riggins was unable to resume his duties, and began proceedings to terminate Riggins.

The City's policies provided that a department director may impose dismissal upon the prior approval of the Human Resources Officer and the City Administrator. After obtaining the required approval, Goodman advised Riggins of his intent to terminate him. Riggins exercised his right to the City's three-step appeal process. Riggins and his attorney met with Chief Goodman and had the opportunity to appeal the termination decision. After Goodman rejected the appeal, Riggins met with the Human Resources Officer, who also upheld the termination. Finally, Riggins met with the City Administrator to appeal the decision. The

City Administrator made the final decision to uphold the termination. Riggins's termination was not effective until after all three levels of appeal.

Riggins sued the City officials asserting violation of his due process rights because he was not afforded adequate pretermination due process and because of bias. The district court denied the City officials' motion for summary judgment on qualified immunity grounds. The Tenth Circuit Court of Appeals reversed.

Government officials are entitled to qualified immunity as long as their conduct does not violate clearly established law which a reasonable person would have known. Before a government employee is deprived of any significant property interest, the employee is entitled to: (1) oral or written notice of the charges against him, (2) an explanation of the employer's evidence, and (3) an opportunity to present his side of the story.

The City gave Riggins written notice of the charges against him, an explanation of the evidence, and several opportunities to present his side of the story prior to his termination. Consequently, the City officials did not violate his due process rights and they were entitled to qualified immunity.

Riggins also argued that he was denied the right to an impartial process because the same individuals who approved the initial decision to terminate him presided over the hearings contesting the decision. He argues that they had already made up their minds prior to presiding over the hearings. The Tenth Circuit found that the same supervisor could perform the investigative function prior to the adverse employment action decision and the adjudicatory function of providing an appeal hearing for the decision. Riggins failed to show any evidence of actual personal animus or bias with respect to the factual matters to be determined in the appeals process. Thus, the City officials were entitled to qualified immunity on Riggins' claim that he was denied an impartial hearing process.

Riggins v. Goodman (10th Cir. 2009) 572 F.3d 1101.



MILITARY LEAVE RIGHTS

Employer Had No Duty to Reemploy Employee Where Employee Failed to Request Reemployment Within Ninety Days After Completing His Military Service.

Richard Erickson worked for the United States Postal Service (USPS). He also served in the Army National Guard Reserve. From 1991 to 1995, he was absent from his position with the USPS for a total of more than 22 months. From 1996 to 2000, he worked at USPS for only four days. In January 2000, USPS called Erickson to determine whether he intended to return to his position with USPS. Erickson said he would not report back to work until he completed his current tour of duty in September 2001. He said that he preferred military service to working for USPS.

In March 2000, USPS terminated Erickson's employment for excessive use of military leave. Erickson remained on active military duty until December 31, 2005. On September 28, 2006, Erickson filed an appeal with the Merit Systems Protection Board alleging that USPS had violated his rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) by removing him from his position based on his military service. The administrative judge found that Erickson was entitled to reemployment. He also found that USPS discriminated against Erickson based on his military service, but that Erickson had waived his USERRA rights by abandoning his civilian career in favor of one in the military. Erickson appealed the administrative judge's decision to the full Board, which found that Erickson's military service was not a motivating factor in his termination because the real reason was his absence regardless of its cause. The Board did not address whether Erickson abandoned his position. The Federal Circuit Court of Appeals affirmed in part and reversed in part.

An employer is prohibited from discriminating against an individual based on his or her military service. The Federal Circuit rejected the Board's finding that the real reason for Erickson's removal was his absence from work regardless of whether that absence was caused

by his military obligation. The most significant consequence of reserve service with respect to the employer is that the employee is absent to perform that service. To allow an employer to fire an employee because of his military absence would eviscerate the protections afforded by USERRA. The Court also rejected USPS's argument that it needed to fill Erickson's position. Thus, USPS unlawfully discriminated against Erickson.

Service members also have a right to reemployment in their civilian jobs after completing their military obligations. USERRA requires an employee to provide timely notification to his employer of his intention to return to work. Employees who have served in the military for more than 180 days must submit an application for reemployment no more than 90 days after completing their military service. Because Erickson completed his military service on December 31, 2005, he was required to submit an application for reemployment with USPS by April 1, 2006. Erickson did not request reemployment until September 2006.

The Court remanded the case to the Board to determine if Erickson had waived his USERRA rights by abandoning his civilian career in favor of one in the military based on his stated preference for military work, his long and distinguished military career during much of which he was absent from this Postal Service position, and his failure to take any steps to obtain reemployment with the USPS until he filed his appeal with the Board nine months after his separation from the military.

Erickson v. United States Postal Service (Fed. Cir. 2009) 571 F.3d 1364.

COMPUTER ABUSE

Employee Who Emailed Company Documents To His Personal Computer Did Not Access the Company's Computers In Violation of Law.

LVRC operates a residential treatment center for addicted persons in Nevada. The Company hired LOAD, Inc. to provide email, website, and related services for the facility, and Christopher Brekka to oversee a number of

aspects of the facility, including interacting with LOAD. The Company gave Brekka a computer to use. Because Brekka often commuted between Florida and Nevada, he emailed documents he obtained or created in connection with his work to his personal computer. Brekka had an administrative login for the Company's website so he could access usage statistics to manage the Company's internet marketing. In August 2003, Brekka and the Company entered into discussions regarding Brekka purchasing an ownership interest in the Company. At the end of August, Brekka emailed a number of the Company's documents to his personal email account. In September 2003, negotiations broke down, and Brekka ceased working for the Company.

Brekka left his Company computer at the Company and did not delete any emails from the computer, including the email which contained the administrative user name and password. After Brekka left the company, other Company employees had access to Brekka's former computer. At some point after Brekka left, the email with the administrative login information was deleted from the computer. In November 2004, the Company noticed that someone was logged into the Company's website using Brekka's old user name and password.

The Company sued Brekka in the federal district court alleging that Brekka intentionally accessed the Company's computer without authorization, or in excess of his authorized access, in violation of the Computer Fraud and Abuse Act (CFAA). The district court granted summary judgment in favor of Brekka. The Ninth Circuit Court of Appeals affirmed.

The CFAA imposes criminal and civil penalties against a person who intentionally accesses a computer without authorization or exceeds authorized access and thereby obtains information from any protected computer. Here Brekka indisputably had authority to access the Company's documents and email them to his personal computer while he was employed with the Company. Consequently, Brekka did not access the Company's computers without authorization or in excess of his authorization.

The Company argued that Brekka acted in excess of his authorized access because he was acting in contradiction to his duty of loyalty to

the Company. But the Court rejected the Company's argument, finding that the statute did not require that the individual's access be consistent with his or her duty of loyalty to the employer.

Finally, because numerous individuals used Brekka's Company computer after he stopped working for the Company, the Company could not show that Brekka was responsible for the login in November 2004. Various individuals could have used Brekka's administrative login and password as they were accessible on Brekka's former computer.

LVRC Holdings, LLC v. Brekka (9th Cir. 2009) ___ F.3d ___ [2009 WL 2928952].

■ STUDENTS

SCHOOL CLOSURES DUE TO PANDEMIC FLU

California Department of Education Publishes Draft Pandemic Influenza Manual.

In the wake of the H1N1 flu outbreak, the California Department of Education (CDE) published a Draft Pandemic Influenza Manual in order to provide school districts, charter schools and county offices of education with information regarding the procedures if there is a school, district or statewide student dismissal due to a high-severity pandemic. The manual is divided into 14 sections, addressing various issues related to the pandemic, as well as the impact of a pandemic on the provision of services and programs. We briefly highlight some of them here:

Section 2: CDE Recommendations and Resources for Preparedness and Prevention

Each local education agency (LEA) should review its safety plan, and update the plan as necessary to include procedures for addressing a possible pandemic influenza. The CDE will monitor guidance issued by the Centers for Disease Control and Prevention (CDC) to provide LEA's with updated information regarding the response to pandemic influenza.

Prevention actions include:

- ◆ School personnel and students who are sick should stay home.
- ◆ Students and staff members should cover their mouths and noses when they cough or sneeze.
- ◆ Students and staff members should wash hands often and properly - for at least 20 seconds, using soap and water.
- ◆ School sites should have soap and water and/or hand sanitizers for both student and staff use.

The CDC recommends an exclusion period of three to five days for infected individuals. Students with influenza-like illness should remain home until at least 24 hours after they are free of fever without the use of fever-reducing medication. School areas should be routinely cleaned, and any ill students or staff members should be moved to a designated sick room until they can be sent home.

Public Health Officers have the authority to order student dismissal and/or close schools to protect the public health, and LEA's must comply with such orders. Student dismissal orders (where all students are dismissed) are the most commonly anticipated orders. If a student dismissal order is imposed, LEA's should immediately cancel all other school gatherings involving students (e.g., school dances.) During a student dismissal order, school staff can safely work from the school site.

Section 4: Fiscal Impacts of Student Dismissals Ordered by Local or State Health Officials

CDE will make it a priority to ensure that LEA's continue to receive timely allocations of principal apportionment funds, state categorical funds, and federal categorical program funds in the instance of a pandemic.

With regard to apportionments based on ADA, while LEA's are held harmless for reductions in loss of ADA due to specific types of emergencies, the Education Code does not provide that LEA's are held harmless for significant reductions in pupil enrollment due to a pandemic. The CDE may, however, adjust rev-

enue limits and principal apportionment program entitlements based on the fiscal impact of the pandemic.

Section 5: Accountability and Assessment Policies During Extended Student Dismissals

In the event of standardized testing schedule disruptions due to a statewide student dismissal policy, the CDE will issue notice to LEA's of changes of test administration dates as well as the deadlines for test contractors' receipt of answer documents. For regional, district or school-wide student dismissal orders, LEA's should contact CDE's Standards and Assessment Division to inform the CDE of the circumstances and request a change of the test administration dates and deadlines for test contractors' receipt of answer documents.

Section 8: Impact of Pandemic Influenza on Special Education

The key for special education students is that they must be treated the same way that non-special education students are treated. Thus, if there is a student dismissal order or a school closure, special education students do not need to be provided services, as all other students are not receiving services. But, any services provided to the regular school population (e.g., independent study, distance learning, an extended school year to make up for days missed due to the dismissal order) must be provided to special education students.

Each special education student's IEP team should reflect on how services would be enacted during a pandemic. In addition, the CDE's Special Education Division will provide technical assistance on serving special education students during a pandemic.

Section 12: Impact of Pandemic Influenza on Curriculum Support Programs

Influenza-related student dismissals may affect a school's ability to meet Title I related timelines, such as timely notification to parents of a school's Program Improvement (PI) status or LEA contracts with Supplemental Education Services (SES) providers for service. In the event of a long-term student dismissal order, CDE officials would apply to the U.S. Department of Education with a request to waive timeline requirements. LEA's would

also be encouraged to submit their requests for waivers to the State Board of Education (SBE).

Section 13: Distance-Learning Options

This section provides various distance learning options in the event of a long-term school, district, or statewide student dismissal ordered by a public health official. The options include videotaped demonstration lessons aired on public broadcast stations, traditional distance learning through online or mail, and use of Independent Study Packets.

Note:

The entire Manual can be accessed via internet here: <http://www.cde.ca.gov/ls/he/hn/documents/pandemicflumannual.doc>

We recommend that all districts, county offices of education, charter schools and state contractors for child care through CDE's Child Development Division review the Manual.

FIRST AMENDMENT

High Court Declines to Hear Two Cases on Student Freedom of Speech.

The U.S. Supreme Court has declined to hear two controversial cases from the Courts of Appeal related to student expression and free speech. In Florida, high school student Cameron Frazier had refused to say the pledge of allegiance in his fourth-period math class. Frazier sued on the grounds that a Florida statute requiring all public-school students to stand and say the pledge, unless excused in writing by a parent, was unconstitutional. The federal appeals court upheld the statute, finding that the First Amendment right to be free from the requirement to say the pledge belongs to the parents and not the student. Thus, the Student could not individually challenge the statute. Frazier appealed to the Supreme Court, but the Court declined to hear the case. Thus, the ruling of the Court of Appeal stands.

(<http://www.csmonitor.com/2009/1005/p02s07-usju.html>)

The other case was based on a challenge by students in Tennessee to a policy which prohibited them from wearing Confederate flag

t-shirts to school. The ban was enacted during a period of heightened racial tension at the school following an altercation between an African-American student and a white student. Students filed a lawsuit which claimed that the schools anti-Confederate flag policy frustrated their desire to express their Southern Heritage by wearing clothing depicting the Confederate flag. The Sixth Circuit Court of Appeals upheld the ban on the basis that it was reasonably foreseeable that the wearing of such clothing would substantially and materially disrupt the school environment. The Supreme Court declined to review the decision, leaving the decision of the Sixth Circuit valid.

(See <http://www.csmonitor.com/2009/1005/p02s04-usju.htm>)

Circuit Court Upholds School District Dress Code Banning Shirts Containing Printed Messages.

On September 21, 2007, Paul Palmer, a student at Waxahachie High School, part of the Waxahachie Independent School District, wore a t-shirt to school with "San Diego" written on it. The school's Assistant Principal told Palmer that his shirt violated the District's dress code which did not allow shirts with printed messages. Palmer called his parents who brought him a "John Edwards for President '08" t-shirt to wear instead. Johnson did not allow the t-shirt for the same reason he did not allow the "San Diego" t-shirt. Palmer sued the District in federal court, claiming that its dress code banning t-shirts with printed messages violated his right to free speech and expression under the First Amendment. Palmer sought, amongst other things, an injunction prohibiting the District from imposing the dress code.

At the hearing on the injunction, a District official testified that the District had adopted a new dress code four days prior. The trial court denied the injunction, but required the District to provide a copy of the new dress code. The District provided the new code, which restricted more speech, including polo shirts with messages, shirts with professional sports team logos, and clothing with university messages. The new code continued to permit clothing with logos from campus principal-approved

clubs, organizations, and athletic teams. It also allowed logos smaller than two inches by two inches.

Palmer submitted three shirts to the principal for approval based on the new code. One was the original John Edwards for President t-shirt, one was a John Edwards for President polo shirt and one was a t-shirt with "Freedom of Speech" on the front and the text of the First Amendment on the back. The District rejected all three, and Palmer sued the District again. The trial court denied the preliminary injunction, and Palmer appealed.

The Fifth Circuit Court of Appeals first provided the standard for granting an injunction. An injunction is proper where the plaintiff establishes 1) a substantial likelihood of success on the merits; 2) a substantial threat of irreparable injury if the injunction is not issued; 3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and 4) that the grant of an injunction will not disserve the public interest.

The Court first noted that that words printed on clothing constitute speech and are protected by the First Amendment, and that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury. Thus, the Court found that Palmer satisfied the first prong of the standard for injunction, because Palmer would be irreparably injured by the enforcement of the dress code.

The Court then addressed whether there was a substantial likelihood of success on the merits. A school cannot "suppress expressions of feelings with which they do not wish to contend." According to Supreme Court precedent, schools can restrict student speech only if it materially interferes with or disrupts the school's operation. For example, a school can prohibit sexually explicit, indecent or lewd speech, or speech advocating illegal drug use, and can regulate school-sponsored speech.

Palmer argued that, because his speech was not disruptive, lewd, school-sponsored or drug-related, it could not be regulated. The Court disagreed, noting that a school can also impose content-neutral regulations on speech. That is, regulations which are not based on the actual content of the speech (i.e., banning all logo

shirts, rather than particular messages on shirts with which the District does not agree.) Such content-neutral regulations can be imposed based on "time, place and manner restrictions" as set forth by the Supreme Court in *United States v. O'Brien*. Under this test, a dress code will pass constitutional scrutiny if: 1) it furthers an important or substantial governmental interest; 2) if the interest is unrelated to the suppression of student expression; and 3) if the incidental restrictions on First Amendment activities are no more than is necessary than to facilitate that interest.

The Court first addressed whether the policy was content-neutral. The Court found that it was, because the District did not adopt the regulation because of disagreement with the message conveyed. The Court held that the dress code was not attempting to suppress any student's expression of unpopular viewpoints, thus making it content-neutral.

The Court then applied the *O'Brien* test. First, it found that the District's interest in the dress code was to "maintain an orderly and safe learning environment, increase focus on instruction, promote safety and life-long learning, and encourage professional and responsible dress for all students." The Court found that this qualified as a substantial government interest, holding that Courts should give substantial deference to schools reasons for imposing a dress code.

Palmer argued that the District's interest was undermined by the fact that the District allowed students to wear messages on pins, buttons, wrist-bands and bumper stickers. The Court did not agree, stating that, for Palmer's objection to stand, he would have to show that this allowance destroyed all of the District's stated important governmental interests. The Court found that it did not. Rather, it found a distinction between the large messages found on t-shirts and the small messages found on buttons, pins, wristbands and bumper stickers, and that the District's interest was still served by the ban on t-shirts, even allowing for the other types of expression.

Moreover, the Court noted that, under the third prong of the *O'Brien* test, the District was required to show that the dress code was no more strict than necessary to achieve its goals. By allowing students to express themselves in

other mediums, the District ensured that it did not violate the third prong. Because the code allowed students to express themselves through different medium throughout the school day, the code passed muster under the third prong of the test.

The Court found, based on its analysis, that Palmer showed no likelihood of success, and affirmed the order denying the preliminary injunction.

Palmer v. Waxahachie Independent School Dist. (5th Cir. 2009) 579 F.3d 502.

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- * Speaking Freely or Shouting “Fire”?
- * Overlapping Leave Challenges

The conference brochure, complete with descriptions for all classes, as well as registration material will be on our website -- www.lcwlegal.com -- by the end of the month.

We hope that you can join us.

To make your hotel reservations online: <https://resweb.passkey.com/go/LCWL2>



LCW Announces Scott Tiedemann to be the Next Managing Partner

Here's exciting news about the next milestone in the management of Liebert Cassidy Whitmore: Upon its founding in 1980, John Liebert managed the firm for its first fifteen years, at which time Melanie Poturica transitioned into the managing partner role. Now the time is approaching that Melanie too will have managed the firm for fifteen years, and she has asked her partners to select a managing partner that will transition the firm to the next generation of leadership. We are pleased to announce that the partners have unanimously selected Scott Tiedemann to assume that leadership role. To assure a smooth transition, Scott will co-manage the firm during our 2009-2010 fiscal year beginning October 1, 2009, and assume the role of sole managing partner October 1, 2010.

Many of our clients know and have worked with Scott. He joined Liebert Cassidy Whitmore in 2000, and became a partner in 2004. In that time he has excelled in a broad range of our practice. He has represented public agencies in litigation, administrative proceedings and negotiations.

Scott has become recognized for his expertise in representing public safety agencies. In that regard, he has successfully handled a number of reported appellate court decisions resulting in significant favorable legal principles.

Scott is one of our very popular trainers. He frequently speaks at national and statewide conferences on a variety of employment law subjects. He has published numerous articles in publications such as *The National Law Journal*, *Municipal Lawyer Magazine*, *The Daily Journal*, and *The Journal of California Law Enforcement*. He recently authored the CPER Pocket Guide to the Firefighters Procedural Bill of Rights Act.

Most importantly, Scott as an individual perfectly reflects the cultural values LCW brings to its client relations - first and foremost, integrity; high quality legal work; economical, practical and creative solutions; responsiveness and availability.

Scott received his Juris Doctorate from Loyola Law School where he received the American Jurisprudence Award in Legal Writing, was a member of the Moot Court Honors Board and was published in the *Loyola International Law Journal*. He received his Bachelor of Arts degree in English Literature from Loyola Marymount University.

Melanie will continue to remain fully active with the firm after October 2010, and is very much looking forward to being able to spending her time practicing law and working with clients.

New to the Firm

Liebert Cassidy Whitmore Welcomes Three New Associates

Paula Schaefer joins LCW's Los Angeles Office. Paula has over six years experience advising and representing school districts, community college districts and special districts in the areas of business, property and construction law. Paula can be contacted at (310) 981-2000 or emailed at pschaefer@lcwlegal.com.

Camille Townsend also joins LCW's Los Angeles Office. Camille provides representation and legal counsel to clients in matters pertaining to education, labor and employment law. Camille's practice focuses on litigation. Camille can be contacted at (310) 981-2000 or emailed at ctownsend@lcwlegal.com.

Todd Simonson joins LCW's San Francisco Office. Todd provides representation and legal counsel to Liebert Cassidy Whitmore clients in all aspects of public sector labor and employment law. Todd has expertise in public safety matters and regularly provides advice to police and fire management. Todd can be contacted at (415) 512-3000 or emailed at tsimonson@lcwlegal.com.



Firm Publications

Steven Berliner of our Los Angeles office and **Alison Neufeld** of our San Francisco office co-authored the article, "Furloughs: The Devil's in the Details" which appeared in the August 2009 issue of the California Public Employee Relations Journal (CPER). The complete article can be read online at <http://www.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "Furloughs".

Jeffrey Freedman of our Los Angeles office co-authored an article, "Pay for Commuting and Off-the-Clock Work" which appeared in the October 1, 2009 issue of the Los Angeles/San Francisco Daily Journal. The complete article can be read online at <http://www.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "Commuting".

Compliant EEO Plans



From Model Plan to Your Plan: Developing Compliant EEO Plans That Work

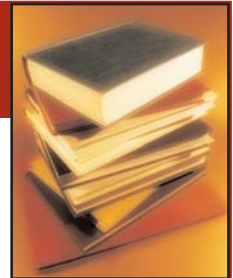
California Community College Districts are required to develop their own Equal Employment Opportunity Plans- which must be compliant with the State Chancellor's regulations, the Education Code, the California Constitution (including Proposition 209) and federal law. Unfortunately, these sources of law (and the cases that interpret them) are dynamic, conflicting and difficult to navigate.

Liebert Cassidy Whitmore has developed a three hour introductory-level workshop designed to walk supervisors and managers through each step in developing their EEO plans. The workshop will explain the current state of the law and offer participants practical suggestions for creating a compliant EEO Plan.

To schedule a training at your District, contact Anna Sanzone-Ortiz at (310) 981-2051 or asanzone-ortiz@lcwlegal.com.



Mandatory Harassment Training



One of the key components of Government Code Section 12950.1 (also known as AB 1825) is the provision requiring training in the prevention of harassment to all supervisory employees **once every two years** and to **new supervisors within 6 months** of their assumption of a supervisory position.

Liebert Cassidy Whitmore has scheduled a series of informative and interactive presentations that will meet this requirement. Classes times are 9:30 a.m. - 11:30 a.m. and 1:30 p.m. - 3:30 p.m.

Please visit www.lcwlegal.com to register for the following scheduled classes.

December 2, 2009
Fresno

December 9, 2009
Los Angeles

December 16, 2009
San Francisco

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.

Train the Trainer Seminars

Train the Trainer Refresher

Need to be re-certified as a trainer? Liebert Cassidy Whitmore is offering "Train the Trainer" refresher sessions to provide you with the necessary tools to **continue** conducting mandatory AB 1825 (Govt. Code Section 12950.1) training for your agency.

Fresno - November 12, 2009

San Francisco - November 12, 2009

Los Angeles - November 20, 2009

Time: 9:00 a.m. - 12:00 Noon

Location: **Liebert Cassidy Whitmore Offices**
6033 West Century Boulevard., Suite 500, Los Angeles, CA 90045
153 Townsend Street, Suite 520, San Francisco, CA 94107
5701 N. West Avenue, Fresno, CA 93711

Cost: **\$1,000 each or \$900 each if ERC Member**

Registration:

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

Please contact us for more information on how to bring this training to your agency by contacting Anna Sanzone-Ortiz at ASanzone-Ortiz@lcwlegal.com or (310) 981-2051.

Public Works Bid and Contract Documents Service from LCW

Are You Taking Unnecessary Risks with Your Public Works Bid and Contract Documents?

The bid and contract documents we've reviewed have truly run the gamut in terms of meeting legal requirements and addressing potential problems and liabilities that may arise on a public works project.

Don't let bid and contract documents increase your liability. Liebert Cassidy Whitmore will be offering a subscription service* to model bid and contract documents including:

Prime Contractor Bid and Contract Documents

1. Notice to Bidders
2. Instructions to Bidders
3. Bid Form
4. Bid Bond
5. Certification of Disabled Veteran Business Enterprise Certification
6. Non-Collusion Declaration
7. Designation of Subcontractors
8. Good Faith Effort Worksheet for Disabled Veteran Business Enterprise Certification
9. Agreement Between Owner and Contractor
10. General Conditions
11. Escrow Agreement
12. Fingerprinting Notice and Acknowledgement
13. Payment Bond
14. Performance Bond

Consultant Agreements

15. Agreement for Architectural Services
16. Engineering Services Agreement
17. Construction Management Agreement
18. Agreement for Inspection Services
19. Agreement for Materials Testing Services

The subscription service is available for \$600 for the initial set of the above bid and contract documents, with annual updates of the entire set provided for \$100. All documents will be provided to you electronically so that you can insert your specific, relevant information.

For more information or to enroll for the service, contact Cynthia Weldon at (310) 981-2055 or cweldon@lcwlegal.com.

*Subscription service begins **January 2010**.



MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Workshop Training

October 1	"Public Sector Employment Law Update" Gateway Public ERC Santa Fe Springs Melanie Poturica
October 1	"Sick and Disabled Employees" and "Public Agency Issues During Lean Economic Times" Bay Area ERC Sunnyvale Richard Bolanos
October 1	"Legal Issues for Negotiators" and "Labor and Employment Relations Issues During Lean Economic Times" East Inland Empire ERC Fontana Steve Berliner
October 2	"Reductions in Staffing" and "Legal Issues Regarding Hiring" Central Coast Personnel Council (CCPC) Santa Barbara Michael Blacher and Joung Yim
October 6	"Preventing Workplace Harassment, Discrimination and Retaliation" and "Labor and Employment Relations Issues During Lean Economic Times" South Bay ERC Hawthorne Michael Blacher
October 7	"Advanced FLSA" and "Advanced Labor Negotiations Roundtable" Central Valley ERC Kerman Richard Bolanos & Gage Dungy
October 7	"Managing Performance Through Evaluation" and "The Disability Interactive Process" Gold Country ERC Roseville Cepideh Roufougar
October 8	"Managing the Marginal Employee" and "Labor and Employment Relations Issues During Lean Economic Times" San Diego ERC Oceanside Bruce Barsook
October 8	"Discipline: Putting It into Practice Part I" LA County Management Attorneys (LACMA) Consortium Los Angeles Mark Meyerhoff and James Oldendorph
October 15	"12 Steps to Avoiding Liability" and "Labor and Employment Relations Issues During Lean Economic Times" West Inland Empire ERC Rancho Cucamonga Steve Berliner
October 16	"Name that Section: Frequently Used Ed Code and Title 5 Sections for Community College" Southern CA Community College Districts (CCDs) ERC Norwalk Peter Brown
October 21	"Preventing Workplace Harassment, Discrimination and Retaliation" and "Performance Management: Evaluation, Documentation and Discipline" San Gabriel Valley ERC Alhambra Laura Kalty
October 21	"Exercising Your Management Rights" and "Public Sector Employment Law Update" NorCal ERC Concord Richard Whitmore and Deborah Glasser
October 21	"Public Sector Employment Law Update" Orange County ERC Anaheim Melanie Poturica
October 21	"Parent/Student Handbooks" Bureau of Jewish Education (BJE) Consortium Los Angeles Pilar Morin and Lauren Liebes
October 22	"Handling Grievances" and "FLSA: New Developments and Hot Topics" Monterey Bay ERC Morgan Hill Richard Bolanos
October 22	"A Supervisor's Employment Relations Primer" North San Diego County ERC Vista Mark Meyerhoff

October 28	"Personnel Issues: Hiring, Reference Checks and Personnel Records and Files" and "FLSA" Los Angeles County Human Resources Consortium Commerce Peter Brown
October 29	"Privacy Issues in the Workplace" and "Public Sector Employment Law Update" Imperial Valley ERC Imperial Melanie Poturica
November 10	"Managing Performance Through Evaluation" and "Advanced FLSA" San Mateo County ERC Foster City Richard Bolanos
November 10	"Preventing Workplace Harassment, Discrimination and Retaliation" and "Managing the Marginal Employee" Bay Area ERC Newark Suzanne Solomon
November 12	"Discipline: Putting It into Practice" Gateway Public ERC Pico Rivera James Oldendorph and Scott Tiedemann
November 12	"Discipline: Putting It into Practice Part II" LA County Management Attorneys (LACMA) Consortium Los Angeles Mark Meyerhoff
November 12	"Preventing Workplace Harassment, Discrimination and Retaliation" and "Family and Medical Care Leave Acts" West Inland Empire ERC Chino Hills Michael Blacher
November 12	"Preventing Workplace Harassment, Discrimination and Retaliation" and "Finding the Facts: Disciplinary and Harassment Investigations" East Inland Empire ERC Fontana Jennifer Hong
November 12	"Supervisory Skills for the First Line Supervisor/Manager" San Diego ERC Poway Donna Evans
November 13	"An Employment Relations Primer for Community College District Administrators and Supervisors" Southern CA CCDs ERC Santa Ana Mary Dowell
November 17	"Advanced FLSA" and "Sick and Disabled Employees" Coachella Valley ERC Indio Peter Brown
November 18	"Supervisory Skills for the First Line Supervisor/Manager" South Bay ERC Torrance Donna Evans
November 19	"Preventing Workplace Harassment, Discrimination and Retaliation" and "Performance Management: Evaluation, Documentation and Discipline" Orange County ERC Costa Mesa Laura Kalty
November 19	"Supervisory Skills for the First Line Supervisor/Manager" Humboldt County ERC Fortuna Frances Rogers

Customized Training Presentations

October 1	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Indio Linda Jenson
October 1	"Guide for Supervisors on Preventing Harassment, Discrimination and Retaliation" City of Fremont Cynthia O'Neill
October 6	"Absenteeism Prevention" and "Exercising Your Management Rights" County of Sonoma Santa Rosa Richard Bolanos
October 6, 8	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Torrance Donna Evans
October 6	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Fresno Gage Dungy

October 7	"Preventing Workplace Harassment, Discrimination and Retaliation" Fairfield-Suisun Sewer District Fairfield Donna Williamson
October 7	"Managing Performance Through Evaluation" City of Alameda Kelly Tuffo
October 8	"Preventing Workplace Harassment, Discrimination and Retaliation" County of Sonoma Santa Rosa Kelly Tuffo
October 8	"Preventing Workplace Harassment, Discrimination and Retaliation" JFB Ranch Inc. Firebaugh Gage Dungy
October 14	"Guide for Supervisors on Preventing Workplace Harassment, Discrimination and Retaliation" County of San Luis Obispo San Luis Obispo Laura Kalty
October 15	"Preventing Workplace Harassment, Discrimination and Retaliation" San Benito County Hollister Richard Bolanos
October 15	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Glendale Jennifer Hong
October 16, 21, 22	"FBOR" City of Glendale Scott Tiedemann
October 16	"The Brown Act" Yuba Community College District Marysville Laura Schulkind
October 19	"Preventing Harassment, Discrimination and Retaliation in the School Setting/Environment" Conejo Valley Unified School District Thousand Oaks Michael Blacher
October 19, 28	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Anaheim Donna Evans
October 21	"Preventing Workplace Harassment, Discrimination and Retaliation" and "Legal Aspects of Violence in the Workplace" City of Hesperia Donna Evans
October 21	"Issues and Challenges Regarding Drugs and Alcohol in the Workplace" City of Visalia Gage Dungy
October 22	"Preventing Workplace Harassment, Discrimination and Retaliation" Golden State Risk Management Authority Corning Gage Dungy
October 22	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Torrance Laura Kalty
October 22	"Preventing Workplace Harassment, Discrimination and Retaliation" Mesa Consolidated Water District Costa Mesa Connie Chuang
October 26, 29	"Discipline: Putting It Into Practice" County of Ventura, Human Services Agency Ventura Donna Evans
October 26	"Preventing Workplace Harassment, Discrimination and Retaliation" County of Sonoma Santa Rosa Jack Hughes
October 27	"Preventing Workplace Harassment, Discrimination and Retaliation" Los Angeles County Sanitation Districts morning session - Carson / afternoon session - Whittier Donna Evans
October 28	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Oakdale Cepideh Roufougar
October 29	"Conducting Investigations" and "Disability Interactive Process" County of Sonoma Santa Rosa Jack Hughes

- October 29 **"Labor Code 101 for Public Agencies" and "Privacy Issues in the Technological World"**
City of Beverly Hills | Michael Blacher
- November 4 **"Train the Trainer: Refresher"**
Liebert Cassidy Whitmore | Fresno | Shelline Bennett
- November 5 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Glendale | Jennifer Hong
- November 5 **"Principles for Peace Officer Employment" and "Ethics in the Public Service"**
Inyo County | Bishop | Gage Dungy
- November 9, 10, 16 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Bay Area Air Quality Management District | San Francisco | Laura Schulkind
- November 12 **"FBOR" and "Finding the Facts: Disciplinary and Harassment Investigations"**
North County Fire Protection District | Fallbrook | Connie Chuang
- November 12 **"Train the Trainer: Refresher"**
Liebert Cassidy Whitmore | San Francisco | Cynthia O'Neill
- November 12 **"Managing the Marginal Employee" and "12 Steps to Avoiding Liability"**
County of Sonoma | Santa Rosa | Jack Hughes
- November 16 **"Employee Due Process Rights and Skelly: A Guide to Implementing Public Employee Discipline"**
City of Indian Wells | Donna Evans
- November 17 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Temecula | Donna Evans
- November 17 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Saratoga | Jack Hughes
- November 18 **"Ethics in Public Service"**
City of Indian Wells | Peter Brown
- November 18 **"Applied Ethics"**
PMW Associates | San Clemente | Richard Kreisler
- November 20 **"Train the Trainer: Refresher"**
Liebert Cassidy Whitmore | Los Angeles | Laura Kalty
- November 20 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fresno | Shelline Bennett

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.

- October 6 **"Preventing Harassment in the Workplace"**
National Public Employer Labor Relations Association (NPELRA) | Webinar | Mark Meyerhoff
- October 10 **"Reductions in Staffing: What To Do and When To Do It"**
California Association of Cemetery Districts Education Seminar | Ventura | Melanie Poturica
- October 14 **"Public Sector Employment Law Update"**
International Public Management Association (IPMA) of Central California | Madera | Shelline Bennett

- October 15 **"Engaging in the Interactive Process"**
Human Resource Association of Central California HR and Safety Conference | Fresno | Shelline Bennett
- October 22 **"EEO Plan Completion" and "EEO in the 21st Century"**
Association of Chief Human Resources Officers (ACHRO) Fall Institute | Cathedral City | Laura Schulkind
- October 23 **"Understanding the Brown Act and Your Responsibilities"**
California Special Districts Association (CSDA) | Clovis | Shelline Bennett
- October 23 **"The New Family and Medical Care Leave Act"**
ACHRO Fall Institute | Cathedral City | Michael Blacher and Peter Brown
- October 23 **"A Mock Grievance Hearing"**
ACHRO Fall Institute | Cathedral City | Mary Dowell and Eileen O'Hare Anderson
- October 23 **"Town Hall Meeting"**
ACHRO Fall Institute | Cathedral City | Michael Blacher, Peter Brown, Mary Dowell, Melanie Long, Frances Rogers and Laura Schulkind
- November 4 **"The Laws Impacting Background Investigations"**
California Background Investigators Association (CBIA) | Santa Barbara | Mark Meyerhoff
- November 4 **"Navigating the Ins and Outs of Public Safety Employment Law and Practices"**
California Public Employer Labor Relations Association (CalPELRA) Annual Conference | Monterey | Scott Tiedemann
- November 4 **"Labor Relations Game Show"**
CalPELRA Annual Conference | Monterey | Melanie Poturica
- November 5 **"Making the Most of Arbitration"**
CalPELRA Annual Conference | Monterey | Bruce Barsook
- November 5 **"Leaves and the Disability Process: Are You Up To Date?"**
CalPELRA Annual Conference | Monterey | Peter Brown and Laura Schulkind
- November 5 **"Common FLSA Mistakes"**
CalPELRA Annual Conference | Monterey | Peter Brown
- November 5 **"How to Win FLSA Lawsuits by Police Officers: Trial Strategies and Lessons"**
CalPELRA Annual Conference | Monterey | Brian Walter
- November 5 **"Issues in Lean Times"**
CalPELRA Annual Conference | Monterey | Richard Bolanos, Morin Jacob and Donna Williamson
- November 5 **"Briefing Room - A Peace Officers Bill of Rights Case Update"**
County Counsels Association (CCAC) Employment Law Section Meeting | Newport Beach | Mark Meyerhoff
- November 5 **"Workplace Injuries and Leaves"**
CCAC Employment Law Section Meeting | Newport Beach | Michael Blacher
- November 5 **"Internal Affairs/Labor Relations Update"**
California University Police Chiefs Association (CUPCA) Executive Development Conference | Pismo Beach | Todd Simonson

- November 6 **"Elimination of Bias: Taking a Closer Look at Gender and Race Bias in the Legal Profession"**
CCAC Employment Law Section Meeting | Newport Beach | Laura Kalty
- November 16 **"FBOR Primer and Current Developments in the Law for Fire Chiefs"**
California Fire Chiefs Association (CFCA) Executive Leadership Institute | Fresno | Gage Dungy and Mark Meyerhoff
- November 17 **"The MCLE Required Hour on Elimination of Bias in the Legal Profession"**
Occidental College Alumni Attorneys | Century City | Jeffrey Freedman
- November 17 **"Preventing Harassment in the Workplace"**
NPELRA | Webinar | Mark Meyerhoff
- November 18 **"Privacy Rights and Background Checks"**
California State Association of Counties (CSAC) Annual Conference | Monterey | Morin Jacob
- November 19 **"Public Sector Employment Law Update for California's Community Colleges"**
Community College League of California (CCLC) Annual Conference | San Francisco | Mary Dowell
- November 20 **"Legal Eagles"**
CCLC Annual Conference | San Francisco | Bruce Barsook, Mary Dowell, Eileen O'Hare Anderson, Frances Rogers and Laura Schulkind
- November 20 **"Public Meeting Law for Community College Districts"**
CCLC Annual Conference | San Francisco | Mary Dowell and Eileen O'Hare Anderson
- November 20 **"Labor Negotiations for Educational Institutions during Tough Economic Times"**
CCLC Annual Conference | San Francisco | Mary Dowell
- November 21 **"Certified Ethics Training - SB 106"**
CCLC Annual Conference | San Francisco | Mary Dowell

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*Please note: by adding your name to the e-mail distribution list, you will no longer receive a hard copy of **Education Matters**.*

If you have any questions, call Cynthia Weldon at (310) 981-2000.

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