

# LEGISLATIVE ROUND-UP

2010



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NEW EMPLOYMENT LAW AND LABOR RELATIONS BILLS IMPACTING CALIFORNIA PUBLIC AGENCIES IN 2010

The *Legislative Round-Up* is a compilation of bills, presented by subject, which were signed into law and have an impact on the employment and employment related issues of our clients. Unless the bills were considered urgency legislation (which means they went into effect the day they were signed into law), bills are going into effect on **January 1, 2010**, unless otherwise noted. Urgency legislation will be identified as such.

If you have any questions about your agency's obligations under the new or amended laws as outlined below, please contact our Los Angeles, Fresno or San Francisco office and an attorney will be happy to answer your questions.

## RETIREMENT LAW

### AB 399.

Amends Section 22708 of the Education Code, and amends Section 20731 of, and adds Sections 20969, 75103.6, and 75605.1 to the Government Code, relating to public employee benefits.

(1) A PERS member with less than 3 years of service who enters employment as a member of another public retirement system supported by state funds can elect to leave his or her contributions in the PERS retirement fund within 6 months of his or her leaving state service. A member's failure to elect to withdraw the contributions will be considered an election to leave contributions in the retirement fund.

AB 399 requires that a member who is permanently separated from all service covered by PERS, and 70 years of age, be provided with an election to withdraw contributions or, if vested, an election to either apply for service retirement or withdraw contributions. The bill also requires that failure to apply for service retirement or to elect to withdraw contributions within 90 days be considered an election to withdraw contributions.

(2) PERS calculates service credit based upon service rendered and compensated in a fiscal year. STRS calculates a member's creditable service based on his or her creditable compensation. The Judges' Retirement System II Law provides that service means the period of time that a judge received a salary and made contributions to the system by reason of holding office as a judge. Meanwhile, many state employees have been furloughed without compensation. And existing law allows a judge or justice to waive a certain percentage of

## LEGISLATIVE ROUND-UP

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salary and not appear for work on a day a court is closed because of furloughs.

AB 399 requires that STRS retirement benefits for furloughed members be calculated based on the earnings, contributions, and compensation earnable that would have been reported if not for the mandatory furloughs. The employer must pay the cost of the resulting increased service credit. Similarly, for all retirement purposes, service credit and compensation earnable for PERS members employed by the state that are subject to mandatory furloughs must be based on the amount that would have been credited had the employee not been furloughed. Finally, for any judge or justice who voluntarily waives his or her salary, as described above, his or her retirement benefits and Extended Service Incentive Program benefits will be calculated based on the salary and contributions that would have been paid had the judge not made such a waiver. The state will pay the cost resulting from the increased benefits and monetary credits.

### **AB 1584.**

*Amends Section 22212.5 of the Education Code, and amends Sections 20098 and 31528 of, and adds Sections 7508.5, 7513.8, 7513.85, 7513.9, and 7513.95 to, the Government Code, relating to public employees' retirement, and declaring the urgency thereof, to take effect immediately on October 11, 2009.*

(1) PERS prohibits designated officers and employees of the PERS Board of Administration and the Teachers' Retirement Board of the State Teachers' Retirement System (STRS), who served in those positions for less than 5 years, from taking any specified action on behalf of any person, other than the state, to influence certain actions by the retirement boards or systems within 2 years after leaving that position.

AB 1584 includes a member of the board, a deputy executive officer, and an assistant executive officer among those positions subject to the 2 years postemployment restriction, and deletes the qualification that the person have served in that position for less than 5 years.

(2) The County Employees Retirement Law prohibits a member or employee of a retirement board from becoming an endorser, surety, or obligor on, or from having any personal interest in the making of an investment for the board, or in the gains or profits that accrue from those investments.

AB 1584 requires the retirement boards of each public pension or retirement system to develop and implement, on or before June 30, 2010, a policy requiring the disclosure of payments to placement agents in connection with system investments in or through an external manager. The bill also requires a placement agent to disclose to the board all campaign contributions made by the placement agent to any elected member of the board, and all gifts given to any member of the board, during the prior 24-month period, prior to acting as a placement agent in connection with any potential system investment. The placement agent must also disclose any campaign contributions or gifts made to a member of the board during the time the placement agent is receiving compensation in connection with a system investment.

## **PERS RETIREMENT LAW**

### **AB 86.**

*Amends Section 22013.7 of, and adds Section 20423.3 to, the Government Code, relating to public employees' retirement.*

Under PERS law, local safety members are entitled to generally higher benefits, and are

subject to higher contribution rates, than those employees classified as local miscellaneous members. Specified harbor and port patrol officers are within the local safety member classification.

AB 86 allows for contracting agencies, at their option, to include specified airport law enforcement officers within the local safety member classification. Affected employees will be excluded from participation in the federal Social Security Act.

### **SB 519.**

*Amends Sections 21572, 21573 and 21574.7 of, and adds Section 22944.3 to the Government Code, relating to public employment.*

PERS provides preretirement death benefits for the surviving spouse and/or children of state members and specified school members not covered by the Social Security Act. The surviving spouse becomes eligible for certain of these benefits when he or she turns 60 years old and meets other specified criteria. Under existing law, on January 1, 2010, the surviving spouses' eligibility age will increase to 62 years of age, and the financial monthly benefits to the survivors will decrease.

SB 519 deletes the provisions that would change the law on January 1, 2010, and instead maintains the benefits that are currently in effect indefinitely.

### **AB 637.**

*Amends Sections 20537, 21677, 22899 of, and adds Sections 20027.5 and 20538 to, the Government Code, relating to retirement.*

PERS maintains a deferred compensation program for public employees. Contracting agen-

cies also make contributions to PERS for health benefit plans and major medical plans for employees and annuitants.

AB 637 requires contracting agencies to make these contributions through an electronic funds transfer that is prescribed by the Board of Administration. Contracting agencies that are unable to pay through an electronic funds transfer can apply to the Board for a waiver.

### **AB 966.**

*Amends Section 2610 of the Family Code, and amends Sections 20037.6, 20037.7, 20037.8, 20037.9, 20037.10, 20037.11, 20037.12, 20039.5, 20069, 2016, 20195, 20221, 20228, 20281.5, 20283, 20305, 20475, 20479, 20636.1, 20962, 20967, 21117, 21118, 21252, 21264, 21296, 21753, 22839, 22960.15, 75006, 75028.5, and 75507 of, and adds Sections 20831.2, 21310, and 75080.5 to, and repeals Sections 20041 and 20043 of, the Government Code, relating to public employee benefits.*

(1) Existing law allows for officers, warrant officers, and enlisted personnel of the California National Guard to become members of PERS. AB 966 defines "final compensation" for a National Guard member to specify that it is the highest annual compensation that was earned during a consecutive 12-month period while rendering service with the California National Guard.

(2) Existing law requires every contracting agency to provide immediate written notice to the PERS Board of Directors of the change in status of any member resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death. AB 966 revises these provisions to provide that the notice be filed in the manner prescribed by PERS.

(3) PERS law provides that an employer

that fails to enroll an employee into PERS membership when he or she becomes eligible, or within 90 days of that date, when the employer knows or should have known of that eligibility, is required to pay all arrears costs and administrative costs.

AB 966 prohibits the employer from passing these costs onto the employee. The bill also requires an employer that fails to withhold and submit an employee's normal contributions within the applicable time limitations to notify PERS and to take no action until authorized by PERS.

(4) Existing law excludes an employee who serves on a less than full-time basis from membership in PERS unless that person comes within specified exceptions. One such exception is where the person's employment is seasonal, limited-term, on-call, or another irregular basis, and the person works more than 125 days, or 1,000 hours within the fiscal year.

AB 966 instead provides that an employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of 6 months is excluded from PERS membership unless specified exceptions apply. A position is not excluded from PERS membership if it requires service equivalent to an average of 20 hours a week for one year or longer. AB 966 also revises the exception described above, regarding seasonal, limited-term, or on-call employment, to have it apply if the person completes 125 days or 1,000 hours, as specified.

(5) PERL permits a contracting agency to amend its contract with PERS without election among its employees if the agency has fully discharged obligations imposed on it with respect to the amendments and the amendments apply uniformly to all members in specified member classes.

AB 966 includes local safety officers and school safety members within the member classes to which the amendments must apply uniformly.

(6) PERL prohibits making a contract or contract amendment to provide retirement benefits for some, but not all members of specified membership classifications. AB 966 includes local safety officers and school safety members within these classifications.

(7) PERL requires that a state miscellaneous member or industrial member, other than a university member, or a local member of PERS be retired for service if he or she has elected to participate in partial service retirement, has been credited with 20 years of state service, and has attained normal retirement age. AB 966 eliminates the 20 years service credit requirement for partial service retirement.

(8) PERL requires that the effective date of a written application for retirement submitted to the board more than 9 months after the member's discontinuance of state service be determined by the PERS Board of Administration consistent with criteria established for the correction of errors and omissions.

AB 966 requires that the effective date of a retirement application under these circumstances to be the first day of the month in which the member's application is received at an office of the board or by an employee of PERS designed by the board.

(9) The Judges' Retirement Law and the Judges' Retirement Law II provide retirement benefits for retired judges. AB 966 requires that a person who is retired under the Judges' Retirement System who is again appointed or elected to serve as a judge reinstates from retirement and becomes a member of the system.

## COUNTY RETIREMENT LAW

### SB 11.

*Adds Article 8.10 (commencing with Section 31699.1) to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, relating to county employees retirement.*

The County Employees Retirement Law authorizes counties to establish a Post-Employment Benefits Trust Account as a part of their retirement funds.

SB 11 authorizes the board of retirement of **San Bernardino County** to establish by resolution a fund for the collective investment of assets held in trust solely for the exclusive benefit of providing health benefits to employees of any local public agency. The fund would be a separate legal entity from the retirement system, and would be governed by a postemployment health benefits fund board that would be composed of the members of the board of retirement. SB 11 directs the postemployment health benefits fund board to establish the terms and conditions for a public agency to participate in the fund.

### SB 538.

*Amends Section 31663.15 of the Government Code, relating to county employees' retirement.*

The County Employees Retirement Law permits a county to require sheriffs, undersheriffs, and marshals who are safety members to be retired at 60 years of age or 70 years of age. A **Los Angeles County** safety member is not subject to those mandatory retirement provisions if a physician employed or approved by the county certifies that the member is capable of performing his or her assigned duties based on the county's standards.

SB 538 requires **Los Angeles County** to provide a safety member who is on a disability leave of absence the opportunity to receive the physician certification described above upon return from his or her leave.

### SB 752.

*Adds Section 31678.31 to the Government Code, relating to county employees' retirement, and declaring the urgency thereof, to take effect immediately on October 11, 2009.*

The County Employees Retirement Law allows the board of supervisors or the governing body of a district in **Orange County**, by resolution adopted by majority vote and pursuant to a memorandum of understanding, to make certain formulas for the calculation of benefits for general or safety members applicable to the employees of a bargaining unit comprised of general members, safety members, or employees of the Probation Services Unit and Probation Supervisory Management Unit. The affected members, subject to certain conditions, can be required to pay some or all of those additional contributions.

SB 752 permits the board of supervisors or the governing body of a district within **Orange County**, by resolution adopted by a majority vote, to require an employee hired after approval of the resolution, to make a written election between two specified pension calculations within 45 days of beginning employment. An employee who fails to timely elect one of the pension calculations will be deemed to have elected the other.

SB 752 allows the governing body's resolution to require a current employee to make a similar written election regarding his or her own pension benefits for future service within 180 calendar days of approval of the resolution. A current employee who chooses to terminate a

specified pension calculation must be provided with a written explanation of the effect and impact of the termination and sign a specified affidavit. The resolution can require a current employee of the county or district, hired before approval of the resolution, who subsequently becomes eligible for a specified pension calculation to make a one-time written election between the two pension calculations for future service within 45 days of becoming eligible. Failure to make an election within 45 calendar days shall be considered cause for termination of employment until the required election has been made.

SB 752 requires that a retirement allowance for service rendered prior to the effective date of the election be calculated under the employee's prior pension calculation and provides that an employee who has made this election is not eligible for retirement unless the employee meets the minimum requirements of the provisions applicable at the date of retirement.

## **RETIREMENT HEALTH BENEFITS**

### **AB 65.**

*Adds Part 6.7 (commencing with Section 22959.90) to Division 5 of Title 2 of the Government Code, relating to public employee health benefits.*

The Vision Care Program for State Annuitants provides vision care benefits to state annuitants. AB 65 establishes a similar vision care program for specified local members, school members, and university members, and their dependents - the Retired Public Employees Vision Care Program. The PERS Board of Administration is required to create the Retired Public Employees Vision Care Program Fund on or before January 1, 2011.

## **FIREFIGHTERS**

### **AB 388.**

*Amends Section 538e of the Penal Code, relating to firefighting uniforms.*

Existing law prohibits any person, other than an officer or member of a fire department, who willfully wears, exhibits, or uses an authorized firefighting uniform, with the intent of fraudulently impersonating an officer or member of a fire department or of fraudulently inducing the belief that he or she is an officer or member of a fire department, is guilty of a misdemeanor.

AB 388 requires that vendors of firefighting uniforms verify that a person purchasing a uniform identifying a firefighting agency or department is an employee or authorized member of the agency or department.

## **PUBLIC SAFETY EMPLOYEES**

### **AB 169.**

*Amends Section 121060 of the Health and Safety Code, relating to communicable disease.*

Under existing law, when a peace officer, firefighter, or emergency medical personnel is exposed to an arrestee's blood or bodily fluids while he or she is acting within the scope of his or her duties, there are procedures by which the arrestee's blood may be tested, either voluntarily or by court order, for specified communicable diseases.

AB 169 adds custodial officers, custody assistants, and nonsworn uniformed employees of a law enforcement agency to the list of persons who may seek to have an arrestee's blood tested, either voluntarily or by court order, for specified communicable diseases when the cus-

todial officer, custody assistant, or nonsworn uniformed employee of a law enforcement agency is exposed to that arrestee's blood or bodily fluids while acting within the scope of his or her duties.

## LAW ENFORCEMENT

### AB 297.

*Amends Section 11105 of, and adds Section 11105.06 to, the Penal Code, relating to criminal history information.*

Existing law requires the Department of Justice (DOJ) to maintain data pertaining to criminal history information and to disclose that information under specified circumstances to various specified recipients. Agencies conduct criminal background investigations of peace officer and non-sworn law enforcement agency applicants.

AB 297 requires the DOJ to respond to peace officer and public safety dispatcher applicant fingerprint submissions with a record of that applicant's prior applicant fingerprint submissions. As these applicants are required to disclose any previous applications to other law enforcement agencies, AB 297 will allow for background investigators to ensure that the applicants are being honest. Also, this law may reveal if an applicant has been disqualified from other peace officer agencies and has not been forthcoming during subsequent peace officer applications.



### SB 490.

*Amends Section 830.1 of the Penal Code, relating to peace officers.*

Custodial officers employed by a law enforcement agency in one of specified counties or in a county with a population of 425,000 or less, as specified, is a public officer, not a peace officer. Existing law defines various persons as peace officers, including custodial officers in certain counties.

SB 490 includes custodial officers in the **County of San Luis Obispo** and the **County of Colusa** within the definition of peace officer.

### AB 955.

*Amends Section 3304 of the Government Code, relating to public safety officers.*

The Public Safety Officers Procedural Bill of Rights Act prohibits any punitive action, or denial of promotion on grounds other than merit, to be undertaken for any act, omission, or other allegation of misconduct if an investigation of an allegation against a public safety officer is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. Under existing law, the public agency must complete its investigation and notify the officer of its proposed disciplinary action within that year if it determines that discipline may be taken.

AB 955 instead specifies that the discovery could be made by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct, and require the public agency, within that year, to notify the public safety officer of the proposed discipline by a Letter of Intent or Notice of Adverse

Action articulating the discipline. However, the public agency is not required to impose the discipline within that year.

## **DISASTER SERVICE WORKERS**

### **SB 39.**

*Amends Section 1714.5 of the Civil Code, relating to personal liability, and declaring the urgency thereof, to **take effect immediately.***

Under existing law, no disaster worker who is performing disaster services during a state of war emergency, a state of emergency, or a local emergency shall be liable for civil damages on account of personal injury to or death of any person or property.

SB 39 additionally provides that disaster service workers cannot be liable when acting within the scope of their responsibilities under the authority of a governmental emergency organization. SB 39 applies exclusively to any legal action filed on or after August 6, 2009.

## **CIVIL AIR PATROL**

### **AB 485.**

*Adds Part 5 to Division 2 of the Labor Code, relating to the Civil Air Patrol.*

The Civil Air Patrol is the civilian auxiliary of the United States Air Force. AB 485 requires employers employing more than 15 employees to provide not less than 10 days per year of leave to employees who are volunteer members of the California Wing of the Civil Air Patrol if the employees have been directed to respond to an emergency operational mission of the

California Wing of the Civil Air Patrol. To qualify for the leave, the employee must have been employed by that employer for at least 90 days immediately preceding the commencement of leave. These leave days are in addition to any leave benefits otherwise available to the employee.

The employee is required to give the employer as much notice as possible of the intended dates the leave would begin and end. And, when the Civil Air Patrol leave is exhausted, the employer is required to restore the employee to the same position he or she held when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment, unless the employee is not restored because of conditions unrelated to the exercise of the leave rights by the employee.

The employer is not required to grant Civil Air Patrol leave to employees who are required to respond as first responders or disaster service workers for a local, state, or federal agency to the same or a simultaneous emergency operational mission.

## **COURT EMPLOYEES**

### **SB 75.**

*Amends Sections 68085.3, 68085.4, and 69957 of, and adds Section 20969.1 to, the Government Code, and amends Section 1465.8 of the Penal Code, relating to the judiciary.*

(1) PERS generally does not credit an employee service time for any period where a member is absent without compensation. The Judicial Council imposed mandatory furloughs for one day each month until July 1, 2010. With respect to trial court employees subject to the mandatory furloughs, SB 75 requires that,

for purposes of retirement, their service credit and compensation earnable be based on the amount that would have been credited had the employee not been subject to the mandatory furloughs.

(2) Under existing law, a court may use electronic recording equipment for the internal personnel purpose of monitoring judicial officer performance, if notice is provided to litigants. SB 75 modifies that law to authorize a court to use the electronic recording equipment to also monitor the performance of subordinate judicial officers, hearing officers, and temporary judges while proceedings are conducted in the courtroom, if prior notice is provided to the subordinate judicial officer, hearing officer, or temporary judge, and the litigants.

## JUDGES' EMPLOYMENT BENEFITS

### SBX2 11.

*Adds Sections 68220, 68221, and 68222 to the Government Code, relating to judges.*

The California Constitution requires the Legislature to prescribe compensation for court judges. Existing law authorizes a county to consider judges and court employees as county employees for purposes of providing employment benefits. A recent California Court of Appeal case found that these provisions were unconstitutional as the Constitution states that only the Legislature can prescribe the compensation of judges.

SBX2 11 provides that judges who received supplemental judicial benefits provided by a county and/or court as of July 1, 2008, shall continue to receive those benefits on the same terms and conditions as were in effect on that

date. The bill also allows a county to terminate its obligation to provide benefits upon providing 180 days' written notice to the impacted judges, but that termination would not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court, or at the election of the court, when that judge leaves office. The bill also allows the county to elect to provide benefits for all judges in that county. Finally, the bill provides that no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of the bill on the ground that those benefits were not authorized under law.

## HEALTH INSURANCE BENEFITS

### AB 23.

*Amends Sections 1366.20, 1366.21, 1366.22, and 1366.25 of the Health and Safety Code, and amends Sections 10128.50, 10128.51, 10128.52, and 10128.55 of the Insurance Code, relating to health care coverage, and declaring the urgency thereof, to **take effect immediately**.*

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires group health plans providing coverage to employers of 20 or more employees to provide former employees with continuation of benefits. The American Recovery and Reinvestment Act of 2009 (ARRA) provides premium assistance under COBRA and state programs that provide comparable continuation coverage for certain assistance eligible individuals. The California COBRA requires health care service plans and health insurers providing group coverage to employers of 2 to 19 employees to offer continuation of that cover-

age for a specified period of time to certain qualified beneficiaries.

AB 23 requires health care service plans and health insurers to provide notice of the availability of premium assistance under the ARRA to qualified beneficiaries who may be eligible for that assistance and requires the notice to include certain information and to be sent within specified periods of time. The bill allows a qualified beneficiary eligible for the federal premium assistance to elect Cal-COBRA coverage within a certain period of time and allows individuals enrolled in Cal-COBRA coverage as of February 17, 2009, to request application of the federal premium assistance.

## HARVEY MILK DAY

### SB 572.

*Amends Section 37222 of the Education Code, and adds Section 6721 to the Government Code, relating to Harvey Milk Day.*

Existing law requires the Governor to proclaim certain days each year as having special significance for specified reasons. Existing law also designates particular days each year as having special significance in public schools and educational institutions and encourages those entities to conduct suitable commemorative exercises on those dates.

SB 572 proclaims May 22 of each year as Harvey Milk Day. This day shall have special significance and the Governor encourages public schools and educational institutions to conduct suitable commemorative exercises on that date.

Harvey Milk was the first openly gay elected official in a major city and was assassinated while serving as a member of the San Francisco Board of Supervisors.

## PRIVACY

### SB 40.

*Repeals and adds Section 1798.89 of the Civil Code, and amends Section 4506 of the Family Code, relating to social security numbers.*

(1) Under existing law, any person, entity, or government agency that is presenting a document for recording or filing with a county recorder need only list the last 4 digits of a social security number. A county recorder must use due diligence to truncate social security numbers in the public record version of official records.

SB 40 provides that a document containing more than the last 4 digits of a social security number is not entitled for recording. It also provides that a recorder shall be deemed to be in compliance if he or she uses due diligence to truncate social security numbers in documents recorded.

(2) Existing law also requires an abstract of judgment ordering a party to pay spousal, child, or family support to contain the social security number of the party who is ordered to pay. SB 40 instead requires an abstract of judgment to contain only the last 4 digits of the social security number of the party who is ordered to pay.

### AB 524.

*Amends Section 1708.8 of the Civil Code, relating to privacy.*

Under existing law, a person is liable for invasion of privacy when he or she attempts to capture, in a manner that is offensive to a reasonable person, or knowingly trespasses or commits assault with the intent to capture, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in

a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device. However, the sale, transmission, publication, broadcast, or use of any such image or recording does not itself constitute a violation of that provision.

AB 524 creates an exception to the latter provision regarding the first sale, offer for sale, transmission, publication, broadcast, or other use of any visual image, sound recording, or other physical impression, if the person sold, transmitted, published, broadcast, or used any such image or recording with actual knowledge that the images or recordings were obtained in violation of specified provisions and provided compensation, consideration or remuneration for the rights to the unlawfully obtained visual image or recording. AB 524 only applies to visual images, sound recordings, or other physical impressions captured or taken in California after January 1, 2010.

AB 524 provides that a person who violates the above provisions or who directs, solicits, actually induces, or actually causes another person to violate any of those provisions will be subject to a civil fine of not less than \$5,000 and not more than \$50,000.

AB 524 authorizes a county counsel or a city attorney to recover those civil fines. Half of the fines will go to the prosecuting agency and the other half will go to the Arts and Entertainment Fund in the State Treasury.

### **AB 681.**

*Amends Section 56.104 of the Civil Code, relating to confidentiality of medical information.*

Under existing law, health care providers, health care service plans, and contractors are prohibited from releasing medical information

to persons authorized by law to receive that information if the information specifically relates to a patient's participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor. Existing law sets forth exceptions to these provisions for specified disclosures that are made for the purpose of diagnosis or treatment of a patient. AB 681 also excepts from these provisions disclosures that are made to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims.

## **CONFLICT OF INTEREST**

### **AB 906.**

*Amends Section 1091 of the Government Code, relating to conflict of interest, and declaring the urgency thereof, to take effect immediately on October 11, 2009.*

Members of the Legislature, and state, county, district, judicial district, and city officers or employees are prohibited from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law defines what is a remote interest in a contract that does not present a prohibited conflict of interest.

AB 906 revises the definition of "remote interest" to include the interest of a person who is both a member of a state, county, district, judicial district, or city body or board, and an officer or employee of an investor-owned utility in a contract related to energy efficiency encouragement programs.

## ARBITRATION

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### AB 1090.

*Amends Section 1281.85 of the Code of Civil Procedure, relating to arbitration.*

A person serving as a neutral arbitrator pursuant to an arbitration agreement must comply with the ethics standards for arbitrators adopted by the Judicial Council. However, this requirement does not apply to an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

AB 1090 specifies that certain ethics requirements and standards are nonnegotiable and cannot be waived.

## PUBLIC MEETING LAW

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### AB 1494.

*Amends Section 11122.5 of the Government Code, relating to public meetings.*

(1) The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. With the exception of teleconferencing, the Act's definition of "meeting" prohibits any use of direct communication, personal intermediaries, or technological devices employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body. The Act specifies the contacts, conferences, and other types of gatherings that are excluded from this prohibition.

AB 1494 repeals the prohibition regarding the use of those communications or devices to

develop a collective concurrence. The bill instead prohibits a majority of the members of a state body from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body. The bill also excludes from that prohibition an employee or official of a state agency engaging in a separate conversation or communication with a member of a legislative body for the purpose of answering questions or providing information.

(2) The Act provides that the general open meeting requirement does not apply to certain activities, including an individual contact or conversation that is between a member of a state body and any other person.

AB 1494 specifies that the individual contact or conversation between a member of a state body and any other person shall remain excluded from the Act's general open meeting requirement, despite any changes AB 1494 imposes.

## PUBLIC RECORDS

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### AB 32.

*Amends section 6254.21 of the Government Code, relating to public records.*

A person, business, or association cannot publicly post or display on the Internet the home address or telephone number of any elected or appointed official if that official has made a written demand to that person, business, or association to not disclose the personal information. Upon receiving such a demand, a person, business, or association cannot transfer the official's information to any other person, business, or association. The law also prohibits soliciting, selling, or trading on the Internet the home address or telephone number of an elect-

ed or appointed official with the intent to cause bodily harm to the official or to any person residing at the official's home address.

AB 32 requires a person, business, or association, upon receiving the written demand of an official, to remove the official's home address or telephone number from public display on the Internet within 48 hours of the delivery of the demand and to continue to ensure that information is not reposted on any web site maintained by the recipient of the written demand. AB 32 also allows an official to designate an agent (e.g. the official's employer, a related governmental entity, etc.) to make the written demand or seek enforcement of these posting requirements.

### **SB 359.**

*Amends Sections 6275, 6276.02, 6276.04, 6276.06, 6276.08, 6276.10, 6276.12, 6276.14, 6276.16, 6276.18, 6276.22, 6276.24, 6276.26, 6276.28, 6276.30, 6276.32, 6276.34, 6276.36, 6276.38, 6276.40, 6276.42, 6276.44, 6276.46, and 6276.48 of the Government Code, relating to records.*

The California Public Records Act, requires each state and local agency to make its records open to public inspection at all times during office hours, except as specifically exempted from disclosure by law. Included in the Act's exemptions are records that are exempted or prohibited from disclosure by federal or state law. The Act lists the records subject to that exemption, specifying that the listed exemptions are not inclusive of all exemptions under the Act.

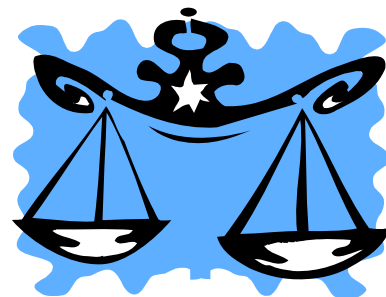
SB 359 revises the list of exempted records to reflect changes in existing law.

### **AB 1245.**

*Adds Chapter 3.01 (commencing with Section 6204) to Division 7 of Title 1 of the Government Code, relating to public records.*

It is a crime for any person who has custody of a public record to willfully steal, remove, destroy, mutilate, deface, alter, or falsify the record, or cause another person to do so. If the Secretary of State has reasonable grounds to believe that a public record belonging to a state or a local agency is in the possession of a person or organization not authorized by law to possess the record, AB 1245 allows the Secretary to issue a written notice demanding that person or organization within 20 calendar days to either return the record or respond in writing and declaring why the record does not belong to the state or local agency. When a record is returned, the Secretary or local agency must issue a copy or digital image of the record to the person or organization returning that record upon request.

If the person or organization does not deliver the described record, or does not respond to the notice within the required time, or does not adequately demonstrate that the record does not belong to the state or local agency, under AB 1245, the Secretary may ask the Attorney General to petition the superior court for an order requiring the return of the record.



**AB 1540.**

*Amends Section 6276.24 of the Government Code, amends Sections 1250, 1344, 1366.4, 1374.64, 1375.4, 1376.1, 1377, 1399, 116283, 116286, 116380, 116540, 116650, 116725, 121360.5, 127662, 127664, 127665, 128730, and 128745 of, and to add Sections 116451 and 116552 to, the Health and Safety Code, and amends Sections 14043.26, 14043.28, 14043.29, and 14115.8 of the Welfare and Institutions Code, relating to health.*

The California Public Records Act requires certain public records to be made available for public inspection. AB 1540 provides that patient medical record numbers and any other data elements that the office believes could be used to determine the identity of an individual patient shall be exempt from the disclosure requirements of the Public Records Act.

## **WORKERS' COMPENSATION**

**SB 186.**

*Amends, repeals, and adds Section 4600 of the Labor Code, relating to workers' compensation.*

Workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law, until December 31, 2009, provides an employee with the right to be treated by his or her personal physician from the date of injury if specified requirements are met, including a requirement that the physician agrees to be predesignated.

SB 186 deletes the December 31, 2009 repeal date.

**AB 361.**

*Adds Section 4610.3 to the Labor Code, relating to workers' compensation.*

Under workers' compensation law, every employer must have a medical treatment utilization review process either directly or through its insurer or an entity with which the employer or insurer contracts for these services. An employer or insurer may establish or modify a medical provider network for the provision of medical treatment to injured employees. Employers may contract with a health care organization that has been certified by the Administrative Director of the Division of Workers Compensation to provide medical services to injured employees.

AB 361 provides that, regardless of whether an employer has established a medical provider network or contracted with a health care organization, an employer that authorizes medical treatment cannot rescind or modify the authorization for the portion of the medical treatment that has been provided after that treatment has been provided for any reason, including if the employer later determines that the treating physician was not eligible to treat that injured employee.

AB 361 shall not be construed to expand or alter the benefits available under any contract, including existing medical provider network and health care organization contracts. The bill also shall not be construed to impact an employer's ability to transfer treatment of an injured employee into a medical provider network or health care organization. Moreover, AB 361 shall not be construed to establish that a provider of authorized medical treatment is the primary care physician for specified purposes.

**AB 1093.**

*Amends Section 3600 of the Labor Code, relating to workers' compensation.*

Workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, and in the course of, employment. If an employee is injured or killed by a third party in the course of the employee's employment, AB 1093 provides that a workers' compensation claim cannot be denied to the employee-victim based solely on the employee's personal characteristic and a third party's personal belief regarding the employee's race, religious creed, color, national origin, age, gender, disability, sex, or sexual orientation.

**AB 1227.**

*Amends Section 4850 of the Labor Code, relating to workers' compensation.*

Labor Code section 4850 provides certain public employees who are members of PERS or the Los Angeles City Employees' Retirement System, or subject to the County Employees Retirement Law, and disabled by injury or illness arising out of and in the course of their duties, to a leave of absence while so disabled without loss of salary for up to one year. Under existing law, employees are entitled to this leave regardless of their period of service with the public employer.

AB 1227 requires that these employees be employed on a regular, full-time basis, but eliminates the requirement that these employees be members of PERS or the Los Angeles City Employees' Retirement System, or subject to the County Employees Retirement Law. The provision pertaining to a leave of absence shall not apply to certain public safety personnel

who are employees of the City and County of San Francisco.

**UNEMPLOYMENT INSURANCE****ABX3 23.**

*Amends Sections 4003, 4004, and 4552 of the Unemployment Insurance Code, relating to unemployment insurance, making an appropriation therefore, and declaring the urgency thereof, to **take effect immediately on March 27, 2009.***

California law allows individuals to receive unemployment insurance benefits for a maximum duration of 59 weeks. AB 23 allows for federal funds to be used to provide individuals with an additional 20 weeks of unemployment insurance benefits.

**AB 29.**

*Amends Sections 1032.5, 1275, 1277.5, 1329, and 1951 of, and adds Sections 1277.1 and 1329.5 to, Unemployment Insurance Code, relating to unemployment insurance.*

California's existing law provides that the base period for purposes of calculating unemployment insurance benefits excludes earnings in the last three to six months of employment. AB 29 specifies that unemployed persons who fail to qualify for benefits under the existing base period can have their eligibility determined under the alternative base period, in which earnings as recent as one to three months prior may be counted.

## PUBLIC UTILITY DISTRICTS

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### SB 673.

*Amends Section 15956 of the Public Utilities Code, relating to public utility districts.*

The Public Utility District Act provides for the election of directors at large of public utility districts. The Act requires that each office of director at large be designated as "director at large" number one, number 2, number 3, or number 4, etc. for each director at large to be elected.

SB 673 authorizes the board of directors of a district to adopt an ordinance that provides that the candidates seeking election for directors at large receiving the greatest number of votes districtwide shall become the elected directors at large.

### AB 863.

*Amends Section 11887.1 of the Public Utilities Code, relating to municipal utility districts.*

Municipal utility districts are required to have civil service systems. The board of directors of a municipal utility district with 600 or more employees may appoint up to 15 employees to positions requiring peculiar and exceptional qualifications who are exempt from the district civil service system. In addition, the board of a district which has owned and operated an electric distribution system for at least 8 years and has a population of 250,000 or more may determine that additional positions be exempt from district civil service, so long as the total number of these exempt positions does not exceed 2% of the district's total civil service positions.

AB 863 raises the maximum percentage of exempt employees the board of a district may appoint from 2% of the total civil service posi-

tions of the district to 5%.

## IRRIGATION DISTRICTS

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### AB 348.

*Adds Section 21100.7 to the Water Code, relating to the South Bay Irrigation District.*

The Irrigation District Law generally requires a director of the board of an irrigation district to be a voter and a landowner in the district and a resident of the division that he or she represents. The district law requires a director elected at a formation election to be a resident, landowner, and voter in the proposed district at the time of his or her nomination and a resident of the division that he or she represents during his or her entire term.

AB 348 eliminates the landownership requirement for the purposes of being elected to, or serving on, the Board of Directors of the **South Bay Irrigation District**.

## SEX OFFENDERS

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### AB 307.

*Amends Section 290.95 of the Penal Code, relating to sex offenders, and declaring the urgency thereof, to **take effect immediately on October 11, 2009**.*

A person required to register as a sex offender who applies for or accepts a position as an employee or volunteer with any person, group, or organization where he or she would be working directly and in an unaccompanied setting with minor children on a regular basis, is required to disclose the fact that he or she is a registered sex offender. The law also prohibits

a person required to register as a sex offender because of a conviction for a crime where the victim was a minor under 16 years of age from being an employer, employee, or independent contractor, or acting as a volunteer with any person, group, or organization in a capacity in which the registrant would be "working directly and in an unaccompanied setting" with minor children on more than an incidental and occasional basis or from having supervision or disciplinary power over minor children.

AB 307 specifies that "working directly and in an unaccompanied setting" includes, but is not limited to, providing goods or services to minors.



## LOCAL EMERGENCY DECLARATIONS

### AB 486.

*Amends Section 8630 of the Government Code, relating to local emergencies.*

When a governing body of a city, county, or city and county declares a local emergency, it must review the need for continuing the local emergency at its regularly scheduled meetings, but at least every 21 days. Or, if the governing body meets weekly, it must review the need for continuing the local emergency at least every 14 days, until the local emergency is terminated.

AB 486 eliminates the distinction between a governing body that meets weekly and non-weekly, and requires any governing body to review the continuing need for a local emergency at least every 30 days until the local emergency is terminated.

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## Save the Date!



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

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

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

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

# Mandated Ethics Training



**Do you have newly elected officials required to receive Ethics Training? Did you have training in 2006 when AB 1234 went into effect? Then it's time for Mandated Ethics Training!**

*AB 1234 mandates that if a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then **all** local agency officials shall receive a minimum of 2 hours of ethics training by January 1, 2007, and every two years thereafter.*

Please visit [www.lcwlegal.com](http://www.lcwlegal.com) to register for the following scheduled classes.

**December 3, 2009**  
9:30 am - 11:30 am  
*San Francisco*

**December 10, 2009**  
9:30 am - 11:30 am  
*Fresno*

**December 17, 2009**  
9:30 am - 11:30 am  
*Los Angeles*

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

# Train the Trainer Seminars

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

***Los Angeles - December 22, 2009***

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

## Already Certified???

### Train the Trainer Refresher

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

***Fresno - November 4, 2009***  
***San Francisco - November 12, 2009***  
***Los Angeles - November 20, 2009***

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

#### **Registration:**

Visit [www.lcwlegal.com](http://www.lcwlegal.com) for more information and to download the registration form or to register online.

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

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

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