

# THE BRIEFING ROOM

NEWS AND DEVELOPMENTS IN EMPLOYMENT LAW AND LABOR RELATIONS FOR CALIFORNIA LAW ENFORCEMENT

December 2011

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## THE BRIEFING ROOM

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## RETIREMENT BENEFITS

### California Supreme Court Holds that Retired County Employees *Could* Have An Implied Vested Contractual Right To A Methodology For Pooling Medical Insurance Premiums.

In 1966, the County of Orange began offering group medical insurance to retired County employees. The County initially calculated premiums separately for active and retired employees. In 1985, the County began combining active and retired employees into a single unified pool for purposes of calculating health insurance premiums. As a group, retired employees are older and more expensive to insure than active employees; if pooled separately, retirees normally would pay higher premiums. The single unified pool thus had the effect of subsidizing health insurance for retirees. The County maintained this single unified pool from 1985 through 2007.

In 2007, the County passed a resolution splitting the pool of active and retired employees, effective January 1, 2008. The Retired Employees Association of Orange County sued the County and sought an injunction prohibiting the County from splitting the pool. Although the various memoranda of understanding and the County's resolutions were silent as to the duration of the unified pool, the Association argued that the County's practice of pooling active and retired employees, along with the County's representations to employees regarding a unified pool, created an implied contractual right to a continuation of the single unified pool for employees who retired before January 1, 2008.

The district court granted summary judgment for the County on all claims, finding that the County cannot, as a matter of law, be liable for any obligation it did not undertake explicitly through a resolution. The Association appealed and the Ninth Circuit Court of Appeals asked the California Supreme Court to determine whether a county could create an implied contract that confers vested rights to health benefits. The California Supreme Court found that, under certain circumstances, a retired county employee could have an implied vested right to retiree health benefits.

A contract can include express or implied terms. Implied contractual terms ordinarily stand on equal footing with express terms. Governmental agencies may be bound by an implied contract if there is no statute that prohibits providing for the benefit by contract. Here, the Court found no such prohibition.

The Court also noted that the Association was asserting that the right to a single unified pool was an implied term to the County's existing collective bargaining agreements with active employees. Consequently, there was no issue as to whether the Board of Supervisors had approved any contract with the Association.

The Court did not address whether the Association actually had a vested right in the calculation of health insurance premiums through a single unified pool of active and retired employees. The only question before the Court was whether a right to health benefits could be implied in certain circumstances from a county ordinance or resolution.

*Retired Employees Association of Orange County v. County of Orange* (2011) \_\_\_ Cal.4th \_\_\_\_.

**Note:**

*This opinion holds only that it is legally possible for a retiree to have an implied vested contractual right to benefits. In order to avoid creating implied vested contractual rights, public agencies should carefully describe the limits of a retiree benefit, and/or expressly state that neither a benefit, nor a method of calculating that benefit, is vested, but instead can change from year to year. For those public agencies looking to change existing retiree health benefits and/or methods for calculating such benefits, the agency should first research and identify the legal sources of the benefits and how the benefits were communicated to employees and retirees. This will allow the employer to determine the extent to which the Supreme Court's rules for vested rights apply to the benefits in question.*

## LEGISLATION

### With AB 1028, The Legislature Clarifies The Limits On Post-Retirement Work Opportunities For PERS Retirees.

As of January 1, 2012, PERS retirees will have additional restrictions on their ability to work for PERS agencies. While AB 1028 affects several different Government Code sections, it is garnering the greatest attention for its changes to Government Code sections 21221(h) and 21224; the two statutes that address post-retirement work opportunities and restrictions for PERS service retirees with PERS agencies.

There is no doubt that AB 1028's changes in this area are important and must be followed, but they do not mark any monumental shift in philosophy. In fact, they are more a clarification of the current law rather than a drastic change in the law.

Government Code section 21221(h) is the section used when the retiree is to be appointed by the agency's governing body. It currently allows PERS retirees to be appointed for a limited duration to a position deemed by that governing body as requiring

specialized skills or during an emergency to prevent stoppage of public business. A retiree can be appointed for a term not to exceed one year, AND may not work more than 960 hours in a fiscal year (July 1- June 30). There is an ability to exceed 960 hours in a fiscal year if a request is made to PERS before the 960 hour limit is exceeded and PERS does not deny the request. There is a no mechanism to request that the one year term be exceeded. Section 21221(h) has generally been used to fill high level vacancies for positions that are appointed by the governing body, such as City Manager, Police Chief, Fire Chief, etc., with a retiree who is willing to work for a short period of time. This arrangement helps the agency fill that position while a permanent replacement is sought. However, section 21221(h) has not always been used solely for this purpose and the current statutory language does not explicitly limit it to that arrangement.

AB1028 simply takes the standard scenario described above and makes it the sole basis for post-retirement employment under the statute. Moreover, if there was any question about whether the one year limitation on post-retirement employment could be circumvented by simply reappointing the retiree to another one year term, AB 1028 explicitly prohibits subsequent appointments. Lastly, AB 1028 limits the retiree's compensation to the maximum published pay schedule for the vacant position.

Changes to Government code section 21224 are even more modest. This section does not require appointment by the governing body, but it does require appointments be for a limited term. Currently, these appointments implicitly required specialized skills for the post-retirement appointment to be lawful. That implication was derived from the heading of the section, although the plain language of the actual statute did not contain this requirement, only requiring the work to be in an emergency or because the retiree had needed "skills." AB 1028 adds the special skills requirement in the actual statutory language. It also reinforces the limited term restriction by added that the appointments shall be temporary. It made no other changes to that statute.

*AB 1028 does not affect any of the other limitations on post-retirement work, such as those applicable to retirees who retired before reaching normal retirement age or the limitations applicable to retirees who recently received unemployment insurance.*

## **New Law Limits Local Agency Executive Compensation, Requires Meeting Agendas Be Posted On Website.**

This legislative season various “post-Bell” laws were proposed to prevent excessive compensation for public officials and to foster greater transparency in local governance. One bill which was adopted, AB 1344, made significant changes in both respects.

AB 1344 prohibits an employment contract between a local agency and a chief executive officer or a department head of a local agency – “local agency executive” – from providing an automatic contract renewal that includes an automatic compensation increase greater than a cost of living adjustment.

Another part of AB 1344 deals with severance benefits. Existing law requires employment contracts between employees and local agencies to include a provision that, if the contract is terminated, the maximum cash settlement an employee may receive is the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, with a maximum of 18 months. AB 1344 prohibits any employment contract with a local agency executive from providing a cash settlement greater than this.

AB 1344 also requires an officer or employee of a local agency who is convicted of a crime involving abuse of office or position to reimburse the local agency fully for specified payments made by that local agency to the officer or employee.

Finally, AB 1344 changes the Brown Act to mandate that local agencies post the agendas of their legislative bodies on the agency’s website. The bill also prohibits any legislative body from holding a special meeting regarding the salary, salary schedule, or other form of compensation for any local agency executive.

Although AB 1344 is focused on preventing excessive compensation for executives, the revision to the Brown Act requires that all agendas be posted on the agency’s website at least 72 hours before the meeting, regardless of whether any compensation issues are going to be discussed at the meeting. This new requirement may be burdensome for agencies that already struggle to post their agendas in a

timely manner. Although this amendment is not particularly surprising in light of the technological age, getting accustomed to this new requirement may take some time, particularly for smaller agencies. Before AB 1344 goes into effect on January 1, 2012, local agencies should assess their technological capabilities and plan on allotting extra time to post their agendas to avoid a Brown Act violation.

AB 1344’s provisions regarding employment contracts with local agency executives generally applies to contracts executed or renewed after January 1, 2012, and not to existing contracts. Nevertheless, local agencies should be prepared for careful review and, in some cases, contract revisions, for department heads and the chief executive officer which provide for automatic compensation increases greater than a cost of living adjustment. AB 1344 does not bar executives from receiving larger salary increases. The employment contract simply cannot automatically renew if there is an automatic compensation increase greater than a cost of living adjustment.

AB 1344 applies to all local agencies, including charter counties, charter cities, and charter cities and counties.

*This article first appeared on the firm's **California Public Agency Labor and Employment Blog**. To view other blog posts, please visit [www.calpublicagencylaboremploymentblog.com](http://www.calpublicagencylaboremploymentblog.com).*

## **REIMBURSEMENT FOR EMERGENCY RESPONSE**

### **Emergency Response Expenses Recoverable Where Intentional or Negligent Conduct Caused the Response.**

In November of 2003, Esteban Allende and Michelle Grundhoefer filed a complaint alleging that under CHP’s emergency response cost billing policy, drivers were being charged for costs not authorized by statute. Government Code sections 53150 through 53159 establish the statutory framework allowing public agencies to recover emergency response expenses from persons who intentionally or negligently cause incidents requiring an emergency response. Section 5310 defines the circumstances

under which a person driving a motor vehicle may be liable for the expense of emergency response, and section 53156(a) defines expense of an emergency response.

Following an entry of summarily adjudicating issues in favor of the two plaintiffs, the Court in *Allende I* issued a writ of mandate reversing that order and held: (1) that the meaning of incident as used in the statute is any event that proximately causes emergency response by a public agency (not just a traffic accident); and (2) reimbursable costs did not include activities related to enforcement of the DUI laws, but did include the cost of providing police services at the scene of the incident, including salary costs related to ensuring public safety at the scene of the incident, obtaining appropriate medical assistance, removing vehicles, investigating the cause of the incident, conducting field sobriety tests, and arresting and detaining the subject.

Following *Allende I*, the CHP modified its policy defining under which reimbursement of emergency responses costs would be demanded. The CHP's original policy provided cost recovery only following the arrest of a driver under the influence of drugs who causes an accident. The CHP modified its policy to delete the limitation of cost recovery to situations involving an accident, and to insert the requirement that the arrested party was determined by the investigating officer to have caused a response to an incident. A memo that was circulated regarding the policy stated that CHP will seek cost recovery for any incident in which an officer is dispatched to a call resulting in a DUI arrest of a driver with a supporting blood alcohol concentration.

In their second amended complaint, the plaintiffs challenged CHP's revised policy and asserted that it defined incident which justifies cost recovery more broadly than permitted by statute and caselaw. The Court upheld CHP's revised policy, stating that it was consistent with the definition of "incident" under Government Code section 51350. In its reasoning, the Court noted that when a dispatch is triggered by a person driving under the influence of alcohol or drugs, the situation is in virtually all circumstances an emergency. The Court also upheld the CHP's method of including the cost of benefits in calculating the reimbursable salary of police officers was consistent with Government Code section 53156.

*Allende v. Department of the California Highway Patrol* (2011) --- Cal.Rptr.3d ----, 2011 WL 6118485.

## PREGNANCY LEAVE

### California Legislature Fills Gap: Continuation Of Health Insurance Now Required Through Entire Four Month Maternity Leave.

A gap that existed in California law concerning continuation of health insurance coverage during maternity leave has now been filled by the California legislature. Effective January 1, 2012, health insurers will be required to cover maternity benefits and employers who had been required to continue health insurance during a maternity leave covered by the Family and Medical Leave Act (FMLA) will now be required to continue that coverage for the full four month maternity leave of absence permitted by the California Pregnancy Disability Act.

Both federal and California law allow an employee of a covered enterprise to take up to 12 weeks leave of absence per year for, among other things, their own serious health condition. The U.S. Family and Medical Leave Act (FMLA) entitles an employee to use those 12 weeks for maternity leave and the employer is required to keep in force, at its cost, any health insurance to the same extent it is provided while the employee is working. The California Family Rights Act (CFRA) is similar to FMLA except the California law also includes the Pregnancy Disability Act (PDA) which allows an employee to take a leave of absence because of pregnancy, childbirth or related condition for the period of disability up to a maximum of four months. PDA is silent on the subject of health insurance continuation but FMLA requires that the insurance be kept in force for the first 12 weeks of such leave. CFRA leave need not be taken for maternity purposes because PDA independently provides for leave of up to four months.

As a result of this overlay of state and federal law, employers technically have not previously been required to continue health insurance during maternity leave after the first 12 weeks. This all changes on January 1, 2012, as PDA will be amended to require employers to continue paying for health insurance for an employee on maternity leave for the whole period of disability up to a maximum of four months to the same extent the employer pays for health insurance while the employee is working. At the same time, the legislature has amended the California Insurance Code to require health insurers to cover maternity.

Whether this new law will significantly impact health insurers remains to be seen as is the question of whether the new law will have a measurable impact on health insurance premiums. It is likely the PDA amendment will not have a significant impact on California employers; in our experience most employers have kept the health insurance in effect throughout the four months of maternity leave in any case. If you have questions about these new laws we encourage you to check with your labor employment relations legal counsel.

*This article first appeared on the firm's **California Public Agency Labor and Employment Blog**. To view other blog posts, please visit [www.calpublicagencylaboremploymentblog.com](http://www.calpublicagencylaboremploymentblog.com).*

## MILITARY DISCRIMINATION

### Individuals Cannot Be Liable For Discrimination Against Military Members Under California Law.

Lieutenant Mario Pantuso worked for Safeway Services and took a leave of absence when he was deployed to Iraq. When he returned, Safeway terminated his employment. Pantuso sued the Company, his supervisor, and the regional manager for discrimination and retaliation in violation of the California Military and Veterans Code. The individual defendants argued they must be dismissed from the lawsuit because they could not be held individually liable for employment-related decisions. The superior court would not dismiss the individuals, but the California Court of Appeal reversed.

Section 394 of the Military and Veterans Code prohibits any "person, employer, or officer or agent of any company" from discriminating against military members because of that membership. The Court reviewed the extensive case law finding that individuals cannot be liable for discrimination or retaliation under the California Fair Employment and Housing Act (FEHA). Following that reasoning, the Court found that discrimination claims that arise out of necessary personnel management duties and decisions is an inherent and unavoidable part of the supervisory function. A supervisory employee cannot refrain from the type of conduct which could later give rise to a discrimination claim. In contrast, harassment is conduct not necessary for the

performance of a supervisory job. Individuals can, therefore, be liable for harassment.

Like Military and Veterans Code section 394, the FEHA also forbids a "person" from discriminating or retaliating. It would be illogical, however, to subject supervisory employees to personal liability for discrimination against military members when they are not otherwise personally at risk for managerial acts that discriminate on the basis of race, gender, age, or disability.

*Haligowski v. Superior Court of Los Angeles County* (2011) \_\_\_ Cal.App.4th \_\_\_.

#### Note:

*While this case provides a good litigation defense to a lawsuit that names individual employees, the agency is still liable for any discrimination on the basis of military leave and must therefore give supervisors good training and policy guidance to assist them in complying with the laws that protect members of the military.*

## LABOR RELATIONS

### The PERB Put Lead Workers Into A Bargaining Unit With Non-Supervisory Employees.

A Union petitioned for recognition as the exclusive representative of certain City of Palmdale public works employees in the Maintenance and Traffic Divisions of the Department of Public Works. Because the parties were unable to agree on the composition of the bargaining unit, a PERB agent conducted a formal hearing. The agent concluded some of the employees should not be included in the proposed unit because they did not share common job duties, skills, wages or supervision with the other employees. The PERB agent did find, however, that the lead workers could be part of the bargaining unit. The City filed exceptions to the decision and the PERB upheld the decision.

The Meyers-Milias-Brown Act (MMBA) empowers PERB to make unit determinations if there is a dispute concerning the appropriateness of a proposed bargaining unit and there are no applicable local rules. To determine whether a proposed unit is

appropriate, PERB considers whether there is a community of interest among the employees at issue, the history of representation, and the general field of work. In determining whether a community of interest exists, the PERB analyzes the job function and duties, wages, method of compensation, hours, employment benefits, supervision, qualifications, training and skills, contact/interchange with other employees, integration of work functions, and goals. Unlike other labor relations statutes, the MMBA neither defines the term “supervisor” nor expressly precludes the formation of a bargaining unit that includes both supervisory and non-supervisory employees.

Here the lead workers spent at least 10 percent of their time performing the same type of work as the employees they supervised. They spent the rest of their time supervising employees and inspecting their work. Lead workers also had some responsibilities related to discipline and evaluation, assigning and scheduling work, and training.

The City wanted to exclude the lead workers from the unit of other non-supervisory employees in the unit because of their supervisory responsibilities. The PERB found, however, that the leads and the non-supervisory employees shared a common goal to ensure that the City’s facilities, parks and roadways are well maintained. They had daily contact with one another for both informal conversations and discussion of work assignments. They also shared similar training, qualifications, and skills that they mainly learned and acquired in working in the field. In addition, they had common supervision, worked in an integrated fashion with their crews, wore the same uniforms, and sometimes used the same equipment. Unlike those ranked supervisor and above, leads also shared the same wage and benefit structure. The PERB thus found that the lead workers and the other employees shared substantial mutual interests in collectively negotiating matters within the scope of representation.

*City of Palmdale and Teamsters Local 911* (2011) PERB Dec. No. 2203M [\_\_\_ PERC ¶ \_\_\_].

**Note:**

*The PERB became involved in the formation of this bargaining unit because the City did not have its own local rules on topic. Local agency employers have the authority under the MMBA to create their own labor relations rules under Government Code section 3507. A local agency who wants to retain as much local control as*

*possible will make sure that its employer-employee relations resolution addresses all matters listed in section 3507.*

## **City’s Release Of Probationary Bus Driver Who Violated Numerous Safety Rules Was Not Unlawful Retaliation.**

The City of Santa Monica hired Alfred McKnight as a motor coach operator. Shortly after he completed training, in December 2007, the City received two complaints from passengers regarding McKnight’s job performance. The Superintendent also wrote him up for not having his shirt tucked in. McKnight’s three-month probationary performance evaluation rating was “Further Development Needed” and noted various deficiencies. In his six-month evaluation, the City noted another policy violation. In mid-2008, McKnight took a worker’s compensation leave during which he filed a grievance based on the City’s alleged failure to pay him during his leave. After McKnight returned to work, his nine-month evaluation noted that he had received eight complaints for passenger passups and rude behavior with an overall rating of “Further Development Needed.”

On January 9, 2009, another driver reported that he had seen McKnight offload a wheelchair passenger into the traffic lane. Three days later, another driver reported that McKnight had allowed a bicycle to be loaded on the front of the bus in the middle of traffic and had opened the bus doors to allow passengers to board in the traffic lane. Both instances were videotaped. On that same day, the Union filed three grievances on McKnight’s behalf. Soon thereafter, the City terminated his employment.

McKnight filed an unfair practice charge with PERB alleging unlawful retaliation in violation of the MMBA. The administrative law judge (ALJ) found in favor of McKnight, but the Board reversed and found in favor of the City.

A MMBA retaliation case requires the charging party to show: 1) the employee exercised rights guaranteed by the MMBA; (2) the employer had knowledge of the employee’s exercise of those rights; (3) the employer took an adverse action against the employee; and (4) the employer took the action because of the employee’s exercise of guaranteed rights. To establish unlawful motive, the employee must show, in addition to temporal

proximity, some other factor suggesting a nexus between the adverse action and the protected activity, such as the employer's departure from established procedures or standards when dealing with the employee.

The ALJ incorrectly found that the City's failure to interview McKnight or the two complaining employees about the incidents was evidence of unlawful motive. An employer's failure to interview an employee in connection with a disciplinary matter evidences unlawful motive only when the employer routinely interviews employees under such circumstances. Here there was no evidence that the City regularly interviewed probationary employees before releasing them, or that the City had a practice of interviewing individuals about driver performance when a videotape of the incident was available. Similarly, the City's failure to provide McKnight with reasons for releasing him was not evidence of unlawful motive because it did not have a practice of so informing probationary employees.

Even if McKnight could have established a *prima facie* retaliation case, the City offered ample evidence that it would have rejected him on probation even if he had not engaged in protected activity, because the City had repeatedly warned him about his performance deficiencies.

*McKnight v. City of Santa Monica* (2011) PERB Dec. No. 2211M [\_\_\_ PERC ¶ \_\_\_].

#### Note:

*An agency's consistent and evenhanded enforcement of policies and procedures can help demonstrate an agency's legitimate motives and can make the difference in challenges to adverse employment decisions. Though the PERB held that interviewing the subject employee was not per se evidence of an unlawful motive, agencies should generally interview subject employees in connection with an investigation.*

### PERB Adopts Proposed Emergency Regulations On Mandatory Factfinding.

On December 8, 2011, the Public Employment Relations Board (PERB) adopted proposed emergency regulations to implement AB 646 (Chapter 680, Statutes of 2011), the recently enacted legislation

requiring factfinding in bargaining disputes under the MMBA. The emergency rulemaking package now will be submitted to the Office of Administrative Law (OAL) for its review and approval.

AB 646 imposes mandatory factfinding upon the request of an employee organization when a bargaining impasse is reached, as was reported in our November issue.

Prior to the December 8, 2011 meeting, PERB invited interested parties to submit proposed regulations and other commentary regarding the implementation of the statute. LCW and other interested parties, including management and labor firms and organizations, submitted proposed regulatory language, as well as comments.

The proposed emergency regulations provide that if the parties mediate and such mediation does not resolve the negotiations impasse, a factfinding request may be filed not sooner than 30 days but not more than 45 days, following the appointment of the mediator. Obtaining an outer time limit was an important goal for public sector management, as an unreasonable delay in the process would frustrate the purposes of the MMBA and be inconsistent with timely resolution of bargaining disputes.

An unresolved question in the new statute is whether an employee organization may demand factfinding (and thereby delay a unilateral imposition of terms and conditions of employment by the local agency) in the absence of the parties using mediation. At the December 8 hearing there was some uncertainty as to how PERB (or the courts) would handle such a situation. The issue may have to be resolved through litigation (or further "clean-up" legislation). Notwithstanding the uncertainty in the law, PERB adopted a proposed regulation related to this issue. The proposed regulation provides that if the parties do not use mediation, the request for factfinding must occur within 30 days following the declaration of impasse. Although those who believe the statute does not require factfinding in the absence of mediation will not be pleased with such a regulation, all parties will find some benefit from the addition of clarity as to whether there is a time period for submission of factfinding requests.

PERB has indicated that it intends to submit its proposed rules to OAL on December 19, 2011. Once the proposed emergency rules are filed with OAL, there will be a five day comment period. If OAL

accepts the emergency rulemaking package it will be filed with the Secretary of State at which time the regulations will become effective.

Further information can be obtained from the PERB website, and of course, we will keep you posted. In the meantime, if you have any questions please contact one of our labor relations attorneys at any of our four offices.

## **DISABILITY DISCRIMINATION**

### **Employee Who Does Not Satisfy The Prerequisites Of A Job Cannot Be A “Qualified Individual” Unless He or She Shows That The Prerequisites are Discriminatory in Effect.**

Patricia Johnson taught special education in the Boundary County School District Number 101 in Idaho for ten years. Johnson had a history of depression and bipolar disorder. Johnson’s teaching certificate, issued by the State Board of Education, was set to expire during the summer of 2007. However, during that summer Johnson had not yet completed the required three semesters hours of college credit required to renew her certification. At that time Johnson experienced a major depressive episode that prevented her from taking any college classes.

Johnson went before the District Board in early September 2007 and requested provisional authorization to teach for the school year. The Board denied her request, explaining that she had five years to complete the college credits but did not raise this issue until immediately before the school year began. The Board typically only provides provisional authorization when there is an open position and no certified teachers available. Here, however, the Board filled Johnson’s place with a certified special education teacher.

Johnson sued the District, alleging, among other things, that the District discriminated against her because of her disability. In order to succeed on her claim, Johnson must show that first she was a “qualified individual with a disability.” The EEOC defines a “qualified individual with a disability” as someone who meets the prerequisites, such as required skills and education, for the position and who, with or without reasonable accommodation, can perform the essential functions of the job. Johnson argued that, with reasonable accommodations, she could have satisfied the job prerequisites—namely completing her recertification—and, therefore, she was a “qualified individual.”

The Ninth Circuit Court of Appeal disagreed with Johnson and held that she was not a “qualified individual with a disability.” The Court examined the definition of a “qualified individual” and found that it does not mention reasonable accommodations with respect to ensuring disabled individuals can satisfy the job prerequisites. Therefore, the Court concluded that an individual who does not satisfy the prerequisites of a job cannot be a “qualified individual” unless she shows that the prerequisites are discriminatory in effect. Simply not being able to meet the prerequisites without accommodation does not satisfy the definition. Accordingly, the Court affirmed the district court’s grant of summary judgment in favor of the District.

*Johnson v. Bd. of Trustees* (2011) \_\_ F.3d \_\_ [2011 WL 6091313].



## FIRM PUBLICATIONS

To view these articles and the most recent attorney-authored articles, please visit:  
[www.lcwlegal.com/lcw-attorney-authored-articles](http://www.lcwlegal.com/lcw-attorney-authored-articles)

**Morin Jacob** of our **San Francisco** office authored the article, "Public Officials And Employees Ethical Obligation To Avoid Even Indirect Financial" which appeared in the December 1, 2011 issue of *Human Resources Bulletin*, published by the League of California Cities. The complete article can be viewed by visiting the link listed above and/or searching the keywords, "Ethical Obligations."

**Connie C. Almond** of our **Los Angeles** office authored the article, "Governor Signs AB 646 Mandating Factfinding For MMBA Agencies" which appeared in the December 1, 2011 issue of *Human Resources Bulletin*, published by the League of California Cities. The complete article can be viewed by visiting the link listed above and/or searching the keywords, "AB 646."

**Judith Islas** of our **San Diego** office authored the article, "Pandora's Box Opens: Vested Health Benefit Rights For Retired County Employees Can Be Implied" which appeared in the December 5, 2011 issue of the *Daily Journal*. The original blog post can be viewed by visiting the link listed above and/or searching the keywords, "Pandora."

**Morin I. Jacob** of our **San Francisco** office authored the article, "Enforce Policies Uniformly" which appeared in the December 6, 2011 issue of the *Recorder*. The original blog post can be viewed by visiting the link listed above and/or searching the keywords, "Enforce Policies."

**Judith Islas** of our **San Diego** office authored the article, "Obtaining Workplace Violence Restraining Orders Made Easier" which appeared in the December 19, 2011 issue of the *Daily Journal*. The original blog post can be viewed by visiting the link listed above and/or searching the keywords, "Restraining Orders."

To view archive articles, please go to:  
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#### Liebert Cassidy Whitmore Welcomes Two New Associate

**Che Johnson** joins the Fresno office. Che's experience includes employment related litigation, including federal and state litigation and administrative proceedings. Prior to joining LCW, Che worked with a full-service firm where he represented employers in employment law matters. Che can be reached at 559.256.7800 or emailed at [cjohnson@lcwlegal.com](mailto:cjohnson@lcwlegal.com)

**Emily Fulmer** joins the Fresno office. Emily advises and counsels Liebert Cassidy Whitmore clients in matters pertaining to employment and labor law. Emily can be reached at 559.256.7800 or emailed at [efulmer@lcwlegal.com](mailto:efulmer@lcwlegal.com)

# AB646: MANDATING FACT-FINDING FOR MMBA AGENCIES TRAINING

## LIEBERT CASSIDY WHITMORE/PELRAC JOINTLY PRESENT AB646: MANDATING FACT-FINDING FOR MMBA AGENCIES WEBINAR

Time: 10:00 a.m. - 11:30 a.m.  
Dates: January 10, 2012  
Cost: \$55 per person for ERC/PELRAC Members  
\$75 per person for Non-Members

### ***MCLE: Registering attorneys are eligible for 1.5 hours of general MCLE***

The landscape of Labor Relations has changed drastically with the Governor signing AB 646 amending the Meyers-Milias-Brown Act to require fact-finding as a means of resolving an impasse in labor negotiations under certain circumstances. Under the new law, fact-finding is required if a mediator is unable to effect a settlement within 30 days of his or her appointment and the union requests factfinding.

Although the new law has ambiguities that may be clarified by litigation and/or clean up legislation, it is slated to go into effect January 1, 2012, and agencies need to be ready. Even those who have engaged in fact-finding previously need to understand the new requirements proscribed by AB646.

### **Attendees will learn:**

- what is fact-finding
- fact-finding requirements under MMBA (AB646)
- how AB646 may change the negotiation dynamic
- how to prepare effectively for fact-finding
- fact-finding troublespots and how to minimize them

The workshop will be presented by **Rick Bolanos** who has extensive experience in nearly identical fact-finding procedures under the EERA and HEERA (the California labor relations statutes applicable to public schools, colleges, and universities), and can provide the guidance you need to navigate these new fact-finding procedures effectively.

### **Who should attend:**

Anyone who will be involved in the planning or execution of the next round of negotiations that have the potential of impasse fact-finding (newly revised MMBA, and EERA, HEERA, and most transit districts), including labor relations and HR specialists, agency attorneys, chief administrative officers, benefits and compensation specialists, and consultants.

## REGISTRATION

Visit [www.lcwlegal.com/seminars](http://www.lcwlegal.com/seminars) for more information and to register online. Please contact Crystal Tinoco at [ctinoco@lcwlegal.com](mailto:ctinoco@lcwlegal.com) or 310.981.2000 if you have any questions regarding this webinar.

## THE ONE CONFERENCE YOU CANNOT AFFORD TO MISS SAVE THE DATE: FEB. 2-3, 2012

### Annual Public Sector Employment Law Conference

The 2012 Annual Public Sector Employment Law Conference will be held in San Francisco at the Hyatt Regency San Francisco across from the Ferry Building. Participants may attend the full conference or register for a single day. All participants receive a comprehensive reference guide along with hands-on advice from highly experienced practitioners.

**When: February 2-3, 2012**

Employment Law is an ever changing and exciting area of the law and the conference is designed to help participants learn and apply best practices. Some of the sessions include:

- Common and Costly Mistakes in Public Safety Employment
- Disability Boot Camp for Public Safety Managers
- Public Safety Investigations
- Public Safety Update



View all the sessions online at [www.lcwlegal.com/lcw-annual-conference-breakout-sessions](http://www.lcwlegal.com/lcw-annual-conference-breakout-sessions)

**Online registration is available now!**

Please visit [www.lcwlegal.com/lcw-annual-conference-2012](http://www.lcwlegal.com/lcw-annual-conference-2012) for more information

Contact Ann DeGuilio, Marketing Coordinator, at [adeguilio@lcwlegal.com](mailto:adeguilio@lcwlegal.com) / 310.981.2053 if you have any questions regarding the upcoming annual conference.

Follow us on Twitter ([@lcwlegal](https://twitter.com/lcwlegal)) and tweet with us using the hashtag **#lcwac12**



The **Briefing Room** is available via email. If you would like to be added to the email distribution list or if you know someone who would benefit from this publication, please visit [www.lcwlegal.com/subscribe.aspx](http://www.lcwlegal.com/subscribe.aspx). **Please note:** By adding your name to the e-mail distribution list, you will no longer receive a hard copy of the **Briefing Room**.

If you have any questions, call Anna Sanzone-Oritz at 310.981.2000.

## MANAGEMENT TRAINING WORKSHOPS

## Firm Activities

### Consortium Workshop Training

- Dec. 6      **“Finding the Facts: Disciplinary and Harassment Investigations”** and **“Prevention and Control of Absenteeism and Abuse of Leave”**  
San Mateo County ERC | Foster City | Cepideh Roufougar
- Dec. 9      **“Mandated Reporting”**  
Southern California Community College Districts (SCCCD) ERC | Webinar | Michael Blacher
- Dec. 9      **“Employees and Driving”**  
Central CA CCD ERC | Webinar | Mark Meyerhoff
- Jan. 5      **“Sick and Disabled Employees”**  
Gateway Public ERC | Santa Fe Springs | Michael Blacher
- Jan. 13     **“Advanced Retirement Issues for California’s Public Employers”** and **“Employees and Driving”**  
Central Coast Personnel Counsel Consortium | Santa Barbara | Frances Rogers
- Jan. 18     **“Difficult Conversations”**  
Coachella Valley ERC | Palm Desert | Donna R. Evans
- Jan. 18     **“Public Sector Employment Law Update”**  
Los Angeles County Human Resources Consortium | Los Angeles | Geoffrey Sheldon
- Jan. 18     **“Leaves, Leaves and More Leaves”** and **“Difficult Conversations”**  
South Bay ERC | Santa Monica | Laura Kalty
- Jan. 20     **“Leaves, Leaves and More Leaves”** and **“Promoting Safety in Community College Districts”**  
Bay Area CCD ERC | Pleasanton | Laura Schulkind
- Jan. 20     **“Public Sector Employment Law Update”**  
SCCCD ERC | Webinar | Mary Dowell
- Jan. 20     **“Public Sector Employment Law Update”**  
Central CA CCD ERC | Webinar | Mary Dowell
- Jan. 25     **“Legal Issues Related to Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce”** and **“Public Sector Employment Law Update”**  
San Joaquin Valley ERC | Modesto | Jack Hughes
- Jan. 26     **“Supervisory Skills for the First Line Supervisor/Manager”**  
West Inland Empire ERC | Rancho Cucamonga | Donna R. Evans
- Jan. 26     **“Annual Audit of Your Personnel Rules”** and **“Managing the Marginal Employee”**  
North San Diego County ERC | Vista | Judith S. Islas
- Jan. 26     **“Managing the Marginal Employee”**  
Gold Country ERC | Webinar | Jack Hughes
- Jan. 26     **“Labor Code 101 for Public Agencies”**  
Napa/Solano/Yolo ERC | Webinar | Elizabeth Tom Arce
- Jan. 26     **“Mandated Reporting”** and **“Healthcare Reform”**  
Bay Area ERC | Sunnyvale | TBD
- Jan. 27     **“Prevention and Control of Absenteeism and Abuse of Leave”**  
Northern CA CCD ERC | Webinar | Mary Dowell

**Customized Training**

- Dec. 1      **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Lancaster | Donna R. Evans
- Dec. 2      **“Nuts and Bolts of Human Resources: State Center CCD Leadership Series”**  
State Center Community College District | Fresno | Shelline Bennett
- Dec. 5      **“FLSA Compliance”**  
Los Angeles County | Commerce | Elizabeth Tom Arce
- Dec. 5, 6    **“FBOR Refresher”**  
Contra Costa County Fire Protection District | Concord | Jack Hughes
- Dec. 6      **“Harassment and Bullying”**  
Yorba Linda Water District | Placentia | Donna R. Evans
- Dec. 6      **“Supervisory Skills for the First Line Supervisor/Manager”**  
City of Barstow | Mark Meyerhoff
- Dec. 6      **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Fresno | Gage Dungy
- Dec. 7      **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
Liebert Cassidy Whitmore | San Francisco | Kelly Tuffo
- Dec. 7      **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
Liebert Cassidy Whitmore | Los Angeles | Donna R. Evans
- Dec. 7      **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
Liebert Cassidy Whitmore | San Diego | Frances Rogers
- Dec. 7      **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
Liebert Cassidy Whitmore | Fresno | Gage Dungy
- Dec. 7      **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
Point 360 | Burbank | Mark Meyerhoff
- Dec. 7      **“Preventing Harassment, Discrimination and Retaliation in the Academic Setting/  
Environment”**  
Hartnell Community College District | Salinas | Alison Neufeld
- Dec. 8      **“Ethics in Public Service”**  
City of Indian Wells | Donna R. Evans
- Dec. 9      **“Preventing Harassment, Discrimination and Retaliation in the Academic Setting/  
Environment”**  
State Center Community College District | Fresno | Shelline Bennett
- Dec. 12     **“Privacy Issues in the Workplace”**  
City of Richmond | Jack Hughes
- Dec. 12, 15 **“FBOR”**  
City of West Covina | Scott Tiedemann
- Dec. 13     **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Newport Beach | Laura Kalty
- Dec. 13     **“Roberts Rule of Order”**  
Ventura Community College District | Ventura | Mary Dowell
- Dec. 13     **“Absenteeism”**  
JURUPA Community Services District | Mira Loma | Donna R. Evans
- Dec. 14     **“Ethics in Public Service”**  
Merced County | Merced | Shelline Bennett
- Dec. 14     **“Ethics in Public Service”**  
Liebert Cassidy Whitmore | San Francisco | Morin I. Jacob

- Dec. 14 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
County of San Luis Obispo | San Luis Obispo | Laura Kalty
- Dec. 14 **“Ethics in Public Service”**  
Liebert Cassidy Whitmore | Los Angeles | Donna R. Evans
- Dec. 14 **“Ethics in Public Service”**  
Liebert Cassidy Whitmore | Fresno | Gage Dungy
- Dec. 14 **“Ethics in Public Service”**  
Liebert Cassidy Whitmore | San Diego | Frances Rogers
- Dec. 15 **“Absenteeism and FLSA”**  
City of Pico Rivera | Connie C. Almond
- Dec. 15 **“FLSA Compliance”**  
Los Angeles County | Downey | Elizabeth Tom Arce
- Dec. 19 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Gardena | Laura Kalty
- Jan. 5 **“Managing the Marginal Employee and Prevention and Control of Absenteeism and Abuse of Leave”**  
Madera Unified School District | Madera | Eileen O’Hare-Anderson
- Jan. 6 **“Managing the Marginal Employee”**  
Merced Community College District | Merced | Eileen O’Hare-Anderson
- Jan. 6 **“FBOR”**  
City of West Covina | Scott Tiedemann
- Jan. 12 **“Conflict of Interest and Personnel Files”**  
City of Beverly Hills | Mark Meyerhoff
- Jan. 24 **“Supervisory Skills for the First Line Supervisor/Manager”**  
City of Glendale | Mark Meyerhoff
- Jan. 24 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Fresno | Gage Dungy
- Jan. 25 **“Temporary Transitional Work”**  
Municipal Pooling Authority - No CA | Walnut Creek | Alison Carrinski
- Jan. 25 **“Ethics in Public Service and The Brown Act”**  
Vallejo Sanitation & Flood Control District | Vallejo | Kelly Tuffo

### **Speaking Engagements**

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

- Dec. 1 **“The High Cost of Retirement”**  
Association of California Water Agencies (ACWA) Annual Fall Conference | Anaheim | Frances Rogers
- Dec. 1 **“Social Media Guidelines for Educators”**  
California School Boards Association (CSBA) Annual Conference | San Diego | Pilar Morin
- Dec. 1 **“Navigating Disability Laws, Leave Rights, and Employee Discipline”**  
ACWA Annual Fall Conference | Anaheim | Frances Rogers
- Dec. 1 **“Construction - The Impact of Changes to Stop Notice Laws”**  
California Council of School Attorneys (CCSA) Annual Workshop | San Diego | Randy Parent
- Dec. 1 **“Annual FLSA Update”**  
California Public Employers Labor Relations Association Annual Conference | Monterey | Peter J. Brown

- Dec. 2      **“HR Issues”**  
San Diego/Imperial County Deans Academy | North San Diego | Judith Islas
- Dec. 2      **“Legal Update: Camp Issues”**  
Western Association of Independent Camps Annual Conference | Palm Springs | Michael Blacher
- Dec. 2      **“Community College Legal Update”**  
CCSA Annual Workshop | San Diego | Mary Dowell
- Dec. 2      **“Brown Act for Board Members” and “Electronic Monitoring of Employees - Dos and Don’ts”**  
CSBA Annual Conference | San Diego | Frances Rogers
- Dec. 2      **“Engaging in the Interactive Process”**  
International Public Management Association (IPMA) - HR Central California Chapter | Merced | Gage Dungy
- Dec. 2      **“A Brown Act Update”**  
CCSA Annual Workshop | San Diego | Bruce Barsook
- Dec. 2      **“Finance Director’s Role in Labor Negotiations”**  
League of CA Cities Municipal Finance Institute | Long Beach | Mark Meyerhoff
- Dec. 8      **“Labor Relations Update”**  
Marin County City Managers Association | Tiburon | Kelly Tuffo
- Dec. 8      **“Things You Need To Know To Be An Effective Negotiator”**  
California Society of Municipal Finance Officers | Redondo Beach | Mark Meyerhoff
- Jan. 18     **“Pension Reform Updates and What They Mean to Special Districts”**  
California Special Districts Association | Webinar | Steve Berliner
- Jan. 19     **“Workplace Bullying: The Silent Epidemic”**  
Professionals in Human Resources Association (PIHRA) Annual Legal Update | Garden Grove | Oliver Yee
- Jan. 19     **“Public Sector Employment Law Update”**  
IPMA - HR San Diego Chapter Meeting | San Diego | Frances Rogers
- Jan. 19     **“Communications and the New Media”**  
League of California Cities New Mayors and Council Members Academy | Sacramento | Laura Kalty
- Jan. 21     **“Annual Legal Update for California Independent Schools”**  
California Association of Independent Schools (CAIS) Annual Conference | San Francisco | Donna Williamson and Michael Blacher
- Jan. 21     **“Dollars and Sense: Are you the Only School that Enforces the Tuition Agreement?”**  
CAIS Annual Conference | San Francisco | Donna Williamson and Grace Chan
- Jan. 21     **“Five Ways to Put Your School’s 501C(3) Status at Risk (and How to Avoid Them)”**  
CAIS Annual Conference | San Francisco | Donna Williamson and Michael Blacher
- Jan. 21     **“Show Me the Money: The New Green Construction at Independent Schools”**  
CAIS Annual Conference | San Francisco | Randy Parent
- Jan. 24     **“Workplace Bullying: The Silent Epidemic”**  
PIHRA Annual Legal Update | Pomona | Oliver Yee
- Jan. 25     **“Workplace Bullying: The Silent Epidemic”**  
PIHRA Annual Legal Update | Burbank | Oliver Yee
- Jan. 30     **“Sexual Harassment”**  
Mosquito and Vector Control Association of California Annual Conference | Burlingame | Morin Jacob

To view our current calendar of events, please visit: [www.lcwlegal.com/calendar.aspx](http://www.lcwlegal.com/calendar.aspx)

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