

Education Matters

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

January 2012

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EDUCATION MATTERS

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■ THE YEAR IN REVIEW: KEY CASES FROM 2011

BUSINESS AND FACILITIES

Azuza Land Partners v. Dept. of Industrial Relations (2010) 191 Cal.App.4th 1: Where a project is built with a combination of public and private funds, the entire project is considered a “public works” project. The public works requirement to pay prevailing wages applies for all work on the public/private project.

Associated General Contractors of America v. San Diego Unified School District (2011) 194 Cal.App.4th 748: Contractors on public works projects may pay lower than prevailing wages to trainees in a state-approved apprenticeship program. A public entity may require that all apprentices working on a public project be enrolled in any state approved apprenticeship program specified by the public entity based on a determination that the program selected meets the particular interest of the public entity.

Chawanakee Unified School Dist. v. County of Madera (2011) 196 Cal.App.4th 1016: Although Gov. Code section 65996(a) provides that fees imposed by a school district on new developments constitute the exclusive methods of mitigating impacts on school facilities, certain disclosures impacting schools are still required in an Environmental Impact Report. For example, the EIR must consider a project’s indirect impacts on parts of the physical environment other than school facilities, the impact on traffic, and impacts of construction activity (e.g. dust or noise).

Greg Opinski Const., Inc. v. City of Oakdale (2011) 199 Cal.App.4th 1107: A construction contractor that fails to follow contractually required change order procedures may not prevail against a public entity on claims for costs and time extensions. Alleged impossibility of timely performance due to delays caused by public entity does not excuse the contractor from its failure to follow contractually required change order procedures.

CLASSIFIED EMPLOYEES

California School Employees Assn. v. Governing Board of the East Side of Union High School District (2011) 193 Cal.App.4th 540 [122 Cal.Rptr.3d 799]: Classified employees do not reach permanent status when reemployed in a new position in which they have not yet passed probation; they only attain permanent status by passing probation in a specific position or class.

DISABILITY

Cuiellette v. City of Los Angeles (2011) 194 Cal.App.4th 757 [123 Cal.Rptr.3d 562]: A public employer may not separate an employee for disability as long as the employee remains qualified and able to perform his permanent light duty assignment. This holding is premised on the finding that the employer was able to permanently provide the light duty assignment to the officer. That fact distinguishes this case from *Raine v. City of Burbank* (2006) 135 Cal.App.4th 1215, in which the Court held that the Fair Employment and Housing Act did not require a police department to convert a temporary light duty civilian position into a permanent sworn position after the officer’s injury became permanent and stationary.

Riverside Sheriffs' Association v. County of Riverside (2011) 193 Cal.App.4th 20 [122 Cal.Rptr.3d 197]: A public employer placed an employee on unpaid leave while the employer applied for an involuntary disability retirement. The Court found that the employee was entitled to due process rights prior to being placed on unpaid leave. Employers are advised to seek legal counsel before forcing an unwilling employee on leave due to the employee's inability to perform the essential functions of the job pending a determination on the employee's disability retirement application.

Willis v. Superior Court of Orange County (2011) 194 Cal.App.4th 312 [125 Cal.Rptr.3d 1]: A public employer may terminate an employee for violating an anti-violence policy even if the employee's disability caused the threats of violence.

FACULTY

Theiler v. Ventura County Community College District (2011) 198 Cal.App.4th 852 [130 Cal.Rptr.3d 273]: A basketball coach taught ten hours of basketball class per week and received a flat stipend for his ancillary duties. Full-time faculty at the District must spend at least 60 percent of their time teaching. The coach was in a temporary assignment because his time spent teaching was less than 60 percent of his total duties and his ancillary duties were not included in the calculation of teaching hours.

FAMILY LEAVE

Lewis v. United States (9th Cir. 2011) 641 F.3d 1174: Employer's termination of employee was lawful because the employee failed to cure the deficiencies in her Family and Medical Leave Act (FMLA) medical certification and took an extended unauthorized leave. The 2009 FMLA regulations provide precise and detailed notice and certification processes. Employers should ensure that their practices comply with these regulations and consult legal counsel before disciplining an employee who takes an unauthorized leave.

FIRST AMENDMENT

Alpha Delta Chi-Delta Chapter v. Reed (9th Cir. 2011) 648 F.3d 790: University refused to grant official recognition to Christian sorority and fraternity that required its members to express a certain religious viewpoint. University's non-discrimination policy did not violate Christian sorority and fraternity rights to free speech and association because the policy was reasonable given the university's purpose of promoting diversity and nondiscrimination. The policy applied generally to all groups and did not target religious belief or conduct.

FIRST AMENDMENT RETALIATION

Borough of Duryea v. Guarnieri (2011) ___ U.S. ___ [131 S.Ct. 2488]: The U.S. Supreme Court held that public employees cannot assert retaliation claims based on the First Amendment right to petition unless the "petitioning" in question involves a matter of public concern. What qualifies as "petitioning" can be a grievance, or even a lawsuit against the employer, but a constitutional retaliation claim will arise only if the claim involves something sufficiently important to the general public. Because retaliation claims are becoming more common, employers should be sure that they are consistent and fair in their enforcement of personnel policies, and should maintain proper documentation surrounding disciplinary and promotion decisions.

LABOR RELATIONS

Cal. Correctional Peace Officers Ass'n v. State of California (Department of Corrections & Rehabilitation, Avenal State Prison) (2011) PERB Dec. No. 2196S: An employer must bargain over the negotiable effects of a nonnegotiable management decision only if the union makes a valid request to bargain that identifies reasonably foreseeable effects within the scope of representation. Absent such a request, an employer who implements a nonnegotiable decision without prior notice does not violate the duty to bargain.

International Assoc. of Fire Fighters, Local 188 v. PERB (City of Richmond) (2011) 51 Cal.4th 259: The California Supreme Court confirms that public employers have unilateral authority to decide to lay-off in order to reduce or eliminate services. Public employers still have the duty to negotiate the effects of the layoff decision that the employee organization can identify, and the Court suggested that the scope of effects would be interpreted broadly.

PUBLIC RECORDS ACT/ RETIREMENT

San Diego County Employees Retirement Association v. Superior Court (2011) 196 Cal.App.4th 1228 [127 Cal.Rptr.3d 479]: Retired employees' names and pension amounts received are public records.

RETIREMENT/VESTED RIGHTS

Retired Employees Association of Orange County v. County of Orange (2011) 52 Cal.4th 1171: An employer can create an implied vested contractual right to a pooling method of calculating retiree medical insurance premiums through its description of retiree benefits and verbal representations regarding

retiree health benefits. Consequently, employers should be careful to be precise in how they describe retiree benefits to employees.

SCHOOL DISTRICTS

California School Boards Assn. v. State of California (2011) 192 Cal.App.4th 770 [121 Cal.Rptr.3d 696]: State's practice of deferring full appropriation of mandates imposed on school districts to an indefinite future date violates the constitution. However, school districts cannot compel the Legislature, through a writ of mandate, to fund these mandates.

SPECIAL EDUCATION

California School Boards Assn. v. Brown (2011) 192 Cal.App.4th 1507 [122 Cal.Rptr.3d 674]: The Governor acted within his constitutional authority when he line-item vetoed the Legislature's appropriation for the AB 3632 Mental Health Services for Students mandate. Local county mental health agencies are now freed from the duty to implement the AB 3632 mandate, while school districts remain responsible for complying with the IDEA.

E.M. v. Pajaro Valley Unified School District (9th Cir. 2011) 652 F.3d 999: The IDEA requires that federal district courts admit and consider any new evidence that was not available at an administrative hearing if the evidence is relevant, non-cumulative, and other admissible under evidence rules.

STUDENTS

J.D.B. v. North Carolina (2011) ___ U.S. ___ [131 S.Ct. 2394]: A child's age may be a factor for police to consider in determining whether a suspect was in police custody and therefore entitled to a Miranda warning. In some cases a child's age may affect how a reasonable person in the suspect's position would perceive his or her freedom to leave.

WAGE AND HOUR LAW

Sheppard v. North Orange County Regional Occupational Program (2011) 191 Cal.App.4th 289 [120 Cal.Rptr.3d 442]: State minimum wage law applies to school districts and requires that employees be paid at least minimum wage for each hour worked. The reasoning from this case would also require these employers to follow the State law standards, and not FLSA standards, in order to properly compensate employees for travel time.

■ SPECIAL EDUCATION FEATURE

Pay v. Place: More Than Semantics

Holding: A FAPE settlement in which the Hawaii Department of Education (DOE) agreed to pay for a student to attend private school for one year but did not agree to place the student in the private school meant that the private school did not become the student's placement for purposes of the "stay-put" provision of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(j), despite the parent's unilateral decision to re-enroll the student at the private school for subsequent years prior to filing for due process. The parent was not entitled to recover the tuition costs for the subsequent years that she had unilaterally re-enrolled the student in the private school.

Summary: K.D. is a minor student diagnosed with autism. After K.D. attended kindergarten at a public school, K.D.'s parent, C.L., unilaterally placed K.D. in a private school for the first grade. C.L. then filed a request for a due process hearing with the DOE. C.L. and the DOE reached a settlement agreement whereby the DOE agreed to pay K.D.'s tuition at the private school for his first grade year in exchange for C.L.'s agreement to dismiss with prejudice the hearing request and participate in transition planning for K.D. to a DOE public school at the end of that school year, if appropriate.

Due to C.L.'s failure to respond to DOE communications, C.L. did not attend the IEP meeting the DOE held for K.D. where it developed an IEP for K.D.'s second grade year with placement at a public elementary school as K.D.'s FAPE. Ignoring this offer of FAPE, C.L. unilaterally re-enrolled K.D. at the private school for the second grade. Seven months after the offer of FAPE was made, K.D. responded to DOE stating that the re-enrollment in the private school had not been unilateral and requesting that DOE pay K.D.'s tuition. Again due to C.L.'s failure to respond to DOE communications, DOE held an IEP meeting without C.L. where it developed an IEP for K.D.'s third grade year offering as FAPE placement in a public school. Shortly after receiving that proposed IEP, K.D. filed a request for a due process hearing.

The Ninth Circuit Court of Appeals held that DOE's IEP offers for K.D.'s second and third grade years were sufficient to constitute a FAPE. The court further held that the tuition reimbursement request for the unilateral placement during K.D.'s second grade year was untimely under Hawaii state law. Most significantly, the court held that the "stay-put" placement was not the private school K.D. was attending.

Analyzing the language of the FAPE settlement agreement, the court held that the agreement did not transform the private school into the student's "stay-put" placement, stating, "K.D.'s settlement agreement never called for 'placement,' and only required tuition reimbursement. This is not an insignificant semantic difference. Rather, it was logical for the DOE to settle the case by agreeing to pay tuition for a limited amount of time in order to avoid the costs associated with a full due process hearing." The court further emphasized that the agreement was of limited duration, clearly stating that K.D. would transition to a public school at the end of his first grade year.

What This Means For You: Districts should pay careful attention to the specific language of FAPE settlement agreements as subtle word choices can have major impacts on the application of the IDEA's "stay put" provision, being particularly conscientious with regard to any affirmative agreements to a private school "placement."

K.D. ex. rel. C.L. v. Department of Education, State of Hawaii (9th Cir. 2011) ___ F.3d ___ [2011 WL 6760338].

School District In Which Parent Of Special Education Student Resides Is Responsible For Funding Student's Out-Of-State Education; If No Parent, Department Of Education Responsible By Default.

A.S., a minor student eligible for special education services under the Individuals with Disabilities Education Act (IDEA), was a dependent in the Orange County Juvenile Court. The court had terminated the parental rights of A.S.'s parents. From 2000 to 2004, however, the court appointed Lori Hardy as A.S.'s foster parent. Hardy lived within Orange Unified School District.

In 2006, the Orange County Department of Education recommended that A.S. be placed in a resident treatment facility in Utah. A.S. began attending this facility in Utah in July 2006, and Orange County began fronting the costs of A.S.'s out-of-state education.

Shortly thereafter A.S. requested a due process hearing, where he identified several school districts and counties as possibly responsible for his education costs. The Office of Administrative Hearings named Orange County as the responsible agency, and the County appealed, arguing that no public agency is responsible for funding education costs to students such as A.S. who have no parents and are placed in

out-of-state facilities. The Ninth Circuit Court of Appeal held that the County is not responsible for funding A.S.'s education during times when A.S. had no parent, as defined specifically by the Education Code, but rather that the California Department of Education was responsible by default.

Education Code section 48200 states that the school district where the child's "parent or legal guardian" resides is the district responsible for funding the child's education. Legislation defining "parent" for purposes of this section has developed in recent years. In 2006, there was no provision of the Education Code that explicitly defined "parent" for purposes of section 48200. Section 56028 defines parent to include "a guardian generally authorized to act as the child's parent..." Only in 2009 did the legislature explicitly apply the definition of "parent" in section 56028 to section 48200. However, in looking at the legislative intent and similar provisions dealing with older students, the court concluded that section 56028 should apply to section 48200 prior to 2009 as well. Therefore, the court determined that the agency responsible for a child's special education throughout the time period in question is the district in which the child's parent resides.

The court next addressed whether Hardy was A.S.'s parent, under section 56028, such that Orange County was responsible for funding A.S.'s education, or whether the California Department of Education was responsible for the funding as a default. Both the 2007 and 2009 versions of section 56028 defined "parent" to include "a guardian . . . authorized to make educational decisions for the child." Given that Hardy was a court-appointed guardian with authority to make decisions on A.S.'s behalf, Hardy qualified as a parent beginning in 2007. Since Hardy lived in Orange County, the County was responsible for funding A.S.'s education during this time. However, the 2005 definition of "parent" was more limited, such that Hardy did not qualify as a parent under the older version of section 56028. Therefore, the court held that because A.S. had no parent under this definition from 2006 until section 56028 was amended in 2007, the California Department of Education was responsible as default for funding during that time.

Orange County Department of Education v. California Department of Education (9th Cir. 2011) ___ F.3d ___ [2011 WL 6793999].



■ EMPLOYMENT

FIRST AMENDMENT RETALIATION

Denial of Tenure Six Weeks After Awareness of Years-Old Controversy May Satisfy Causation in Retaliation Claim.

Nancy Nagle worked as a tenure-track special education teacher in the Mamaronck Union Free School District of New York ("District"). In January 2007, she reported that the assistant principal forged her signature on a copy of a teaching observation, which was later confirmed by two handwriting experts. District superintendent Paul Fried declined to renew the assistant principal's contract, and she resigned.

In late January or February of 2007, Fried and Nagle's principal, Steve Castar, learned of Nagle's conduct from when she was a special education teacher in Virginia. Four years previously, Nagle reported a teacher in a neighboring classroom to her then-principal for verbally abusing children and to the chair of a county special education department that other adults had witnessed the teacher verbally and physically abusing children. When a student's private nurse reported witnessing her strike a child in the chest, the teacher resigned citing family reasons but retained her teaching license. Nagle informed Child Protective Services and the state police, and the teacher was charged with several counts of felony child abuse; she eventually pled guilty to assault.

In March 2007, the District informed Nagle that it would not recommend her for tenure and that her probationary employment would be terminated at the end of the school year. Nagle filed suit claiming the decision was a violation of her constitutional rights because it was made in retaliation for acts protected by the First Amendment, viz., the forgery incident and abuse reporting. The district court granted summary judgment to the District, but the Second Circuit Court of Appeals vacated the lower court opinion and remanded the case back to the lower court.

To survive the motion for summary judgment on a First Amendment retaliation claim, Nagle had to present evidence that the speech at issue was protected, that she suffered an adverse employment action, and that there was a causal connection between the protected speech and the adverse action. If established, the District would have an opportunity to show it would have taken the adverse employment action even in the absence of the protected conduct. In the context of public employees, only speech "on a matter of public concern" is protected under the First

Amendment, and only when the employee speaks as a citizen and not in her role as an employee.

The Court first examined whether Nagle's speech was protected. It held that Nagle's reporting of the assistant principal's forgery of her signature was not protected speech because it did not implicate matters of public concern. However, the court explained that Nagle's abuse reporting speech had not become "old news" or lost the First Amendment protection it had at the time it was made before she moved from Virginia. Whether speech pertained to a matter of public concern and whether it was uttered in the capacity of a private person are not facts that change over time.

The Court also held that the report of abuse was protected even if it violated reasonable protocols. First Amendment protection is not conditioned on adherence to employer protocols, though an employee's failure to follow protocols may give rise to a non-retaliatory ground for an adverse employment action, which could be the basis of a defense.

The Court next addressed causation. Fried testified that he could not recall exactly when in early 2007 he discovered Nagle's Virginia speech, but believes he was already leaning toward not recommending her for tenure when he found out. An adverse employment action occurs on the date the decision is formally reached, not on an asserted decision made without being memorialized or conveyed to anyone. Given this, the date of the adverse employment action was March 2, 2007, when Nagle was informed.

Lastly, the Court determined whether there was a causal connection between the employee's conduct and an adverse employment action because Fried's awareness of Nagle's report of abuse was at most six weeks from the date of the adverse action. Accordingly, Nagle had made out a claim of retaliation under the First Amendment that could survive summary judgment.

The District claimed that it would have made the same decision in the absence of the report of abuse in Virginia, and that its decision was based primarily on third party accounts to Fried of Nagle's behavior in a December 2006 meeting. At that meeting, she intimated knowing she would not be granted tenure, began crying, and excused herself from the room to calm down. The Court held that this rebuttal was subject to credibility questions and could not be resolved by a summary judgment.

Nagle v. Marron (2d Cir. 2011) 663 F.3d 100.

Note:

There is no expiration date on protected free speech, and it should never be used as a basis for an adverse action against an employee no matter how long ago or far away it was uttered. And as always, good record keeping is paramount. If the District had been able to produce enough evidence to demonstrate the employee would more likely than not have been let go on that record alone, it would have successfully rebutted the claim and still prevailed on the summary judgment motion.

INJUNCTIONS**Court Expands Employers' Ability To Obtain Workplace Violence Restraining Orders.**

A recent California Court of Appeal ruling provides employers an important weapon to combat workplace violence. The Court in *Kaiser Foundation Hospitals v. Wilson* ruled that courts may consider and rely on hearsay evidence to grant workplace violence restraining orders and injunctions. This is a significant departure from the usual rule that hearsay cannot be admitted into evidence or relied on to support a Court order.

As with all workplace violence cases, the facts are not pleasant. After Kaiser terminated his wife, Jeff Wilson became irate, started making violent threats toward Kaiser employees, including that he was going to “kill someone” “going to flip his lid” and “do something he would regret.” Wilson also reportedly told his therapist he was going to shoot a Kaiser employee. In response, Kaiser sought and obtained a temporary restraining order and then a permanent injunction, barring Wilson from Kaiser facilities and from any contact or communication with Kaiser employees.

Wilson challenged the Court’s temporary restraining order and permanent injunction, arguing they were based on hearsay statements that cannot be admitted into evidence or relied on by the Court. Kaiser acknowledged that most of the evidence was hearsay-- threats Wilson reportedly made to employees who did not testify-- but argued courts may consider and rely on hearsay when granting workplace violence restraining orders and injunctions.

In a somewhat surprising, but welcome ruling, the Court of Appeal agreed with Kaiser, expanding an employer’s ability to obtain workplace violence temporary restraining orders and permanent injunctions. The Court reasoned that under the hearsay

rule (Evidence Code section 1200) hearsay is generally inadmissible, “except as provided by law.” Since the statute governing workplace violence hearings (Code of Civil Procedure section 527.8) expressly provides: “At the hearing, the judge shall receive **any testimony that is relevant**” it is one of the exceptions to the general rule that hearsay is inadmissible. This exception is logical, the Court explained, because the whole point of the workplace violence statute is to prevent workplace violence and the Court’s ability to consider all relevant testimony strengthens its ability to protect employees from violence.

What This Means For Employers

The Kaiser case increases employers’ ability to obtain workplace violence restraining orders and injunctions, but also increases their responsibility to seek such orders, because employers can rely on any relevant evidence, not only admissible relevant evidence. If an employer has relevant evidence of violence or credible threats of violence in the workplace, it should not disregard that evidence or decline to seek a restraining order simply because the evidence is hearsay. The failure to seek a workplace violence restraining order and permanent injunction when the employer is on notice of violence or credible threats of workplace violence, can result in liability.

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.

VACATION LEAVE**State Labor Commissioner Issues Decision: School Districts Are Not Subject To Waiting Time Penalties.**

The California Labor Commissioner recently issued a decision stating that school districts are not subject to the waiting time penalties under Labor Code section 220(b) and that a classified employee’s right to payment for accumulated vacation is governed by the Education Code, rather than the Labor Code.

John Fox, a former Assistant Director of Maintenance and Operations for Kern High School District, filed a claim with the Labor Commissioner’s office, claiming the District did not pay him all accumulated vacation in compliance with Labor Code section 203 and seeking waiting time penalties.

Labor Code section 220(b) provides an exception to Labor Code section 203 for counties, incorporated cities, towns, or other municipal corporations. The Labor Commissioner held that school districts are considered “municipal corporations” for purposes of the exception and, therefore, cannot be subject to waiting time penalties. The Labor Commissioner also held that classified public school employees derive their right to payment for accumulated vacation from the Education Code and the constitutional prohibition on gifts of public funds to employees. Accordingly, the Labor Commissioner dismissed Fox’s claim.

John Raymond Fox v. Kern High School Dist. Lab. Commissioner Dec. No. 01-40361 SL (2011).

Note:

While this decision holds that the Labor Code does not govern vacation time for classified school employees, District should not consider this decision as definitive on the issue, but rather may use this decision as persuasive in future matters.

WAGE AND HOUR

Ninth Circuit Finds That County’s Payroll System Complies With The Fair Labor Standards Act.

Approximately 900 deputy sheriffs, district attorney investigators, and supervising attorney investigators sued their County employer for alleged violations of the Fair Labor Standards Act (FLSA). The employees claimed that the County failed to establish a 7(k) partial overtime exemption work period for its sworn personnel. They also argued that the County paid them overtime based on one and one-half times the base hourly rate, rather than the regular rate of pay, in violation of the FLSA. In addition, they argued that the County’s compensatory time off policy violated the FLSA. The district court granted summary judgment in favor of the County.

In a case handled by **Brian Walter, Melanie Chaney, and Connie Almond** of our Los Angeles office, the Ninth Circuit Court of Appeals affirmed summary judgment for the County on all claims.

With respect to the 7(k) work period, the County demonstrated that it had properly established a 14-day, 86-hour work period. Although the memorandum of understanding (MOU) stated that sworn personnel worked a 7-day, 40-hour work week, the County offered several memoranda dating as far back as 1985 that demonstrated that the County had

established a 14-day work period. The County also offered uncontroverted evidence that the 14-day work period was regularly recurring as required by the FLSA regulations.

As for the overtime pay allegation, despite the 7(k) work period, the County agreed to a more generous MOU provision that paid the employees at an overtime rate for hours worked in excess of 40 in a week. The County also counted compensatory time off and paid leave as hours worked for purposes of determining whether the overtime threshold was met. Consequently, the County was regularly paying the employees in excess of the FLSA’s requirements. There was no dispute that, for each work period in which an employee worked more than 86 hours, the payroll system compared what the employee would be paid using the FLSA regular rate of pay, which includes various specialty pays, with what the employee would be paid using the MOU standard. Because the MOU paid employees more generously than the FLSA required, even when specialty pays were not included in the overtime calculation, the employees were still generally paid in excess of the FLSA’s requirements. If the FLSA standard was greater than the MOU standard, the payroll system paid the employee the difference. The Ninth Circuit agreed with the district court that the employees failed to show that any employee was paid less than the FLSA regular rate standard for any pay period.

Split Shift Premium Is Based On The Minimum Wage for the Workday, and Not On The Employee’s Normal Wage.

Daniel Krofta works for Airtouch Cellular as a customer service representative selling cell phones, accessories, and service plans. Once or twice a month, the Company held meetings for 60-90 minutes. On five occasions, Krofta worked a split shift where he would work a short shift (i.e. attend the meeting) in the morning followed by a longer shift later the same day.

Krofta sued the Company for failing to pay him a split shift premium in violation of the Industrial Welfare Commission’s (IWC) Wage Order No. 4-2001. The superior court granted summary judgment in favor of the Company, and the California Court of Appeal affirmed.

The IWC is empowered to issue regulations known as “wage orders,” which govern wages, hours, and working conditions in the State of California. Wage Order 4 defines a “split shift” as a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods. The “Minimum Wages” portion

of the Wage Order states: “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday...”

The Court found that, although Krofta occasionally worked split shifts, he was not entitled to a split shift premium because the Company paid him more than the minimum wage for all hours worked plus one additional hour for the split shift premium. For example, Krofta earned \$10.58 per hour and worked 8 hours for a total of \$84.64 (8 x \$10.58). This amount was still greater than the minimum wage of \$6.75 times 8 hours, plus one additional “hour’s pay at the minimum wage” for a total of \$60.75. The Court found that the wage order only requires that one hour at the minimum wage must be paid if the employee works a split shift; the wage order does not require that an employee who earns more than the minimum wage must be paid his or her full wage for the split shift. Thus, while the wage order applied to Krofta, the provision did not provide him with any tangible benefit because he was paid more than the minimum amount required by the wage order.

Aleman v. Airtouch Cellular (2011) ___ Cal.App.4th ___ [2011 WL 6382127].

Note:

Some of the provisions of the IWC’s wage orders do not apply to public employers, but the State minimum wage law (including the provision regarding split shift premiums) does apply to public employers. Consequently, school districts and community college districts who work employees on split shifts, must pay those employees at least the minimum wage for all hours worked plus an additional hour’s pay at minimum wage.

■ RETIREMENT

PERS 960 RULE

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 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 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 that appointments be for a limited term. Currently, these appointments implicitly required specialized skills for the post-retirement appointment to be lawful. AB 1028 adds the special skills requirement in the actual statutory language. It also reinforces the limited term restriction by adding 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.

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.

■ LABOR RELATIONS

WEINGARTEN RIGHTS

Unfair Practice Charge Dismissed Because It Did Not Contain Facts Regarding The Alleged Protected Activity.

In 2009, Cecilia Jaroslowsky sat on a committee of City and County of San Francisco Planning Department employees to discuss the Director's proposal to place special conditions on certain employee classifications to protect them from impending layoffs. The committee found the Director's proposal to be largely unacceptable and modified it substantially.

In 2010, Jaroslowsky received a letter of intent to terminate from her supervisor - "without a union representative" - present. She also alleged that her termination was a result of age discrimination.

Jaroslowsky filed an unfair practice charge with PERB alleging age discrimination, a violation of her *Weingarten* right to representation, and retaliation in violation of the Meyers-Milias-Brown Act (MMBA). The PERB agent dismissed the charge for failure to state a *prima facie* case. On appeal, PERB adopted the dismissal.

First, PERB lacks the jurisdiction over age discrimination claims. PERB's jurisdiction is limited to the determination of unfair labor practice claims arising under the MMBA and other public-sector collective bargaining statutes.

Second, under the *Weingarten* rule, an employee who is required to attend an investigatory interview is entitled to union representation if the employee has a reasonable basis to believe discipline may result from the meeting. Absent highly unusual circumstances, an employee is not entitled to union representation if the purpose of the employer-employee meeting is to present a final disciplinary

memo. Here, the City and County met with Jaroslowsky for the sole purpose of issuing the notice of intent. The meeting was not investigatory in nature. Consequently, she had no right to representation during the meeting.

To establish a *prima facie* case of retaliation, the charging party must show that: (1) the employee exercised rights under MMBA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. Whether the employer's adverse action is in close temporal proximity to the employee's protected conduct is an important factor. Jaroslowsky's charge, however, did not state when she participated on the committee; who at the City and County received the modified proposal; or when the modified proposal was submitted. Consequently, Jaroslowsky could not show that the City and County retaliated against her because of her participation on the committee.

Jaroslowsky v. City & County of San Francisco (2011) PERB Dec No. 2222M [__ PERC ¶ __].

■ BUSINESS & FACILITIES

ESCROW AGREEMENTS

Retention Funds Held In Escrow Are Subject To Immediate Liquidation And Distribution By The Escrow Agent Upon Demand By The Public Entity Owner.

In 1999, the City of Berkeley (City) entered into a construction contract with Arntz Builders (Arntz) for the restoration and expansion of the Berkeley Central Library. Arntz chose to deposit securities into an escrow account rather than have the City withhold retention on each progress payment. Arntz, the City, and the escrow agent Westamerica Bank (Bank) executed the escrow agreement. Arntz deposited \$2,193,895 with the Bank. The statutorily defined terms of the escrow agreement were set out in the agreement.

Arntz sued the City for breach of contract and the City claimed Arntz produced defective work. During those proceedings, the City issued the Bank a letter indicating Arntz was in default and demanding the Bank release all retention to the City. Arntz sent a letter to the Bank objecting to the City's demand and threatened legal action against the Bank if it released any funds to the City. The Bank filed a

complaint in interpleader contending it faced conflicting instructions regarding whether the Bank should release securities to the City. Interpleader permits an entity that is merely holding money or property to compel conflicting claimants to litigate the claims against themselves instead of separately against each party. A complaint in interpleader must show the defendants made conflicting claims, a reasonable probability of double liability exists, and the stakeholder cannot safely determine which claim is valid, thus it offers to deposit the money in court.

The City demurred to the Bank's complaint in interpleader claiming the escrow agreement requires both parties to hold the Bank harmless for disbursement of funds eliminating the need for interpleader. The Bank argued that the hold harmless clause does not protect it from lawsuits by multiple parties potentially exposing it to double claims. The trial court sustained the City's demurrer without leave to amend. The Bank appealed and the Court of Appeal affirmed the trial court's ruling.

The Court of Appeal found the escrow agreement clearly permitted the City to unilaterally declare a default and receive distribution of the escrowed securities. The escrowed securities are retained earnings serving as an incentive for the timely completion of the contract and the Bank holds them in the name of the City, with Arntz as the beneficial owner. If the City made such a demand, the Bank must immediately convert the securities to cash and distribute the cash as instructed by the City. Both parties must hold the Bank harmless for such distribution. The Bank would only be subject to unprotected litigation if it refused to release and breached the escrow agreement.

Nothing in the statutorily prescribed escrow agreement permits Arntz to obstruct the City's right to disbursement of the securities. If the City wrongfully demands distribution of the escrowed securities, it will likely be subject to heavy penalties and fees for wrongfully withholding retention. This applies regardless of Arntz's claims that it is not in default and the Bank should not release the funds.

The Court of Appeal concluded that the remedy of interpleader is not available to the Bank as there is no reasonable probability that the Bank's compliance with the City's demand would subject the Bank to multiple claims or double liability.

Note:

Districts in this type of situation as the owner of a project must make sure that the contractor is clearly in default before demanding the escrow agent liquidate and distribute all escrowed securities.

Westamerica Bank v. City of Berkeley (2011) 201 Cal. App.4th 598 [133 Cal.Rptr.3d 883].

ENVIRONMENTAL QUALITY ACT

CEQA Does Not Permit A State Agency To Condition Payment For A Mitigation Measure On Obtaining Funding From The Legislature And Does Not Permit An EIR To Defer The Formulation Of Mitigation Measures.

In 2005, the Board of Trustees of the California State University (CSU) certified an environmental impact report (EIR) and approved a project involving new construction for the expansion of San Diego State University. While the litigation challenging this EIR was proceeding, the California Supreme Court decided the case of *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341. As a result, the trial court issued an order setting aside the 2005 EIR and project approval. In 2007, CSU issued a draft EIR for further public comment and, after receiving and responding to comments, CSU prepared a Final EIR.

The Final EIR identified potentially significant effects. CSU adopted findings of fact and found that the mitigation measures would reduce most of the potentially significant effects. One of the mitigation measures was for CSU to pay a "fair-share" toward off-site environmental mitigation activities. However, CSU conditioned payment of its "fair-share" on obtaining funding from the Legislature. The Final EIR further stated that if the Legislature does not provide (or delays) funding, mitigation of the Project's significant off-site environmental impacts would be infeasible. Nonetheless, CSU determined that the benefits of the project outweighed any unavoidable significant impacts.

The City of San Diego and the Redevelopment Agency of the City of San Diego (City), San Diego Association of Governments (SANDAG), and the San Diego Metropolitan Transit System (MTS) challenged CSU's certification of the Final EIR and the project approval. The trial court entered judgment for CSU finding that CSU met the requirements of the California Environmental Quality Act (CEQA) and Marina. The City, SDAG and MTS appealed.

CSU relied upon *Marina* for the proposition that a state agency's power to mitigate the project's effects through mitigation payments is subject to legislative control. CSU included reference to *Marina* in the Final EIR. However, on appeal the court analyzed *Marina* and held the Draft EIR and Final EIR were

inadequate under CEQA. The Draft EIR and the Final EIR did not provide the public with adequate information regarding feasible sources for “fair-share” funding of significant off-site mitigation measures and feasible on-campus acts that could reduce or eliminate the need for off-site mitigation and funding. In reaching this conclusion, the court examined the findings of *Marina* as follows:

- While payments may be a feasible form of mitigation, the fact that funding is guaranteed does not excuse the public agency’s duty to mitigate potentially significant effects on the environment.
- A payment by CSU would not constitute an unlawful gift of public funds because the payments are to discharge its public duty to comply with CEQA.
- CEQA does not limit a public agency’s obligation to mitigate or avoid significant environmental effects to those occurring on its own property.
- CEQA requires state agencies to budget funds necessary to protect the environment.
- A feasible method of mitigation may include payment to a third party to perform necessary acts to mitigate.
- An agency may not disclaim responsibility for making a “fair-share” payment before complying with its statutory obligation to ask the Legislature for funds.

The court found that CSU’s “fair-share” payments for off-site mitigation of significant effects was not excused because it conditioned the funding commitment on the Legislature’s funding. The court also found that the Draft EIR and Final EIR should have addressed the availability of other potential funding sources for off-site mitigation measures as well as the potential alternatives to the Project’s on-campus components (or other on-campus acts) that could mitigate the significant off-site environmental effects.

The court also found that the Final EIR improperly deferred mitigation of the Project’s significant traffic effects by failing to identify specific future mitigation actions or set specific goals or performance standards. CEQA does not permit an agency to defer the formulation of mitigation measures to a future time. The Final EIR mitigation measure for significant traffic effects only required CSU to prepare and follow a report. The Final EIR did not specify any objective performance standard to measure success of the mitigation and was therefore, inadequate.

The court further found that the Final EIR failed to discuss potentially significant impacts on transportation. CEQA confers a duty on a public agency to investigate potential environmental impacts of a project, including whether impacts on a transit system may be significant environmental effects. Likewise, the court held that CSU’s finding that the project would not cause any significant effect on public transit was conclusory and unsupported.

The court ordered CSU to void its certification of the Final EIR and adoption of findings and void its project approval due to noncompliance with CEQA.

City of San Diego v. Bd. of Trustees of the California State University (2011) ___ Cal.Rptr.3d ___ [2011 WL 6155755].

CEQA Requires That An EIR Include A Discussion Of Potential Means For Preservation-In-Place For Archeological Resources But Does Not Require An EIR To Identify Significant Effects Of The Environment On A Project.

The City of Los Angeles (City) revised an environmental impact report (EIR) for a mixed-use real estate development called Playa Vista Phase Two Project (Project). The City certified the revised EIR, adopted California Environmental Quality Act (CEQA) findings and a statement of overriding considerations, and approved the Project. The Ballona Wetlands Trust, Anthony Morales and Surfrider Foundation (collectively Ballona Wetlands) and Ballona Ecosystem Education Project (collectively Ballona) challenged the revised EIR regarding: 1) the Project description, 2) the analysis of archaeological resources and sea level rise resulting from global climate change, and 3) the finding of no significant impact on land use consistency.

The trial court denied the challenge and Ballona appealed. The court of appeal reviewed the findings of fact made by the City and factual conclusions stated in the revised EIR. The CEQA Guidelines provide that preservation-in-place is the preferred manner to mitigate impacts on historic archeological resources. The court emphasized that the EIR must include a discussion of preservation-in-place when the project involves an archeological site. The revised EIR adequately addressed preservation-in-place by discussing each of the potential means for preservation-in-place set forth in the Guidelines. The court upheld the revised EIR on this ground.

The court also found that the revised EIR was not required to discuss the impact of sea level rise on the Project. Specifically, the court upheld that “the

purpose of an EIR is to identify significant effects of a project on the environment, not the significant effects of the environment on a project.” (See *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal. App.4th 889, 905.) An EIR should identify the environmental effects of attracting development and people to an area, but not the effects on the project and its users of locating a project in a particular environmental setting. The revised EIR stated that global warming could result in sea level rise and inundate the coastal areas, but did not provide a specific analysis. The City responded to comments related to the statement after it released the revised EIR. The court concluded that the EIR provided sufficient information and analysis on the impact of sea level rise.

Ballona argued that the project description in the revised EIR failed to disclose that the developer previously agreed to eliminate land use entitlements. The court refused to consider Ballona’s challenges to the project description and the finding of no significant impact on land use consistency because Ballona failed to raise these arguments in the trial court proceedings.

Ballona Wetlands Land Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455 [___ Cal.Rptr.3d ___].

■ SCHOOL DISTRICT FUNDING

REDEVELOPMENT AGENCIES

California Supreme Court Upholds Law Eliminating Redevelopment Agencies.

The California Supreme Court issued a ruling upholding a law that eliminated redevelopment agencies throughout the State. This closely watched lawsuit stemmed from two measures passed by the Legislature last summer to help close California’s budget deficit. The first measure eliminated more than 400 redevelopment agencies that were funded by property tax dollars. The second measure allowed these agencies to continue operations but only on the condition that they share part of their property tax revenue with the State. Although the Court upheld the law eliminating redevelopment agencies, the Court struck down the second measure.

The impact this decision will have on school district funding is unclear. Governor Brown has stated that this decision “guarantees more than a billion dollars of ongoing funding for schools and public safety.” Proponents of the legislation argue that school districts and community colleges are the primary beneficiaries of this legislation, as property taxes that once went to redevelopment agencies will primarily be funneled into funding public education. However, many districts are concerned that if school districts do financially benefit from this decision, the benefit will not be realized until the distant future. This fear stems from the fact that a city’s annual tax increments will be first allocated to pay redevelopment agencies’ debts before going towards schools and public safety, which could take several years. Additional redevelopment funding will also likely be used in part to balance the state’s budget, potentially leaving insignificant amounts to school districts.

California Redevelopment Association v. Matosantos (2011) ___ P.3d ___ [2011 WL 6822391].

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FIRM PUBLICATIONS

To view these articles and the most recent attorney-authored articles, please visit:

www.lcwlegal.com/lcw-attorney-authored-articles

Elizabeth Arce of our **Los Angeles** office authored the article, "Recent EEOC Disability Discrimination Lawsuits Are A Reminder To Employers To Comply With The ADA" which appeared in the December 9, 2011 issue of the *Law360*. The original blog post can be viewed by visiting the link listed above and/or searching the keywords, "EEOC."

David Urban of our **Los Angeles** office authored the article, "First Amendment Issues in Public Employment and Education for 2012" which appeared in the December 30, 2011 issue of the *Los Angeles/San Francisco Daily Journal*. The original blog post can be viewed by visiting the link listed above and/or searching the keywords, "First Amendment."

David Urban of our **Los Angeles** office authored the article, "Federal Court in California Decides "Religious Banners" Case On First Amendment Rights Of Public School Teachers" which appeared in the January/February 2012 issue of the *Small School Districts' Association Newsletter*. The original blog post can be viewed by visiting the link listed above and/or searching the keywords, "Religious Banners."

To view archive articles, please go to:

www.lcwlegal.com/lcw-attorney-authored-articles?archive=1

**New
to
the
Firm**

Liebert Cassidy Whitmore Welcomes Two New Associate

Maila Labadie joins the San Francisco office. Maila provides representation and legal counsel to Liebert Cassidy Whitmore clients in matters pertaining to education, employment and labor law.

Maila can be reached at 415.512.3000 or emailed at mlabadie@lcwlegal.com

CONGRATULATIONS



Congratulations to San Francisco Partner Jack Hughes. He and his wife Alyssa welcomed the arrival of their daughter Maggie Ruth on December 13th.

We also Congratulate Los Angeles Associate Damon Brown. He and his wife Elizabeth welcomed the arrival of their son Mason Conner on December 28th.

We wish both families much happiness!

TRAIN THE TRAINER SEMINAR

TEACH MANDATORY HARASSMENT TRAINING BECOME A CERTIFIED AB 1825 TRAINER

SAN DIEGO - APRIL 4, 2012

LOS ANGELES, SAN FRANCISCO AND FRESNO - APRIL 11, 2012

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

REGISTRATION

Visit www.lcwlegal.com/seminars for more information and to register online. Please contact Anna Sanzone-Ortiz at asanzone-ortiz@lcwlegal.com or 310.981.2051 for more information on how to bring this training to your agency.

Employment Relations Consortium

In These Tough Economic Times, Your Agency Can't Afford Not To Be In An Employment Relations Consortium (ERC)!

An ERC is a number of local school and community college districts in a geographic area joining together for the purpose of securing quality employment relations training, consultation and informational services on a very economical basis. Currently there are over 500 cities, counties, school districts, community college districts, universities and other public sector agencies involved with Liebert Cassidy Whitmore's 32 consortiums.

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For the cost of sending one or two employees to an out of town conference, your agency can have:

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For complete information on our training services, including establishing a new ERC or joining an existing ERC, contact Cynthia Weldon, Director of Marketing and Training, at our Los Angeles office at: (310) 981-2000 or cweldon@lcwlegal.com.

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:

- Demystifying the FLSA: 15 Common Solutions To Unknown Problems
- Retirement Made Simple: FAQs and Town Hall Discussion
- Avoiding Difficult Conversations Is Riskier Than You Think
- OMG! Did U C Her Facebook Post?!?! The Risks and Rewards of Accessing and Viewing Employees' Online Activities



View all sessions online at www.lcwlegal.com/lcw-annual-conference-breakout-sessions

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Contact Ann DeGuilio, Marketing Coordinator, at 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**

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Workshop Training

- | | |
|------------|--|
| January 5 | “Sick and Disabled Employees”
Gateway Public ERC Santa Fe Springs Michael Blacher |
| January 13 | “Employees and Driving” and “Advanced Retirement Issues for California’s Public Employers”
Central Coast Personnel Counsel Santa Barbara Frances Rogers |
| January 18 | “Leaves, Leaves and More Leaves” and “Difficult Conversations”
South Bay ERC Santa Monica Laura Kalty |
| January 18 | “Embracing Diversity” and “Difficult Conversations”
Coachella Valley ERC Palm Desert Donna R. Evans |

January 18	“Public Sector Employment Law Update” Los Angeles County Human Resources Consortium Los Angeles Geoffrey Sheldon
January 19	“Discipline: Putting it into Practice” Orange County Human Resources Consortium Garden Grove Connie C. Almond
January 20	“Promoting Safety in Community College Districts” and “Leaves, Leaves and More Leaves” Bay Area CCD ERC Pleasanton Laura Schulkind
January 20	“Public Sector Employment Law Update” Southern California Community College Districts (SCCCD) ERC Webinar Mary Dowell
January 20	“Public Sector Employment Law Update” Central CA CCD ERC Webinar Mary Dowell
January 25	“Public Sector Employment Law Update” and “Legal Issues Related to Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce” San Joaquin Valley ERC Modesto Jack Hughes
January 26	“Managing the Marginal Employee” and “Annual Audit of Your Personnel Rules” North San Diego County ERC Vista Judith S. Islas
January 26	“Supervisory Skills for the First Line Supervisor/Manager” West Inland Empire ERC Rancho Cucamonga Donna R. Evans
January 26	“Mandated Reporting” Bay Area ERC Sunnyvale Alison Neufeld
January 26	“Labor Code 101 for Public Agencies” Napa/Solano/Yolo ERC Webinar Elizabeth Tom Arce
January 26	“Healthcare Reform” Bay Area ERC Sunnyvale Alison Neufeld and Randy Parent
January 26	“Managing the Marginal Employee” Gold Country ERC Webinar Jack Hughes
January 27	“Prevention and Control of Absenteeism and Abuse of Leave” Northern CA CCD ERC Webinar Mary Dowell
February 8	“Difficult Conversations” and “Front Line Defense” San Gabriel Valley ERC Alhambra Laura Kalty
February 8	“Front Line Defense” and “Difficult Conversations” Central Coast ERC Paso Robles Donna R. Evans
February 9	“Healthcare Reform” Gateway Public ERC Pico Rivera Heather DeBlanc
February 9	“Front Line Defense” Gateway Public ERC Pico Rivera Geoffrey S. Sheldon
February 9	“Terminating the Employment Relationship” and “Public Sector Employment Law Update” San Diego ERC Poway Mark Meyerhoff
February 9	“Difficult Conversations” Los Angeles County Human Resources Consortium Los Angeles Donna R. Evans
February 9	“Supervisory Skills for the First Line Supervisor/Manager” Northern California ERC San Ramon Kelly Tuffo
February 9	“Managing Leave Laws and the Discipline Process” Central Valley ERC Hanford Gage Dungy
February 10	“Governance Issues for Educational Entities” Central CA CCD ERC Webinar Eileen O’Hare-Anderson
February 10	“Sick and Disabled Employees” and “The Disability Interactive Process” SCCCD ERC Ventura Michael Blacher

- February 15 **“Front Line Defense” and “Ethics in Public Service”**
Coachella Valley ERC | La Quinta | Mark Meyerhoff
- February 15 **“Prevention and Control of Absenteeism and Abuse of Leave Law” and “Managing Performance Through Evaluation”**
Orange County Human Resources Consortium | Buena Park | Frances Rogers
- February 15 **“A Supervisor’s Employment Relations Primer”**
San Mateo County ERC | Brisbane | Kelly Tuffo
- February 22 **“Public Sector Employment Law Update” and “Advanced Investigations of Harassment Complaints”**
Ventura/Santa Barbara ERC | Santa Barbara | Connie C. Almond
- February 23 **“Healthcare Reform” and “Advanced Investigations of Harassment Complaints”**
North State ERC | Redding | Alison Neufeld
- February 23 **“Front Line Defense” and “Difficult Conversations”**
Imperial Valley ERC | Imperial | Laura Kalty
- February 28 **“Parent and Student Handbooks”**
Bay Area Jewish Schools Consortium | Foster City | Alison Neufeld
- February 29 **“Employee Due Process Rights and ‘Skelly’: A Guide to Implementing Public Employee Discipline” and “Performance Management: Evaluation, Documentation and Discipline”**
Sonoma/Marin ERC | Rohnert Park | Suzanne Solomon

Customized Training

- January 5 **“Managing the Marginal Employee and Prevention and Control of Absenteeism and Abuse of Leave”**
Madera Unified School District | Madera | Eileen O’Hare-Anderson
- January 6 **“FBOR”**
City of West Covina | Scott Tiedemann
- January 6 **“Managing the Marginal Employee”**
Merced Community College District | Merced | Eileen O’Hare-Anderson
- January 10 **“AB646: Mandating Fact-finding For MMBA Agencies Training”**
Liebert Cassidy Whitmore/PELRAC | Webinar | Richard Bolanos
- January 11, 13, 27 **“Supervisory Skills for the First Line Supervisor/Manager”**
Novato Fire Protection District | Morin Jacob
- January 12 **“Preventing Harassment, Discrimination and Retaliation in the Academic Setting/ Environment”**
Ohlone College | Newark | Eileen O’Hare-Anderson
- January 12 **“Conflict of Interest and Personnel Files”**
City of Beverly Hills | Mark Meyerhoff
- January 17 **“Ethics in Public Service”**
City of Salinas | Jack Hughes
- January 19 **“Guidelines and EEO Rules on Hiring and Selections”**
Ohlone College | Fremont | Eileen O’Hare-Anderson
- January 24 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of Fresno | Gage Dungy
- January 24 **“Managing Performance Through Evaluation & Discipline: Putting It Into Practice”**
Marin County Housing Authority | San Rafael | Jack Hughes
- January 24 **“Supervisory Skills for the First Line Supervisor/Manager”**
City of Glendale | Mark Meyerhoff
- January 25 **“Ethics in Public Service”**
City of Placentia | Laura Kalty

- January 25 **“Temporary Transitional Work”**
Municipal Pooling Authority - No CA | Walnut Creek | Alison Carrinski
- January 25 **“Ethics in Public Service and The Brown Act”**
Vallejo Sanitation & Flood Control District | Vallejo | Kelly Tuffo
- January 26 **“Electronic Communications”**
Mesa Consolidated Water District | Costa Mesa | Pilar Morin
- January 30 **“The Brown Act”**
Arcata Fire Protection District | Arcata | Jack Hughes
- February 8 **“Supervisory Skills for the First Line Supervisor/Manager”**
Novato Fire Protection District | Morin Jacob
- February 9, **“Preventing Workplace Harassment, Discrimination and Retaliation”**
22 City of Arcadia | Laura Kalty
- February 15 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of Fresno | Shelline Bennett
- February 15 **“Mitigating Employment Liability Risks for Law Enforcement”**
Employment Risk Management Authority | Walnut Creek | Morin I. Jacob
- February 15 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of Torrance | Laura Kalty
- February 21 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of Modesto | Gage Dungy
- February 21 **“Ethics in Public Service”**
Hartnell Community College District | Salinas | Laura Schulkind
- February 22, **“Difficult Conversations and Managing the Marginal Employee”**
24 Novato Fire Protection District | Morin Jacob
- February 24 **“EEO Training”**
Mt. San Antonio College | Walnut | Mary Dowell

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.

- January 18 **“Pension Reform Updates and What They Mean to Special Districts”**
California Special Districts Association | Webinar | Steven Berliner
- January 19 **“Public Sector Employment Law Update”**
International Public Management Association (IPMA) - HR San Diego Chapter Meeting | San Diego | Frances Rogers
- January 19 **“PERS Retirees and Independent Contractors Employment Issues”**
Southern California Public Labor Relations Council Meeting | Cerritos | Steve Berliner
- January 19 **“Communications and the New Media”**
League of California Cities New Mayors and Council Members Academy | Sacramento | Laura Kalty
- January 19 **“Workplace Bullying: The Silent Epidemic”**
Professionals in Human Resources Association (PIHRA) Annual Legal Update | Garden Grove | Oliver Yee
- January 21 **“Dollars and Sense: Are you the Only School that Enforces the Tuition Agreement?”**
California Association of Independent Schools (CAIS) Annual Conference | San Francisco | Donna Williamson and Grace Chan
- January 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

- January 21 **“Show Me the Money: The New Green Construction at Independent Schools”**
CAIS Annual Conference | San Francisco | Randy Parent
- January 21 **“Annual Legal Update for California Independent Schools”**
CAIS Annual Conference | San Francisco | Donna Williamson and Michael Blacher
- January 24 **“Workplace Bullying: The Silent Epidemic”**
PIHRA Annual Legal Update | Pomona | Oliver Yee
- January 25 **“Public Sector Employment Law Update”**
IPMA Sacramento Motherlode Meeting | Roseville | Richard Bolanos
- January 25 **“Legal Update”**
American Camp Association Annual Meeting | Newport Beach | Judith Islas
- January 25 **“Workplace Bullying: The Silent Epidemic”**
PIHRA Annual Legal Update | Burbank | Oliver Yee
- January 26 **“Legal Update”**
Wells Fargo Annual Business Officers & Administration Seminar | Los Angeles | Michael Blacher and Brian P. Walter
- January 30 **“Sexual Harassment”**
Mosquito and Vector Control Association of California Annual Conference | Burlingame | Morin Jacob
- February 2, 3 **“Liebert Cassidy Whitmore Public Sector Employment Law Conference”**
Liebert Cassidy Whitmore | San Francisco
- February 15 **“Successful Leadership – How It Can Keep You Out of Trouble”**
Public Agency Risk Management Association (PARMA) Annual Conference | Monterey | Donna R. Evans
- February 16 **“My First Closed Session”**
Southern California Public Labor Relations Council | Lakewood | Peter J. Brown
- February 16 **“Public Sector Employment Law Update”**
Southern California Public Labor Relations Council | Lakewood | J. Scott Tiedemann
- February 16 **“Performance Evaluations”**
IPMA - HR San Diego Chapter Meeting | San Diego | Judith S. Islas
- February 17 **“The High Cost of Retirement: Strategies for California’s Public Employer”**
PARMA Annual Conference | Monterey | Steven Berliner
- February 27 **“You Be The Judge! A Mock Trial Employment Law Trial”**
National Business Officers Association (NBOA) Annual Conference | Seattle | Michael Blacher and Donna Williamson
- February 27 **“You Be The Judge! A Mock Trial Employment Law Trial”**
NBOA Annual Conference | Seattle | Michael Blacher and Donna Williamson
- February 28 **“E-Signatures: Do They Create a Binding Agreement?”**
NBOA Annual Conference | Seattle | Michael Blacher
- February 28 **“What You Never Imagined: A Wage and Hour Audit of Independent Schools”**
NBOA Annual Conference | Seattle | Donna Williamson
- February 28 **“Innovative, but Illegal: Wage and Hour Misconceptions an Independent Schools”**
NBOA Annual Conference | Seattle | Donna Williamson
- February 29 **“You be the Judge! A Mock Employment Law Trial”**
National Association of Independent Schools Annual Conference | Seattle | Michael Blacher and Donna Williamson

To view our current calendar of events, please visit: www.lcwlegal.com/calendar.aspx

LCW LIEBERT CASSIDY WHITMORE

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