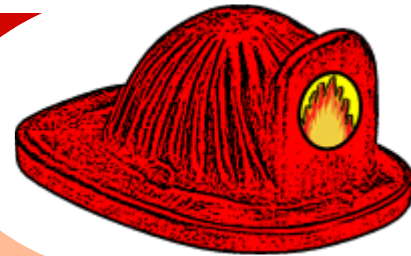


# FIRE WATCH



NEWS AND DEVELOPMENTS IN EMPLOYMENT LAW AND LABOR RELATIONS FOR CALIFORNIA FIRE SAFETY MANAGEMENT

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## FIRE WATCH

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## THE YEAR IN REVIEW: KEY PUBLIC EMPLOYMENT LAW CASES FROM 2011

### 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 on the employee's behalf. 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.

*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.

### DISCRIMINATION

*Pantoja v. Anton* (2011) 198 Cal.App.4th 87 [129 Cal.Rptr.3d 384]: Evidence of sexual harassment toward other employees who the current victim of discrimination did not know about can be offered at trial to prove that a supervisor has a discriminatory or biased intent.

### DUE PROCESS

*Walls v. Central Costa Transit Authority* (9th Cir. 2011) 653 F.3d 963: Employee was entitled to Skelly rights because a last chance agreement did not expressly waive such rights. This case highlights the importance of identifying in a last chance agreement the specific rights the employee is waiving and what effect the agreement will have on the employee's discipline.

### 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 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.

## FURLoughS

*Service Employees Internat. Union, Local 1000 v. Brown* (2011) 197 Cal.App.4th 252 [128 Cal. Rptr.3d 711]; *Brown v. Chiang*, 198 Cal.App.4th 1203 [132 Cal.Rptr.3d 48] (2011); *Brown v. Superior Court* (2011) \_\_\_ Cal.App.4th \_\_\_ [132 Cal.Rptr.3d 448]: State furloughs of employees were lawful because of the Legislature’s ratification through passing the annual budget acknowledging the furloughs.

## 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 layoff 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 SAFETY OFFICERS’ PROCEDURAL BILL OF RIGHTS

*Lanigan v. City of Los Angeles* (2011) 199 Cal. App.4th 1020, 132 Cal.Rptr.3d 156: Police officer’s limited waiver of rights under the Public Safety Officers Procedural Bill of Rights Act (“POBR”) was valid. The officer had been terminated and chose to accept a suspension in lieu of termination in exchange for a resignation and a waiver of his POBR appeal rights in any future discipline for similar misconduct. The California Supreme Court had previously decided in *County of Riverside v. Superior Court* (2002) 27 Cal.4th 793 [118 Cal.Rptr.2d 167] that POBR rights could be waived in certain circumstances. The waiver was enforceable in this case because the officer chose to waive his POBR rights with regards to specific, pending circumstances that the officer understood and considered. Conversely, blanket or pre-employment waivers that apply to future, unknown circumstances are generally invalid.

## 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.

## WAGE AND HOUR LAW

*Chavez v. City of Albuquerque* (10th Cir. 2011) 630 F.3d 1300: Court finds that sick leave buy-backs

should be included in the regular rate of pay under the Fair Labor Standards Act, but vacation buy-backs should not. This case also contains an excellent discussion of the proper method for calculating the regular rate of pay. The case specifically validates the approach whereby an employer divides total non-overtime compensation by all hours actually worked in the workweek (instead of scheduled hours) to determine the regular rate.

*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 general law cities, special districts, and other public agencies, 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. No county or charter city, however, is affected by this decision.

## RETALIATION/SEXUAL HARASSMENT

### **Police Officer who was Disciplined for Filing a False Sexual Harassment Complaint Failed to Prove that the City's Decision to Discipline him was Based on Retaliatory Intent, Rather than Violation of a Workplace Rule.**

Plaintiff Richard Joaquin, a Los Angeles Police Department motor officer, complained of sexual harassment by Sergeant James Sands in 2005. Specifically, Joaquin had complained that Sands was retaliating against him because he rebuffed Sands' sexual advances. At the time, Sands was Joaquin's watch commander and had supervisory authority over him. Joaquin submitted his complaint against Sands after Joaquin allegedly disobeyed an order from Sands, walked off duty without permission, and was told that a negative comment card would be placed in his file.

The department initiated an internal affairs investigation and concluded that Joaquin's complaint was unfounded. Sands then pursued a complaint against Joaquin for filing a false sexual harassment complaint and providing false information in connection

with an official investigation. Internal Affairs investigated Sands' complaint, agreed that Joaquin's charge was without foundation, and recommended that the matter be adjudicated by a Board of Rights. The Board of Rights found Joaquin's charge was fabricated and recommended termination. The Chief of Police adopted the recommendation and Joaquin was terminated effective March 2006.

Joaquin filed a petition for writ of mandate. The superior court granted the petition and ordered Joaquin reinstated, concluding that the Board of Rights' findings were not supported by the weight of the evidence.

Following his reinstatement, Joaquin filed suit against the City, alleging that his termination was in retaliation for filing a sexual harassment complaint in violation of the Fair Employment and Housing Act (FEHA). The case proceeded to trial and the jury received a form jury verdict which asked: (1) whether Joaquin's reporting sexual harassment was a motivating reason for the City's decision to terminate him; and (2) was the City's conduct a substantial factor in causing harm to Joaquin. Based on this special jury verdict form, the jury awarded Joaquin more than \$2 million for lost wages and emotional distress.

The City argued on appeal that Joaquin failed to introduce substantial evidence that the City's decision to terminate him was motivated by retaliatory intent. The Court of Appeal agreed, and found that although there was a direct causal connection between Joaquin's report of sexual harassment and the City's decision to terminate him, that decision was not made merely because Joaquin had reported sexual harassment, but because it concluded that he had fabricated the accounts of sexual harassment in an attempt to avoid discipline. The Court also concluded that the City was not required to prove that Joaquin in fact lied in connection with the investigation in order to avoid Title VIII liability, but only that it had a good faith belief that a false statement was knowingly made.

The Court held that once the City had proffered a legitimate reason for the termination – i.e., the making of a knowingly false complaint and providing false information in connection with an investigation– Joaquin was required to prove that the City acted based on intent to retaliate rather than on a good faith belief that he violated a workplace rule. The Court reasoned that to hold otherwise, and not require such a showing, would result in employees being immune from making unreasonable and

malicious internal complaints of discrimination. In connection with this finding, the Court held that the jury instruction (which was given in accordance with the standard Judicial Council forms) was given in error as it did not include an instruction on retaliatory intent. The Court urged the Judicial Council to redraft its jury instructions and corresponding special verdict forms on retaliation to clearly indicate that retaliatory intent is a necessary element of a retaliation claim under FEHA.

*Joaquin v. City of Los Angeles* --- Cal.Rptr.3d ----, 2012 WL 171723.

### **LCW Practice Pointer:**

*This is a very important decision for California employees. The decision highlights that employees claiming retaliation must be able to establish an employer's intent to retaliate as opposed to showing that the employee engaged in a protected activity which then became a motivating or substantial facts in a subsequent adverse action. Here, Joaquin's harassment complaint was obviously a factor in his termination, but the City was able to show it did not have retaliatory intent because it had a good faith belief that he falsely submitted the complaint. This case may make it easier for public agencies to defend against retaliation claims.*

## **POLICE OFFICERS' BILL OF RIGHTS**

### **City's Removal of Chief of Police without notice, a statement of reasons and an opportunity for administrative appeal violates the Public Safety Officers Procedural Bill of Rights.**

A former chief of police sued the City that had employed him, alleging breach of contract, wrongful termination, and violations of the Public Safety Officers Procedural Bill of Rights (POBRA). The plaintiff's claims were based on a written employment agreement which provided for an automatic three year contract renewal unless the City or the plaintiff provided six months notice of an intent not to renew the employment contract relationship. In 1997, the Plaintiff and City entered into an employment agreement under which the City retained the

Plaintiff as Chief of Police. In March 2000, the agreement automatically renewed for three years. In September 2003, the City advised Plaintiff that the council had decided not to renew his contract and Plaintiff was notified his employment would terminate on September 29, 2003. However, on September 5, 2003 Plaintiff was directed to immediately remove himself and his belongings from the Department and an acting chief was named the same day.

The trial court determined that the city breached its obligations under POBRA when it removed the police chief from office without notice, a statement of reasons and an opportunity for an administrative appeal as required by Section 3304 (c). However, the court granted the City's motion for summary adjudication as to plaintiff's wrongful termination claim on the ground that the former police chief failed to comply with the claim filing requirements in the Government Claims Act before he filed suit in court.

The City appealed the trial court's judgment. On appeal, the appellate court concluded that the trial court properly applied the provisions of POBRA when it determined that the police chief had been removed from office without the requisite notice, statement of reasons, and opportunity for an administrative appeal. Second, the appellate court held that the trial court properly interpreted the automatic renewal and notice provisions of the employment agreement when it determined those provisions permitted more than one automatic renewal and did not allow for oral notice of non-renewal. As a result, the court found that the city breached the employment contract when it terminated the police chief's employment and did not pay him the six months' severance benefits provided for in the contract. Finally, the appellate court found that the trial court had properly applied the Government Claims Act when it concluded that the claim filing requirement had not been met or waived.

In reaching its holding the appellate court rejected the City's arguments that it had not violated POBRA because the notice and appeal provisions apply only if a trial court first determines that a police chief has a protected property or liberty interest and that it had not "removed" the chief for purposes of the statute. However, the appellate court found that it was not necessary for the plaintiff to show a property interest in his or her job as a police chief, and that when the City appointed an interim chief, and told the plaintiff to remove his belonging some twenty days prior to the expiration

of the employment agreement, it had “removed” the plaintiff, subjecting the city to notice and statement of reasons requirement under Government Code section 3304 (c). Finally, the City argued it was not required to provide written notice of non-renewal. However, in looking at the specific language of the agreement, the appellate court upheld the trial court’s interpretation that written notice of non-renewal was required.

As for the Plaintiff, the appellate court rejected the argument that he was not required to file a claim under the Government Claims Act before filing a lawsuit in court, and to the extent he was, a letter from his counsel requesting back pay and reinstatement was sufficient under the Government Claims Act. The plaintiff argued in the alternative that even if his counsel’s letter did not substantially comply with the filing requirements under the Government Claims Act, it triggered the City’s obligation to provide him with notice of insufficiency. The appellate court found that plaintiff’s letter was insufficient to satisfy the claims filing requirement, and it had not triggered the City’s duty to provide a notice of insufficiency.

### **LCW Practice Pointer:**

*Police Chief removals are specifically covered under section 3304(c) of the POBR. Agencies must be sure to comply with the requirements under that section, such as providing written notice for removal and an opportunity for an appeal. Fire Chiefs enjoy similar protections under Government Code section 3254(c).*

*Robinson v. City of Chowchilla* (2011) --- Cal. Rptr. 3d ---; 2011 WL 6761073

## **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 ].

## LCW Practice Pointer:

*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, public employers 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.*

## DISABILITY DISCRIMINATION

### Employee Who Lost Prior Discrimination Lawsuit and Termination Appeal Could Not Relitigate in a New Lawsuit The Allegations of Unlawful Discrimination and Retaliation.

Karin White, a police officer with the City of Pasadena, suffered from multiple sclerosis. In 2004, the City terminated White for misconduct. White appealed the termination and the City reinstated her. White sued the City in state court alleging disability discrimination, harassment, and a violation of her privacy rights (White I). The jury found in her favor on the privacy claim, but the Court reversed.

In 2006, White was shot in the face in her home. White's son said that White had attempted suicide. White denied it. The Los Angeles Sheriff's Department and the Pasadena Police Department conducted separate investigations into the incident. Both concluded that White had attempted suicide. Consequently, the City terminated White for making false statements to the two law enforcement agencies. White appealed the decision. The City Manager upheld the termination. White filed a writ of mandamus to challenge the appeal in superior court under California Code of Civil Procedure section 1094.5 (White II). The superior court, and later the Court of Appeal, upheld the City's decision.

In 2008, White sued the City again, based on claims that were identical to her claims in her first lawsuit. She also claimed that her second termination constituted further disability discrimination, harassment, and retaliation under Section 1983 (White III). The district court dismissed the case

on the ground that White I and II precluded her from asserting the claims in White III. The Ninth Circuit Court of Appeals affirmed.

The doctrine of issue preclusion prohibits relitigation of issues argued and decided in prior proceedings. White argued that she could not have litigated the claims arising from her second termination in White I, because the second termination had not yet occurred. Although that is true, the Court held that the issues decided in White I precluded relitigation of the issues underlying White III—specifically, that the City engaged in discrimination against her and harassed her on the basis of a perceived disability.

Similarly, White II precluded White from relitigating the alleged retaliation claim because that argument was considered and rejected in White II.

*White v. City of Pasadena* (9th Cir. 2012) \_\_\_ F.3d \_\_\_ [2012 WL 118569].

## GPS DEVICES/FOURTH AMENDMENT

During the course of a criminal investigation of Antoine Jones for drug distribution, officers from a federal task force obtained a warrant from the Federal District Court in Washington D.C. to place a Global positioning system tracking device (“GPS”) on a vehicle registered to Jones’ wife. The vehicle was used exclusively by Jones. The warrant authorized installation in Washington D.C. within ten days. On the eleventh day officers installed the device on the exterior underbody of the vehicle while it was parked in a public place in Maryland.

The GPS tracking device was used to monitor the vehicle’s movements for 4 weeks. As a result of information obtained from the GPS device, Jones was arrested for conspiracy to distribute, and to possess with intent to distribute, five or more kilograms of cocaine and 50 or more grams of cocaine base. During his trial, Jones filed a motion to suppress all of the evidence obtained through the GPS tracking. The government conceded noncompliance with the warrant, but argued that a warrant was not required. The District Court granted Jones’ motion to suppress as to evidence obtained while the vehicle was in Jones’ garage, but denied the motion as to all of the other evidence, ruling that Jones’ Fourth Amendment rights were not violated because he had no reasonable expectation of privacy in his

movements in public. Jones was subsequently convicted and sentenced to life in prison.

The United States Court of Appeals for the District of Columbia Circuit overturned Jones's conviction, holding that the police action was a search because it violated Jones's reasonable expectation of privacy. After granting a writ of certiorari, the Supreme Court held that attaching the GPS device to the vehicle for the purpose of obtaining information was not a seizure. However, the Court unanimously held that the attachment of the GPS device to the vehicle, and use of that device to monitor the vehicle’s movements, constituted a search under the Fourth Amendment and that police erred by not obtaining a valid search warrant before attaching the device to Jones's car.

The Court reasoned that the Fourth Amendment was intended to protect “persons, houses, papers and effects” against unreasonable searches and seizures by the government. The Court then decided that the vehicle Jones used was an “effect” within the meaning of the Fourth Amendment. Because there was no meaningful interference with Jones’ ability to possess or use his vehicle, there was no seizure. However, the Court held that when the government “physically occup[ies] private property for the purpose of obtaining information,” a search of constitutional significance has occurred. By attaching the GPS device to Jones’ vehicle, “officers encroached on a protected area” and their trespass constituted a search. The Court also relied upon this trespass doctrine to hold that a search occurred but did not decide whether Jones had a reasonable expectation of privacy regarding the information collected by the GPS device.

*United States v. Jones* (2012) --- S.Ct. ----, 2012 WL 171117.

### LCW Practice Pointer:

*LCW does not interpret this case as limiting a public agency’s right to install GPS devices on agency owned vehicles. In other words, if the agency owns or leases a vehicle, that agency may use GPS, or similar electronic tracking devices, to monitor the location or movement of those vehicles. While a public agency is allowed to track the use of vehicles it owns or leases, it should implement this technology only where it has a legitimate business reason for doing so, and in a manner that puts employees on notice that they will be monitored. This should help the public agency avoid violation*

*of privacy rights arguments. Public agency employers should implement written policies that inform employees that their use of the agency vehicle will be monitored. The written policy should also discuss some of the business reasons for monitoring employees, such as measuring productivity, locating stolen vehicles, providing aid to vehicles that break down, or ensuring that employees are following their routes or assignments.*

## AGE DISCRIMINATION

### Hiring Committee's Request for Age and Projected Retirement Dates During the Hiring Period Constituted Direct Evidence of Age Discrimination.

The Army Corps of Engineers started a two-step hiring process for a Chief of Contracting position in its Kansas City District. The Corps first advertised an opening for a 120-day temporary position, and then announced a formal process to hire a permanent Chief of Contracting. Devon Shelley applied for both positions. At the time, he was the Assistant Chief of the Contracting Division for the Walla Walla District, held a master's degree, and had 29 years of experience in contracting (26 years with the Corps). He was 54 years old.

Kelly Butler reviewed the resumes and spoke with the applicants' references. She testified that Shelley's supervisor gave him a negative reference and that was the reason she did not hire him. The supervisor later testified, however, that she had never spoken to Butler and had only spoken to Regional Contracting Chief Joseph Scanlan and had given Shelley a positive reference. Forty-two year old Vince Marsh was the youngest candidate interviewed. Shelley's score was slightly too low to receive an interview. The Corps ultimately selected Marsh for the temporary and the permanent position.

Shelley sued the Corps for discrimination in violation of the Age Discrimination in Employment Act (ADEA). The district court granted summary judgment for the Corps. The Ninth Circuit Court of Appeals reversed.

To establish a *prima facie* case of age discrimination in a failure-to-promote case, the plaintiff must show

that he or she was (1) at least forty years old, (2) qualified for the position, (3) was denied the position, and (4) the promotion was given to a substantially younger person. The burden then shifts to the employer to set forth a legitimate, nondiscriminatory reason for its decision. Then, the plaintiff must produce evidence that the employer's reason was pretextual.

Here, there was no dispute that Shelley could establish a *prima facie* case. The Corps then stated that it selected Marsh because he was already employed in a GS-14 position, thus hiring him would be a lateral move, whereas it would have been a one step promotion for Shelley. Nevertheless, the Ninth Circuit found that Shelley produced sufficient evidence to create a triable issue as to whether the Corps' reason was pretextual.

Specifically, there was evidence that two individuals involved in the hiring process inquired about the projected retirement dates for employees in the contracting divisions during the hiring period for the temporary and permanent positions. A jury could infer that they considered age and projected retirement relevant to the hiring decision. In addition, there was sufficient evidence for a jury to find that Shelley was more qualified than Marsh for the position. Shelley had significantly more work experience related to contracting, more experience employed in the Corps, and superior educational qualifications. There was also conflicting testimony about whether Shelley received a negative reference.

*Shelley v. Geren* (9th Cir. 2011) \_\_\_ F.3d \_\_\_ [2012 WL 89215].

## WHISTLEBLOWER LAWS

### Whistleblower's Motives Are Irrelevant To Determining If Disclosure Was Protected; Disclosure of Possible Violation of Law to Supervisor May be Protected, But Not if the Supervisor is the Alleged Wrongdoer.

Pamela Mize-Kurzman was a dean for the Marin Community College District. Her direct supervisor was the Vice President of Student Learning, Anita Martinez. Beginning in April 2006, Mize-Kurzman made four disclosures of what she believed to be violations of law or regulations. First, Mize-Kurzman

was on the interview committee for a vacant position. The committee recommended one candidate and was then told to recommend two more because Martinez wanted a specific person for the position. Mize-Kurzman told Martinez that she thought Martinez's tampering with the process violated the Education Code. Second, Mize-Kurzman told Martinez and the District President that she thought a fund proposal was unconstitutional in targeting scholarship funds to Hispanic students. Third, Mize-Kurzman told Martinez that Martinez's policy of allowing students to register even if they had outstanding unpaid fees violated the Education Code. Finally, Martinez asked Mize-Kurzman to remove citizenship inquiries from the credit class application for admission and Mize-Kurzman told Martinez that the information was legally required.

In March 2007, the District removed Mize-Kurzman from her dean position and later reassigned her to a counselor position. She sued for whistleblower retaliation in violation of Labor Code section 1102.5 and the Education Code. The jury found in favor of the District. But the California Court of Appeal found that some of the jury instructions were erroneous and ordered a new trial.

The Court analyzed five jury instructions in particular. The first jury instruction was: Plaintiff must prove that any disclosure was made in good faith and for the public good and not for personal reasons. The Court found this instruction to be erroneous because a whistleblower's motivation is irrelevant to the consideration of whether his or her activity is protected. As long as the employee can voice a reasonable suspicion of a violation of law, the employee's report to a government agency may be sufficient to create liability for retaliation.

The second instruction was that: Debatable differences of opinion concerning policy matters are not protected disclosures. This instruction was incorrect because disclosure of policies that a plaintiff believed are unwise, wasteful, gross misconduct or the like are not protected. On the other hand, disclosures of policies that a plaintiff reasonably believed violated the law are protected even if these policies were also claimed to be unwise, wasteful, or to constitute gross misconduct.

The third instruction was: Information passed along to a supervisor in the normal course of duties is not a protected disclosure. Labor Code section 1102.5, however, expressly provides that a report made by an employee of a government agency to his or her

employer is a protected disclosure of information. The fourth instruction was: Reporting publicly known facts is not a protected disclosure. The Court found this instruction to be accurate because an employee's report to his or her supervisor about the supervisor's own wrongdoing is not a "disclosure" because the employer already knows about his or her wrongdoing.

Similarly, the Court upheld the fifth jury instruction: Efforts to determine if a practice violates the law are not protected disclosures. Discussion among employees and supervisors concerning various possible courses of action is healthy and normal, and may in fact avoid a violation.

The Court found the three erroneous jury instructions to be prejudicial and ordered a new trial.

*Mize-Kurzman v. Marin Comm. Coll. Dist.* (2011) \_\_\_ Cal.App.4th \_\_\_ [2012 WL 75015].

### **LCW Practice Pointer:**

*The case potentially makes it easier for public employees to file suit under Labor Code section 1102.5. For example, the Court held that a plaintiff can state a section 1102.5 claim even if the employee's complaint was in part motivated by personal animus towards a supervisor.*

## **LABOR RELATIONS**

### **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 "without a union representative" present. She also alleged that her termination was a result of age discrimination.

Jaroslawsky 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 Jaroslawsky 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. Jaroslawsky'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, Jaroslawsky could not show that the City and County retaliated against her because of her participation on the committee.

*Jaroslawsky v. City & County of San Francisco* (2011) PERB Dec No. 2222M [ \_\_\_ PERC ¶ \_\_\_].

*This PERB decision emphasizes that Weingarten rights are not triggered by any interaction between an agency and a represented employee. Agencies should consider any request for representation but there is no legal requirement to allow representation unless there is a meeting with the employee that the employee reasonably believes can result in discipline.*

## RETIREMENT

### Where Memorandum of Understanding Entitled Employees to Arbitrate Termination Decisions, Employee's Retirement Subsequent to Termination Did Not Waive His Right to Arbitration.

Riedinger worked for the County of San Joaquin. In February 2009, the County terminated his employment for misconduct. Riedinger immediately requested an arbitration to appeal his termination. In March 2009, he filed an application for service retirement and he began to receive pension payments soon thereafter. In May 2010, the County contacted the selected arbitrator and scheduled the hearing for August 2010. In July 2010, the County advised Riedinger that, in light of his retirement during the pendency of his termination appeal, the County would not participate in the scheduled arbitration.

The memorandum of understanding provides that an employee, at his or her choice, may appeal a disciplinary action to the Civil Service Commission or binding arbitration.

The Union filed a petition to compel arbitration in superior court. The superior court denied the petition, but the California Court of Appeal reversed.

The right to arbitration depends upon the parties' agreement to arbitrate a dispute. It is the agreement which determines the details of the process. The Court found that the MOU expressly allows Union members to elect arbitration as the vehicle to appeal a termination. The County argued that, once Riedinger retired from his job, he was no longer an "employee" under the MOU. The Court held, however, that where a former employee has been terminated, seeking retirement benefits does not result in a voluntary resignation from employment. Riedinger had already been separated from employment as a result of the termination.

The Court concluded that Riedinger's retirement did not constitute a waiver of his right to arbitrate and did not deprive the arbitrator of jurisdiction.

*Service Employees International Union, Local 1021 v. San Joaquin County* (2011) \_\_\_ Cal.App.4th \_\_\_ [2011 WL 6812543].

## 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. In *Kaiser Foundation Hospitals v. Wilson* the court held that it 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 and 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.

The Kaiser case increases an 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](http://www.calpublicagencylaboremploymentblog.com).*

## REDEVELOPMENT

### 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 Court’s ruling is undoubtedly a blow to cities and counties across the State who rely on redevelopment money to fund improvement projects within their communities. Thus, public agencies who are already facing financial difficulty should be prepared to deal with additional challenges that may result from the Court’s ruling. Agencies facing these issues should consider the following points. Agencies should be prepared to handle questions

from the media and employees about the impact of the Court's ruling on their financial condition. For example, questions regarding possible layoff or cuts to public services may arise. Because of increased scrutiny of public agencies in this "post-Bell" era, agencies must carefully evaluate the impact the Court's ruling will have on them before responding to any inquiries, and carefully scrutinize how they will address these issues publicly.

If layoffs are being considered, agencies are reminded to review any language relating to layoffs contained in memoranda of understanding, personnel rules and other policies. Agencies should pay specific attention to layoff procedures including any timelines associated with the layoff process and the manner in which employees are selected for layoff. In addition, the agency may have to meet and confer with the bargaining units of represented employees regarding the impact of any layoffs. Agencies should also think about how the layoffs will be communicated to employees.

Finally, the loss of redevelopment funding could trigger the need to seek additional cuts through labor negotiations. Consequently, agencies should prepare a budget summary regarding the agency's financial condition. In addition, agencies should familiarize themselves with language in the memoranda of understanding regarding re-opening negotiations and the timeline for conducting negotiations especially in light of the new requirements under AB 646.

*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).*

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[www.lcwlegal.com/lcw-attorney-authored-articles](http://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."

To view archive articles, please go to:

[www.lcwlegal.com/lcw-attorney-authored-articles?archive=1](http://www.lcwlegal.com/lcw-attorney-authored-articles?archive=1)



New  
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### Liebert Cassidy Whitmore Welcomes A 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](mailto:mlabadie@lcwlegal.com)



## CONGRATULATIONS



### Congratulations to Fresno Associate Melody Hawkins

Melody Hawkins was elected as a Board Member of the Fresno County Bar Association.

## TRAIN THE TRAINER SEMINARS

### 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

## TRAIN THE TRAINER REFRESHER SEMINARS

### TEACH MANDATORY HARASSMENT TRAINING BECOME RE-CERTIFIED UNTIL 2014

MAY 23, 2012 - LOS ANGELES, SAN FRANCISCO, FRESNO AND SAN DIEGO

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

You must have attended one of LCW's previous Train the Trainer sessions, to be eligible to attend

## REGISTRATION

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

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## MANAGEMENT TRAINING WORKSHOPS

**Firm Activities****Consortium Workshop Training**

- February 8 **“Front Line Defense” and “Difficult Conversations”**  
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 **“Public Sector Employment Law Update” and “Terminating the Employment Relationship”**  
San Diego ERC | Poway | Mark Meyerhoff
- February 9 **“Difficult Conversations”**  
Los Angeles County Human Resources Consortium | Los Angeles | Donna R. Evans
- February 9 **“Managing Leave Laws and the Discipline Process”**  
Central Valley ERC | Hanford | Gage Dungy
- February 9 **“Healthcare Reform” and “Front Line Defense”**  
Gateway Public ERC | Pico Rivera | Heather DeBlanc and Geoff Sheldon
- February 9 **“Supervisory Skills for the First Line Supervisor/Manager”**  
NorCal ERC | San Ramon | Kelly Tuffo
- 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”**  
Southern California Community College District (SCCCD) ERC | Ventura | Michael Blacher
- February 15 **“Front Line Defense” and “Ethics in Public Service”**  
Coachella Valley ERC | La Quinta | Mark Meyerhoff
- February 15 **“Managing Performance Through Evaluation” and “Prevention and Control of Absenteeism and Abuse of Leave Law”**  
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 **“Advanced Investigations of Harassment Complaints” and “Public Sector Employment Law Update”**  
Ventura/Santa Barbara ERC | Santa Barbara | Connie C. Almond
- February 22 **“Super Manager or Super Spy: The Use of Technology in Monitoring Employee Conduct”**  
Monterey Bay ERC | Webinar | Pilar Morin
- February 23 **“Difficult Conversations” and “Front Line Defense”**  
Imperial Valley ERC | Imperial | Laura Kalty
- February 23 **“Healthcare Reform” and “Advanced Investigations of Harassment Complaints”**  
North State ERC | Redding | Alison Neufeld
- 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

March 1	<b>“Managing Employee Injuries, Disability and Occupational Safety Part I”</b> Los Angeles County Human Resources Consortium   Los Angeles   Douglas M. Bray
March 2	<b>“Healthcare Reform”</b> Central CA CCD ERC   Webinar   Heather DeBlanc
March 7	<b>“Retaliation” and “Sick and Disabled Employees”</b> Gold Country ERC   Citrus Heights   Gage Dungy
March 7	<b>“Front Line Defense” and “Difficult Conversations”</b> Bay Area ERC   Palo Alto   Suzanne Solomon
March 8	<b>“Employees and Driving”</b> Gateway Public ERC   Huntington Park   Mark Meyerhoff
March 8	<b>“Labor Code 101 for Public Agencies”</b> East Inland Empire ERC   Fontana   Elizabeth Tom Arce
March 8	<b>“Public Sector Employment Law Update”</b> East Inland Empire ERC   Fontana   Laura Kalty
March 8	<b>“Managing Employee Injuries, Disability and Occupational Safety Part II”</b> Los Angeles County Human Resources Consortium   Los Angeles   Douglas M. Bray
March 9	<b>“Difficult Conversations” and “Managing the Marginal Employee”</b> Central Coast Personnel Council Consortium   Santa Barbara   Michael Blacher
March 14	<b>“Front Line Defense” and “Difficult Conversations”</b> Napa/Solano/Yolo ERC   Vacaville   Suzanne Solomon
March 14	<b>“Employee and Student Contracts” and “Private School Law 101”</b> Builders of Jewish Education Consortium   Los Angeles   Michael Blacher
March 15	<b>“Legal Issues Related to Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce” and “Sick and Disabled Employees”</b> Monterey Bay ERC   Hollister   Jack Hughes
March 15	<b>“Front Line Defense” and “Difficult Conversations”</b> West Inland Empire ERC   Diamond Bar   Laura Kalty
March 16	<b>“Current Developments in Workers’ Compensation”</b> Central CA CCD ERC   Webinar   Doug Bray
March 16	<b>“Terminating the Employment Relationship”</b> SCCCD ERC   Webinar   Eileen O’Hare-Anderson
March 16	<b>“Terminating the Employment Relationship”</b> Northern CA CCD ERC   Webinar   Eileen O’Hare-Anderson
March 16	<b>“Terminating the Employment Relationship”</b> Bay Area CCD ERC   Webinar   Eileen O’Hare-Anderson
March 20	<b>“Legal Issues Related to Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce” and “Front Line Defense”</b> South Bay ERC   Torrance   Mark Meyerhoff
March 21	<b>“Labor Code 101 for Public Agencies” and “Preventing Workplace Harassment, Discrimination and Retaliation”</b> San Gabriel Valley ERC   Alhambra   Elizabeth Tom Arce
March 21	<b>“Difficult Conversations” and “Managing the Marginal Employee”</b> Ventura/Santa Barbara ERC   Thousand Oaks   Donna R. Evans
March 21	<b>“Mandated Fact-finding: What Now?” and “Retaliation”</b> Sonoma/Marin ERC   Rohnert Park   Richard Bolanos
March 21	<b>“Terminating the Employment Relationship” and “Public Sector Employment Law Update”</b> Central Coast ERC   San Luis Obispo   Geoffrey S. Sheldon

- March 22 **“Sick and Disabled Employees”**  
Orange County Human Resources Consortium | Tustin | Peter J. Brown
- March 27 **“Difficult Conversations” and “Performance Management: Evaluation, Documentation and Discipline”**  
San Mateo County ERC | Foster City | Suzanne Solomon
- March 28 **“Front Line Defense” and “Difficult Conversations”**  
North State ERC | Redding | Alison Neufeld
- March 28 **“Supervisory Skills for the First Line Supervisor/Manager”**  
Mendocino County ERC | Ukiah | Kelly Tuffo
- March 28 **“Discipline: Putting It into Practice”**  
Humboldt County ERC | Fortuna | Suzanne Solomon
- March 29 **“Public Sector Employment Law Update” and “Terminating the Employment Relationship”**  
North San Diego County ERC | Carlsbad | Geoffrey Sheldon
- March 29 **“Terminating the Employment Relationship” and “Mandated Fact-finding: What Now?”**  
NorCal ERC | Concord | Richard Bolanos
- March 29 **“Discipline: Putting It into Practice”**  
Humboldt County ERC | Fortuna | Suzanne Solomon
- March 29 **“Terminating the Employment Relationship” and “Advanced FLSA”**  
Central Valley ERC | Hanford | Jesse Maddox

### **Customized Training**

- February 6 **“Board Meetings: Parliamentary Procedure and Brown Act Update”**  
San Gabriel Unified School District | Mary Dowell
- February 8 **“Supervisory Skills for the First Line Supervisor/Manager”**  
Novato Fire Protection District | Morin Jacob
- February 9, 22 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Arcadia | Laura Kalty
- February 10 **“Creating an Ethical Mindset”**  
Palomar College | San Marcos | Mary Dowell
- February 14 **“Ethics in Public Service”**  
Imperial Irrigation District | El Centro | Mark Meyerhoff
- February 15 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Fresno | Shelline Bennett
- February 15 **“Mitigating Employment Liability Risks for Law Enforcement”**  
ERMA | Walnut Creek | Morin I. Jacob
- February 15 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Torrance | Laura Kalty
- February 15 **“Ethics in Public Service”**  
Hartnell Community College District | Salinas | Laura Schulkind
- February 15, 28 **“Legal Update”**  
Orange County Probation | Santa Ana | J. Scott Tiedemann
- February 21 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Modesto | Gage Dungy
- February 22, 24 **“Difficult Conversations and Managing the Marginal Employee”**  
Novato Fire Protection District | Morin Jacob

- February 23 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Glendale | Donna R. Evans
- February 24 **“EEO Training”**  
Mt. San Antonio College | Walnut | Mary Dowell
- February 27 **“Performance Evaluations”**  
Tri-City Mental Health Center | Pomona | Laura Kalty
- February 29 **“Supervisory Skills for the First Line Supervisor/Manager”**  
South Coast Air Quality Management District | Diamond Bar | Mark Meyerhoff
- March 1 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
County of San Luis Obispo | Laura Kalty
- March 2 **“Leaves, Leaves and More Leaves”**  
Allan Hancock College | Santa Maria | Bruce Barsook
- March 6 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Fresno | Gage Dungy
- March 8 **“Managing Performance: How to Manage the Marginal Employee; Performance Improvement Plan”**  
Ohlone College | Fremont | Eileen O’Hare-Anderson
- March 9, 23 **“Difficult Conversations and Managing the Marginal Employee”**  
Novato Fire Protection District | Morin Jacob
- March 13, 15 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Torrance | Donna R. Evans
- March 15 **“Public Sector Employment Law Update and HR Roundtable”**  
City of Beverly Hill | Mark Meyerhoff
- March 21 **“Preventing Workplace Harassment, Discrimination and Retaliation”**  
City of Arcadia | Laura Kalty

### **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).

- February 10 **“Super Manager or Super Spy: The Use of Technology in Monitoring Employee Conduct”**  
UC Davis Forensic Science Lab Leadership Program | Davis | Jack Hughes
- February 15 **“Successful Leadership – How It Can Keep You Out of Trouble”**  
Public Agency Risk Management Association Annual (PARMA) Conference | Monterey | Donna R. Evans
- February 16 **“My First Closed Session”**  
Southern California Public Labor Relations Council | Lakewood | Peter J. Brown
- February 16 **“Performance Evaluations”**  
International Public Management Association (IPMA) - HR San Diego Chapter Meeting | San Diego | Judith S. Islas
- February 16 **“Public Sector Employment Law Update”**  
Southern California Public Labor Relations Council | Lakewood | J. Scott Tiedemann
- 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 28 **“What You Never Imagined: A Wage and Hour Audit of Independent Schools”**  
NBOA Annual Conference | Seattle | Donna Williamson
- February 28 **“E-Signatures: Do They Create a Binding Agreement?”**  
NBOA Annual Conference | Seattle | Michael Blacher
- February 28 **“Innovative, but Illegal: Wage and Hour Misconceptions in Independent Schools”**  
NBOA Annual Conference | Seattle | Donna Williamson
- March 1 **“When the Walls Come Tumbling Down: MySpace, Your Space, School Space”**  
NAIS Annual Conference | Seattle | Michael Blacher and Donna Williamson
- March 2 **“Board Relations (The Brown Act)”**  
Cerritos College Leadership Academy | Cerritos | Mary Dowell
- March 2 **“Innovative, but Illegal: Wage and Hour Misconceptions at Independent Schools”**  
NAIS Annual Conference | Seattle | Donna Williamson
- March 8 **“The New Fact Finding Requirements and Changes to AB 1028”**  
County Personnel Administrators Association of California | Fresno | Gage Dungy and Shelline Bennett
- March 8 **“Legislative and Case Law Update”**  
California County Counsel’s Association Employment Law Conference | Monterey | Cynthia O’Neill
- March 19 **“When Johnny (or Janie) Comes Marching Home - Hooray, Your Veterans Are Back... Now What?”**  
College and University Professional Association for HR (CUPA-HR) Western Region Conf. | Sacramento | Alison Neufeld
- March 19 **“Social Networking or Not Working: Do’s and Don’ts in Building on Relationships in Social Media”**  
CUPA-HR Western Region Conf. | Sacramento | Pilar Morin
- March 22 **“Best Personnel Practices”**  
California & Pacific Southwest Recreation & Park Training Conference | Long Beach | Mark Meyerhoff
- March 22 **“Labor Law Update”**  
Southern California Public Management Association Annual Conference | Alhambra | J. Scott Tiedemann

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

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