LCW Liebert Cassidy Whitmore

# Briefing Room

News and developments in employment law and labor relations
for California Law Enforcement Management.

July/August 2019

## INDEX

Discrimination & Whistleblower . . . 3
Family Leave. . . . . . . . . . . . . . . . . . . . 8
First Amendment . . . . . . . . . . . . . . . . 7
Labor Relations. . . . . . . . . . . . . . . . . . 1
Public Records Act . . . . . . . . . . . . . . 2
Retirement. . . . . . . . . . . . . . . . . . . . . . 6
Wage & Hour . . . . . . . . . . . . . . . . . . . 4

## LCW NEWS

Fifty Year Anniversary. . . . . . . . . . . 9
Firm Activities . . . . . . . . . . . . . . . . . 12
Internal Affairs Seminar . . . . . . . . . 10
Law350. . . . . . . . . . . . . . . . . . . . . . . . 11
New to the Firm . . . . . . . . . . . . . . . . 10
Southern CA Rising Star . . . . . . . . . 11

*Briefing Room* is published monthly for the benefit of the clients of Liebert Cassidy Whitmore. The information in *Briefing Room* should not be acted on without professional advice.

**Los Angeles** | Tel: 310.981.2000
**San Francisco** | Tel: 415.512.3000
**Fresno** | Tel: 559.256.7800
**San Diego** | Tel: 619.481.5900
**Sacramento** | Tel: 916.584.7000

©2019 Liebert Cassidy Whitmore
**www.lcwlegal.com**

## LABOR RELATIONS

### *PERB Can Decide Cases Brought By Employee Organizations That Represent PC 830.1 Peace Officers.*

At issue in this case was whether: 1) the Public Employment Relations Board ("PERB") has jurisdiction to decide claims brought by employee organizations that represent "peace officers" as that term is defined in Penal Code 830.1; and 2) Orange County was obligated to bargain changes to an ordinance creating an Office of Independent Review ("OIR") that advised the Sheriff-Coroner on certain in-custody incidents and complaints against law enforcement personnel. PERB held for the Association of Orange County Deputy Sheriffs on the jurisdictional issue, and for the County on the merits.

During the relevant time, the Association was a bargaining unit composed of 1693 peace officers, as that term is defined in Penal Code 830.1, and 115 non-peace officers. (Penal Code 830.1 defines persons who are "peace officers" to include deputy sheriffs and police officers.)

In 2008, the County passed an ordinance creating an OIR to advise the Sheriff-Coroner regarding in-custody incidents involving death or serious injury and complaints against law enforcement personnel. In 2015, the County notified the Association of its intent to change its OIR ordinance to extend OIR authority to cover the District Attorney's Office, among other changes. The Association argued that the decision to change the OIR ordinance and the effects of the decision were matters within the scope of representation. In December 2015, the County implemented changes to the OIR without meeting and conferring with the Association. The Association then filed an Unfair Practice Charge ("UPC").

As part of its response to the UPC, the County moved to dismiss, arguing PERB lacked jurisdiction to hear claims brought by 830.1 peace officers. According to the County, Government Code section 3511 of the Meyers Milias Brown Act ("MMBA") barred claims by persons who are peace officers as defined in 830.1 of the Penal Code, as well as claims that impact Penal Code 830.1 peace officers. The ALJ disagreed, relying on a 2015 PERB decision that found the Board had jurisdiction over charges brought by employee organizations representing bargaining units that include, in whole or in part, persons who are peace officers. The County then excepted to the ALJ's ruling on jurisdiction and the matter was heard before the PERB Board.

After a lengthy discussion of statutory history and statutory framework, PERB affirmed the ALJ's decision and rejected the County's arguments, holding that PERB has jurisdiction over claims brought by employee organizations that

represent or seek to represent bargaining units composed partially or entirely of Penal Code 830.1 peace officers. In other words, while section 3511 of the MMBA prohibits people who are peace officers pursuant to Penal Code 830.1 from filing claims with PERB, their Associations may do so.

PERB found the County did not have an obligation to bargain changes to its OIR ordinance that: expanded the jurisdiction of the OIR; authorized the OIR to work with departments beyond the Sheriff-Coroner; and authorized the OIR attorneys to provide legal advice on non-law enforcement employee misconduct. According to the Association, the changes to the OIR were within the scope of representation because legal advice provided by the OIR attorneys could influence disciplinary decisions, which would affect the discipline process and disciplinary procedure. Disciplinary procedure is a mandatory subject of bargaining under the MMBA. PERB disagreed, finding the changes to the OIR ordinance only concerned management's direction to its legal counsel for the performance of legal services, which is outside the scope of representation and the MMBA's meet-and-confer requirement. PERB drew a distinction between citizen review board procedures and advice of legal counsel, finding that the directions an employer gives its legal counsel about how to provide it with legal advice is so attenuated from the employment relationship that it is outside the scope of representation. PERB concluded, "[u]ltimately, the OIR ordinance functions much like a contract for legal services and concerns only how OIR attorneys and staff will provide the County with legal advice; it does not change or have effects on the disciplinary procedure."

*Association of Orange County Deputy Sheriffs v. County of Orange* (2019) PERB Decision No. 2675-M

***Note:***

*Prior to this decision, employee organizations that solely represented peace officers as that term is defined in Penal Code 830.1 were limited to filing claims for alleged MMBA unfair practice charges in the California Superior Court. This PERB decision makes clear that those organizations may file claims directly with PERB. Unless the California Court of Appeal overturns this decision, law enforcement agencies will likely see an increase in PERB claims.*

# PUBLIC RECORDS ACT

### *Governor Signs Budget Bill Clarifying Public Access To Body Camera Videos.*

On June 27, 2019, California Governor Gavin Newsom signed into law Senate Bill No. 94 ("SB 94"). SB 94 contains clean-up language for recent changes to Government Code section 6254 regarding the California Public Records Act ("PRA"). As a budget trailer bill, SB 94 took effect immediately upon the Governor signing the bill into law.

Government Code section 6254 requires an agency to disclose video and audio recordings of "critical incidents" involving the use of force resulting in great bodily injury, or the discharge of a firearm by a peace officer or custodial officer at a person. The disclosure of a record can be delayed for between 45 days up to one year, depending on the circumstances, if disclosure would undermine an active criminal or administrative investigation.

Under the PRA, withholding of records is also permitted to protect specified privacy interests. Specifically, an agency may withhold records if disclosure would violate the privacy interests of a person depicted in the recording and if the person's privacy cannot be adequately protected through redaction. However, an agency must disclose the record to the subject whose privacy is sought to be protected (or to their legal representative). SB 94 addresses when that disclosure must occur. SB 94 amends Section 6254 to require an agency to provide the requesting party with the estimated date for disclosure of the recording, and allows the agency to withhold the recording if the aforementioned conditions are met.

Sen. Bill No. 94 (2019-2020 Reg. Sess.)

**Note:**

*PRA requests continue to raise complicated legal questions regarding whether records are public records and/or exempt from disclosure. LCW attorneys can help agencies comply with the PRA and avoid court orders to disclose records or pay attorney's fees.*

## DISCRIMINATION & WHISTLEBLOWER

### *Trial Court Erred By Dismissing Deputy District Attorney's Disability Discrimination and Whistleblower Claims.*

Christopher Ross worked for the County of Riverside ("County") as a deputy district attorney. In 2011, the County assigned Ross a murder case in which Ross believed the accused person was innocent. Ross emailed his supervisors twice indicating that he did not believe the County could prove the case beyond a reasonable doubt, and recommending that the dismissal of the case.

The case was not dismissed. Over the next two years, Ross obtained more evidence exculpating the accused person. For example, Ross: received DNA testing results indicating the accused did not commit the crime; identified a witness who implicated the accused's roommate in the murder; and obtained recordings of two telephone calls the roommate made from jail in which the roommate admitted to murdering the victim. Despite Ross' repeated requests from 2011 to 2013, the district attorney's office did not dismiss the case until February 2014. Ross believed that the district attorney's office was violating the accused's due process rights by pursuing an allegedly malicious prosecution, but Ross never expressly informed his supervisors that he believed the office was violating state or federal law.

During this same time, Ross learned he was exhibiting neurological symptoms that required evaluation and testing. While Ross was undergoing testing at an out-of-state clinic, he requested a number of accommodations to reduce his workplace stress. However, the district attorney's office either denied Ross' requests or did not follow through with the accommodations.

A few months later, the assistant district attorney sent Ross a memorandum directing him to provide a doctor's note indicating his work restrictions so that the County could evaluate whether it could reasonably accommodate him. Ross explained that his out-of-state testing center had a policy not to provide such documentation, but he offered to provide a note from his primary care physician. The County refused to accept a note from his primary care physician, so Ross never provided the County with any documentation.

After Ross missed approximately three weeks of work over a six-month period to attend out-of-state testing, the County placed him on paid administrative leave of absence pending the outcome of a fitness-for-duty examination. A little over a week later, Ross' counsel sent the County a letter informing the County that Ross deemed himself constructively discharged as of the date of the letter. While the County attempted to send Ross subsequent letters directing him to return to work, Ross did not return. After repeated attempts, the County sent Ross a final notice indicating that the County considered him to have abandoned his job.

Ross then filed suit against the County alleging a violation of Labor Code section 1102.5 and the Fair Employment and Housing Act's ("FEHA") disability-related provisions. The trial court dismissed Ross' lawsuit, and Ross appealed.

The Court of Appeal concluded that the trial court improperly dismissed Ross' claims. In order to establish a claim for violation of Labor Code section 1102.5, an employee must show: (1) participation in protected activity; (2) an adverse employment action; and (3) a causal link between the protected activity and the adverse employment action. Under Labor Code section 1102.5, an employee participates in protected activity by disclosing "'reasonably based suspicions' of illegal activity." The court noted the trial court erred in dismissing Ross' Labor Code section 1102.5 claim because Ross had sufficient evidence of protected activity. For example, Ross brought the evidence exculpating

the accused to his supervisors, and he repeatedly recommended dismissing the case, at least in part, because of his belief that continued prosecution would violate the accused's due process rights and well as Ross' ethical obligations under state law. The court noted that while Ross did not expressly say that he believed the County was violating any specific state or federal law by continuing to prosecute the accused, Labor Code section 1102.5 does not require that.

Similarly, the court found that the trial court erred in dismissing Ross' claims under the FEHA. The FEHA prohibits an employer from discharging or discriminating against an employee because of a physical disability. The FEHA also prohibits an employer from failing to reasonably accommodate an employee's known physical disability, from retaliating against an employee who has requested reasonable accommodation, and from failing to conduct a timely, good faith interactive process with an employee who has requested reasonable accommodation. Ross presented enough evidence to show a physical disability, and that the County was aware of his potentially disabling condition. For example, Ross told his supervisors about his symptoms and that he was being tested at an out-of-state clinic, he missed work periodically to travel to testing, and the County placed him on a paid leave of absence pending a fitness for duty examination.

*Ross v. County of Riverside,* 36 Cal.App.5th 580 (2019).

***Note:***

> *This case illustrates that an employee need not say that the public agency employer is violating any particular state or federal law to pursue a whistleblower claim under Labor Code section 1102.5. This case is also a cautionary tale about FEHA disability and reasonable accommodation claims; a careful analysis of the facts and law is always required in this high-risk area.*

## WAGE & HOUR

***California Supreme Court Limits State Correctional Employees' Claims For Additional Compensation.***

In these consolidated class action lawsuits, correctional employees sued the State of California and various departments of the State government for violations of wage and hour law. The correctional employees alleged that they were entitled to additional compensation for the time they spent in pre- and post-work activities. These activities included traveling between the outermost gate of the prison facility and the employees' work posts within the facility; briefing at the beginning and end of each shift; checking in and out mandated safety equipment; and submitting to searches at various security checkpoints.

The California Supreme Court divided these activities into two categories: "entry-exit walk time" and "duty-integrated walk time." Entry-exit walk time is the time an employee spends after arriving at the prison's outermost gate but before beginning the first activity the employee is employed to perform (plus the analogous time at the end of the employee's work shift). Duty-integrated walk time is the time an employee spends after beginning the first activity the employee is employed to perform but before the employee arrives at his or her assigned work post (plus the analogous time at the end of the employee's work shift).

In each of the class action complaints, the correctional employees alleged the State failed to pay minimum wages, breached their contract, and failed to pay overtime compensation. The trial court divided the employees into two subclasses: (1) unrepresented supervisory employees; and (2) represented employees. The California Supreme Court addressed the causes of action for each subclass of employees separately.

**Minimum Wage Claims**

For the unrepresented supervisory employees' minimum wage claim, the Court first had to determine which regulations applied: the Industrial Welfare Commission's ("IWC") wage order No.

4-2001; or CalHR's Pay Scale Manual. The California Legislature delegated authority to the IWC to adopt regulations regarding wages, hours, and working conditions in the state of California. Similarly, the Legislature delegated authority to CalHR to adopt regulations governing the terms and conditions of State employment, which includes setting the salaries of state workers and defining their overtime.

IWC wage order No. 4-2001 provides that employers must pay their employees at not less than a designated hourly rate "for all hours worked." The order defines all hours worked as "the time during which an employee is subject to the control of any employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." While most provisions of the order do not apply to state or local public agency employees, the minimum wage provision does. Under this definition, entry-exit walk time would likely be considered hours worked.

In contrast, the Pay Scale Manual adopts the narrower definition of hours worked stated in the Fair Labor Standards Act ("FLSA"), the federal wage and hour law. The Pay Scale Manual provides "[f]or the purpose of identifying hours worked under the provisions of the [FLSA], only the time spent which is controlled or required by the State and pursued for the benefit of the State need be counted." The FLSA excludes entry-exit walk time from hours worked.

While the unrepresented correctional employees argued the more employee-friendly standard from the IWC wage order should apply, the Court disagreed. The Court concluded that the two definitions of "hours worked" could not be harmonized, and therefore, the CalHR Pay Scale Manual acted as an exemption to the IWC wage order. The Court noted that because the Legislature explicitly delegated to CalHR the authority to adopt regulations for State employees, the Pay Scale Manual, including its narrow FLSA-based definition of compensable work time, governed the rights of the unrepresented employees. Because the FLSA definition applied, the Court reasoned that the unrepresented employees were not entitled to compensation for entry-exit walk time. However, duty-integrated walk time is included as work time under the FLSA. If the State did not take into consideration this time, the unrepresented employees may be entitled to additional compensation.

With regard to the represented employees' minimum wage claim, the Court found that they were not entitled to additional compensation. The memoranda of understanding ("MOU") at issue specifically provided the represented employees with four hours of compensation for duty-integrated walk time. As a result, they were not entitled to additional compensation for that time. Also, the evidence did not suggest that the four hours was insufficient. The Court noted that although the MOUs did not specifically refer to entry-exit walk time, they expressly stated that they constituted the entire understanding of the parties regarding the matters they addressed, and compensation for pre- and post-work activities was one of those matters. Therefore, the represented employees were also not entitled to additional compensation for entry-exit walk time. Further, the Court highlighted that the Legislature approved the MOUs, which precluded the represented employees from relying on more general state laws to support their minimum wage claims.

**Breach of Contract Claims**

For the unrepresented employees' breach of contract claim, the Court determined that because CalHR's Pay Scale Manual controlled their right to compensation, they could only recover any uncompensated duty-integrated walk time under a breach of contract theory. The Court concluded that if the unrepresented employees performed duty-integrated walk time and did not receive overtime compensation for it, they may have a contractual interest in receiving that compensation.

For the represented employees, the Court concluded their breach of contract claim failed. The Court again noted that the Legislature approved the MOUs governing their employment, and the unrepresented employees' contract rights derive from, and are limited to, the legislatively-created terms of their employment. Thus, they were not entitled to additional compensation under a breach of contract theory.

**Overtime Compensation Claims**

Finally, the Court concluded that the unrepresented employees could not maintain a cause of action for unpaid overtime compensation under California Labor Code sections 222 or 223. The Court noted that section 222 only applies when an employer withholds "the wage agreed upon" in "any wage agreement." Thus, it did not apply to the unrepresented employees because their employment was not governed by an agreement. Similarly, the Court noted that section 223 only applies to "secret deductions" or "kick-backs," which were not alleged.

Similarly, the Court found that the represented employees' overtime compensation claims under Labor Code sections 222 and 223 were without merit. For the section 222 claim, the Court noted that the represented employees could not prove that any duty-integrated walk time ever went uncompensated. Additionally, the MOUs precluded compensation for entry-exit walk time. Accordingly, the State did not withhold the wage agreed upon in a wage agreement. Further, as was the case with the unrepresented employees' section 223 claim, the represented employees' allegations did not involve "secret deductions" or "kick-backs."

*Stoetzl v. Department of Human Resources,* 2019 WL 2722597 (2019).

***Note:***

*Because wage and hour claims are often brought on behalf of a large category or class of employees, these lawsuits can subject public agencies to substantial liability. LCW attorneys have defended many FLSA collective actions and can assist public agencies to limit or eliminate liability.*

# RETIREMENT

### *CalPERS Could Not Reinstate Previously Terminated Employee To A Higher Classification.*

Clare Byrd worked as an Administrative Analyst/Specialist at San Diego State University ("SDSU"), which is part of the California State University ("CSU") system. In December 2014, after 14 years of employment, SDSU dismissed Byrd. Byrd subsequently filed a retirement application with CalPERS, and CalPERS accepted her application.

Byrd also filed an appeal with the State Personnel Board ("SPB") to challenge her dismissal. Byrd and CSU ultimately agreed to settle the appeal. One provision of their settlement agreement directed CSU to reinstate Byrd to a higher classification, which Byrd had not previously held, and pay Byrd the higher salary associated with that classification while CSU applied for medical retirement benefits on Byrd's behalf. The SPB approved the settlement agreement.

Following the settlement agreement, CalPERS refused to reinstate Byrd to the higher classification because Government Code section 21198, part of California's retirement law, only authorized Byrd's reinstatement to a job she previously held.

In light of CalPERS' refusal to reinstate Byrd to the higher classification, the SPB issued a decision voiding its prior approval of the settlement agreement. Byrd then asked the superior court to compel CalPERS to reinstate her to the higher position. The trial court denied Byrd's request, and Byrd appealed.

On appeal, the court considered whether Government Code section 21198 prevented CalPERS from reinstating Byrd to a classification she had not previously held. In pertinent part, section 21198 reads, "[a] person who has been retired under this system for service following an involuntary termination of … employment, and who is subsequently reinstated to that employment . . . shall be reinstated from retirement." The court, relying on the plain meaning of the statute, determined that the term "reinstate" means that the employee is returning to the specific, previously-held position or classification.

The court noted that while a reinstatement to a different classification at a higher salary level could be consistent with section 21198 if the different classification had some connection to the underlying dispute, Byrd alleged no such connection in this case. Instead, the court reasoned that Byrd's reinstatement to the different classification was merely part of a package of benefits CSU had offered in exchange for the promises it received from Byrd in the settlement agreement. Therefore, the court found that section 21198 prevented CalPERS from complying with the settlement agreement's directive that Byrd be reinstated to a different job classification.

*Byrd v. State Personnel Board,* 36 Cal.App.5th 899 (2019).

***Note:***

*This case illustrates the complexities of California's retirement law. Public agencies should ensure they are not reinstating an employee to a different classification as part of a settlement agreement if the classification has no connection to the underlying dispute.*

## FIRST AMENDMENT

### *Transit Authority Unreasonably Rejected Union's Proposed Bus Advertisements.*

The Spokane Transit Authority ("STA") generates revenue through ads on its busses. After receiving complaints about the content of a number of ads on its buses, STA adopted its Commercial Advertising Policy ("Ad Policy"). STA only permits two types of ads under its Ad Policy: "commercial and promotional advertising" and "public service announcements." Further, the Ad Policy expressly prohibits "public issue" advertising, which is defined as advertising "expressing or advocating an opinion, position, or viewpoint on matters of public debate about economic, political, religious or social issues."

In 2016, Amalgamated Transit Union Local 1015 ("ATU"), the union that represents all of STA's transit operators and maintenance, clerical and customer service employees, submitted a proposed ad to the media vendor STA contracted with to run ads. The ad stated, "Do you drive: Uber? Lyft? Charter Bus? School Bus? You have the Right to Organize! Contact ATU 1015 Today at 509-395-2955." The ad prominently featured ATU's logo.

However, after a delay in the approval process for the proposed ad, STA informed ATU that it had terminated its contract with the media vendor and was no longer accepting new ads until it chose a new vendor through a public proposal process.

Following STA's rejection of its ads, ATU filed a lawsuit alleging violations of its rights under the First and Fourteenth Amendments of the U.S. Constitution. ATU alleged that STA discriminated on the basis of viewpoint by prohibiting only labor organizations from placing ads. ATU also alleged that the Ad Policy's restrictions on ads were unreasonable. While the trial court found no viewpoint discrimination, it concluded that: it did not need to defer to STA's way of applying its Ad Policy; and that ATU's proposed ad constituted "commercial and promotional advertising," not "public issue" advertising. Therefore, the court found that STA was unreasonable in denying the ad.

On appeal, STA argued that the trial court should have deferred to its way of applying its Ad Policy as courts in other jurisdictions have done. STA also argued that it was reasonable to reject the ad as "public issue" advertising because the ads could be interpreted as a foray into the public debate between labor unions and opposition groups. Finally, STA argued that ATU's ad did not constitute "commercial and promotional advertising." The Ninth Circuit Court of Appeals rejected all of STA's arguments.

The Ninth Circuit noted that STA's buses are limited public forums, which means that STA can restrict the content of speech on its buses so long as the restrictions are reasonable and viewpoint neutral. The court identified the three components of the reasonableness requirement: (1) "whether [the policy]'s standard is reasonable 'in light of the purpose served by the forum,'"; (2) whether "the standard [is] 'sufficiently definite and objective to prevent arbitrary or discriminatory enforcement by [the government] officials'"; (3) and "whether an independent review of the record supports [the

agency]'s conclusion" that the ad is prohibited by the agency's policy. The court applied this three-part test in addressing each of STA's arguments.

First, the court found that the trial court should not defer to how STA applied its advertising policy. The court noted that while other jurisdictions give agencies deference, the case law in Ninth Circuit is clear and does not require deference.

Second, the court applied the three-part test to review STA's decision to exclude ATU's ad under "public issue" advertising. The court noted that the decision was unreasonable under the third part of the test because an independent review of the facts did not support STA's decision. The record showed that since 2008, STA buses have carried stickers on the inside that displayed ATU's logo and stated that "This vehicle is operated and maintained by union members Amalgamated Transit Union AFL CIO/ CLC." Further, these stickers, and other union ads that STA ran previously, never elicited a complaint. Thus, the facts did not suggest that ATU's ads would cause conflict or debate to the detriment of STA, and STA unreasonably rejected the ads.

Lastly, the court considered whether STA properly rejected ATU's proposed ad because it did not qualify as "commercial and promotional advertising." Again, the court, relying on the third part of the test, determined that STA's decision was unreasonable. The court noted that STA's definition of "commercial and promotional advertising" is broad and promotes any entity engaged in commercial activity. The court found that because ATU's ad promotes an organization that engages in commercial activity, STA unreasonably rejected ATU's ad.

*Amalgamated Transit Union Local 1015 v. Spokane Transit Authority*, 2019 WL 2750841 (2019).

***Note:***

> *An individual or entity's free speech rights depends on the forum in which the speech occurs: a public forum; a limited public forum; or a nonpublic forum. Speakers enjoy the strongest First Amendment protections in public forums and the weakest in nonpublic forums.*

## FAMILY LEAVE

### *Governor Signs Budget Bill Into Law Increasing Paid Family Leave To Eight Weeks.*

On June 27, 2019, California Governor Gavin Newsom signed into law the State Budget and accompanying budget trailer bills. One of those bills, Senate Bill No. 83 ("SB 83") amends Unemployment Insurance Code section 3301 regarding the Paid Family Leave program that is administered by the Employment Development Department. Specifically, SB 83 increases the maximum length of paid family leave benefits from 6 to 8 weeks, effective July 1, 2020. SB 83 also notes that the Governor will create a task force to develop a proposal to increase paid family leave duration to a full six months by 2021-2022. The bill indicates the Office of the Governor will present the task force findings and observations to the Legislature by November 2019.

Sen. Bill No. 83 (2019-2020 Reg. Sess.)

***Note:***

> *Only those public entities that have opted into the Paid Family Leave program will be impacted by this new legislation.*

§

# Daniel Cassidy Celebrates Fifty Years of Practicing Law

Liebert Cassidy Whitmore would like to congratulate **Daniel C. Cassidy** on celebrating fifty years of practicing law. Dan, a founding partner of Liebert Cassidy Whitmore, is among the most experienced and accomplished practitioners in the fields of public sector labor relations, negotiations and employment law.

After graduating from the University of Southern California Dan joined the workforce for a decade before attending law school. He earned his Juris Doctor degree from Loyola Law School in Los Angeles in 1968 and began practicing law in 1969 working in the Los Angeles County Counsel office. During his time there, Dan was promoted to Assistant County Counsel and gained numerous insights into the trials and tribulations of labor negotiations and employee relations along the way.

Dan joined the law office of Paterson and Taggart, an education law firm. Here he met his lifelong friend, John Liebert. However, after the tragic death of partner Mike Taggart in the 1978 PSA Flight 82 plane crash in San Diego, the firm dissolved. After this traumatic event, Dan adopted the motto, “life is short, take risks.”

Dan and John formed their own firm in 1980 – Liebert Cassidy – which quickly became the top public employment law firm in Southern California. The rapid success of the firm was in part to Dan’s leading philosophy on how the firm should be, as he describes, “more like a family – I wanted to make sure that our people gave their best service to clients but had a well-rounded life outside of the law office.”

Building on the success cultivated by Dan and John, the firm continued to grow by merging with the Whitmore Johnson & Bolanos firm in 2000. The Whitmore firm was based in the Bay Area and was culturally complimentary to Liebert Cassidy – a critical requirement for Dan, John and the other partners. Liebert Cassidy Whitmore was born and has continued to build upon the foundation well established in both predecessor firms.

Over the course of his fifty years practicing, Dan’s love of the law and his clients has never wavered. Melanie Poturica, former Managing Partner of LCW, describes some of Dan’s key qualities that shaped LCW’s culture.

“I learned from Dan that one of the successes to being an effective lawyer and trusted advisor to our clients is to bring my best, caring self to all client relationships. Not only does Dan sincerely care about our clients but he also knows how to work with the union side of the table and employees. His care for people and genuine concern for the public agencies he represents are the reason he is so good at getting labor agreements without acrimony and bitterness.”

J. Scott Tiedemann, the current Managing Partner of LCW, echoes Melanie’s sentiments, stating, “Dan’s love of people is the foundation of LCW’s success. Nowadays, Dan is often the first one sending and responding to congratulatory emails with apt emojis as he celebrates life milestones for our partners, employees and their families.” Scott adds, “Dan is, of course, a pioneer in the field of labor and education law in California, but he is also a leader in the law business, adopting the premise of preventative law and laying the foundation for a firm that fosters inclusivity.”

Dan is now semi-retired from practicing law, but continues to mentor attorneys at LCW and provide advice and support to clients. “I am so grateful that even in retirement, Dan is actively involved with LCW,” says Scott, “he provides us with invaluable insights about our past but always has a keen eye towards our future.”

Outside of his practice, Dan is involved in his community and volunteer work with his alma mater, USC. In 2017, USC awarded Dan with the Alumni Service Award, an honor that recognizes outstanding volunteer efforts on behalf of the university.

Dan enjoys spending time with his wife, Terri, 5 kids, 14 grandchildren, and 12 great-grandchildren. His two favorite hobbies are traveling and trying new restaurants and food.

LCW congratulates Dan Cassidy for this incredible accomplishment and wishes him continued success in his practice!

# New to the Firm

**Meredith Karasch** joins our Los Angeles office where she provides counsel and advice to our clients in all aspects of labor, employment, and education law. Meredith is an experienced litigator and trial lawyer and has defended clients before administrative bodies and state and federal courts.

She can be reached at 310.981.2059 or mkarasch@lcwlegal.com.

**Kate Im** joins our Los Angeles office where she provides counsel and representation to Liebert Cassidy Whitmore's clients on a variety of matters including labor, employment, and education law. Kate specializes in working with school districts covering the full spectrum of education law including personnel matters, collective bargaining, public works contracts, and student affairs.

She can be reached at 310.981.2056 or kim@lcwlegal.com.


## LCW Seminar

## BEST PRACTICES FOR CONDUCTING FAIR AND LEGALLY COMPLIANT INTERNAL AFFAIRS INVESTIGATIONS

**Who Should Attend?**
Police Sergeants, Lieutenants, and other command staff responsible for internal affairs/personnel investigations, as well as risk managers and human resources professionals who assist public safety departments with personnel administration.

**Workshop Fee:**
Consortium Members: $550
Non-Members: $625

**OCTOBER 23 - 24, 2019 | 9:00 AM - 4:00 PM**

The Internal Affairs investigation is a key element in whether an agency will be successful in imposing discipline. What do decision makers, hearing lawyers and courts look for in an IA report? This **two-day** course will unlock the difference between an IA that supports discipline versus those that undermine it.

This **POST-certified** course provides a complete guide to conducting a fair and thorough internal affairs investigation that will create a defensible disciplinary action in the event of sustained findings. You will gain an understanding of the impact that good decision-making and strategy have on the agency's success in defending IAs and winning appeals. Topics include:

- All aspects of the POBR as it relates to investigations, including frequent POBR issues raised by witnesses and/or their representatives.
- Identifying common mistakes made during IA investigations.
- How to make sure findings are in line with the discipline that is ultimately proposed.
- Strategic decisions that must be made when crafting the investigative report and supporting documents.
- Interactive exercises to illustrate effective interviewing techniques and pitfalls to avoid.

This course includes a continental breakfast and lunch both days.

**LOCATION: LOS OLIVOS COMMUNITY CENTER**
**101 Alfonso Drive, Irvine CA 92618**
***In-person seminar only (no webinar recording)**

**PRESENTED BY**
GEOFFREY S. SHELDON
& J. SCOTT TIEDEMANN

**REGISTER TODAY:**
WWW.LCWLEGAL.COM/
EVENTS-AND-TRAINING

## MEGAN ATKINSON NAMED A 2019 SOUTHERN CALIFORNIA RISING STAR!

Liebert Cassidy Whitmore is pleased to announce that associate Megan Atkinson has been selected a "2019 Southern California Rising Star" by *Super Lawyers*. Megan was selected in the Employment Litigation: Defense category.

**Megan Atkinson,** located in the Los Angeles office, represents clients in labor and employment law matters. She regularly defends against claims of discrimination, harassment, retaliation, and wage and hour violations and litigates in both state and federal courts.

**Congratulations, Megan!**

## LCW Named A Best Law Firm for Women And Minority Attorneys By Law 360

Los Angeles, CA – On July 11, 2019, Law360 published their annual Best Law Firms for Women and Minority Attorneys list that highlights the top 25 firms outranking their peers on their representation of both women and attorneys of color. Liebert Cassidy Whitmore ranked third out of firms with 50-149 attorneys on staff.

Law360 surveyed more than 300 law firms across the United States and their Diversity Snapshot revealed that "just over 16% of attorneys and just over 8% of equity partners at surveyed law firms are attorneys of color. Women still represent just over one-third of all attorneys, and slightly more than 20% of equity partners. These numbers have remained consistent over the five years Law360 has conducted the survey."

However, Liebert Cassidy Whitmore reported above-average representation of both women and minorities at every tier, from nonpartners to equity partners, compared to firms of similar size.

Fifty-five percent of LCW's attorney workforce is comprised female attorneys and fifty-one percent of the partners are female. These numbers nearly double the legal industry's overall average where, according to Law360, firms of comparable size are thirty-five percent female and only twenty-seven percent of partners are female.

In addition, minority attorneys make up twenty-four percent of LCW's workforce and twenty-four percent of LCW's partners. These numbers are significantly higher compared to the legal industry's national average where, according to Law360, firms of comparable size have only thirteen percent minority attorneys and ten percent minority partners.

**Liebert Cassidy Whitmore is honored to be included in Law360's list of Best Law Firms for Women and Minority Attorneys and to be recognized for its long-standing tradition of inclusiveness and diversity.**

Management Training Workshops

## Firm Activities

**Consortium Training**

**Sept. 3** **"Maximizing Supervisory Skills for the First Line Supervisor"**
San Mateo County ERC | South San Francisco | Heather R. Coffman

**Sept. 4** **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"** & **"Navigating the Crossroads of Discipline and Disability Accommodation"**
San Joaquin Valley ERC | Ceres | Jesse Maddox

**Sept. 5** **"Navigating the Crossroads of Discipline and Disability Accommodation" & "Human Resources Academy II"**
Bay Area ERC | Santa Clara | Richard Bolanos & Austin Dieter

**Sept. 5** **"The Art of Writing the Performance Evaluation"** & **"Difficult Conversations"**
Sonoma/Marin ERC | Rohnert Park | Casey Williams

**Sept. 11** **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"**
Humboldt County ERC | Fortuna | Jack Hughes

**Sept. 11** **"The Future is Now - Embracing Generational Diversity and Succession Planning"** & **"Difficult Conversations"**
San Gabriel Valley ERC | Alhambra | Christopher S. Frederick

**Sept. 11** **"The Meaning of At-Will, Probationary, Seasonal, Part-time and Contract Employment"**
Ventura/Santa Barbara ERC | Webinar | Ronnie Arenas

**Sept. 12** **"Conducting Disciplinary Investigations: Who, What, When and How"** & **"Managing the Marginal Employee"**
Central Valley ERC | Fresno | Shelline Bennett

**Sept. 12** **"Exercising Your Management Rights"**
Humboldt County ERC | Fortuna | Jack Hughes

**Sept. 12** **"Labor Code 101 for Public Agencies"**
Monterey Bay ERC | Webinar | Michael Youril

**Sept. 12** **"Workplace Bullying: A Growing Concern"** & **"Public Service: Understanding the Roles and Responsibilities of Public Employees"**
San Diego ERC | La Mesa | Stephanie J. Lowe

**Sept. 17** **"Labor Code 101 for Public Agencies"** & **"Privacy Issues in the Workplace"**
North San Diego County ERC | Vista | Kevin J. Chicas

**Sept. 18** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
NorCal ERC | San Ramon | Morin I. Jacob

**Sept. 19** **"MOU Auditing and The Book of Long Term Debt"** & **"Labor Code 101 for Public Agencies"**
Coachella Valley ERC | La Quinta | Melanie L. Chaney

**Sept. 19** **"Navigating the Crossroads of Discipline and Disability Accommodation"** & **"Privacy Issues in the Workplace"**
Napa/Solano/Yolo ERC | Fairfield | Gage C. Dungy

**Sept. 19** **"The Art of Writing the Performance Evaluation"** & **"Difficult Conversations"**
Orange County Consortium | Tustin | Kristi Recchia

**Sept. 19** **"Workplace Bullying: A Growing Concern" & "Legal Issues Regarding Hiring"**
West Inland Empire ERC | Chino Hills | Danny Y. Yoo

**Sept. 25** **"Managing the Marginal Employee"** & **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"**
Central Coast ERC | Paso Robles | Michael Youril

**Customized Training**

Our customized training programs can help improve workplace performance and reduce exposure to liability and costly litigation. For more information, please visit www.lcwlegal.com/events-and-training/training.

**Aug. 20** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Carlsbad | Stephanie J. Lowe

**Aug. 21** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Pittsburg | Kelsey Cropper

**Aug. 22** **"Harassment and Ethics"**
City of Long Beach Water Department | Long Beach | Laura Drottz Kalty

**Aug. 22,28** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Sunnyvale | Lisa S. Charbonneau

**Aug. 27** **"Legal Issues Regarding Hiring and Promotion"**
City of Glendale | Mark Meyerhoff

**Aug. 28** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Nevada County | Grass Valley | Donna Williamson

**Aug. 29** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Compton | Alysha Stein-Manes

**Aug. 29** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Marin/Sonoma Mosquito and Vector Control District | Cotati | Heather R. Coffman

**Sept. 3** **"Difficult Conversations"**
County of San Luis Obispo | San Luis Obispo | Christopher S. Frederick

**Sept. 5,10,18,24** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Sunnyvale | Lisa S. Charbonneau

**Sept. 10** **"Harassment and Ethics"**
City of Long Beach Water Department | Long Beach | Laura Drottz Kalty

**Sept. 10** **"Key Legal Principles for Public Safety Managers - POST Management Course"**
Peace Officer Standards and Training - POST | San Diego | Stefanie K. Vaudreuil

**Sept. 11** **"Preventing Workplace Harassment, Discrimination and Retaliation and Mandated Reporting"**
East Bay Regional Park District | Castro Valley | Casey Williams

**Sept. 11,12** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Housing Authority of the County of Santa Clara | San Jose | Kelsey Cropper

**Sept. 12** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Brea | Laura Drottz Kalty

**Sept. 12** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Rancho Simi Recreation and Park District | Simi Valley | Joung H. Yim

**Sept. 13** **"Inclusive Leadership"**
San Diego County Water Authority | San Diego | Kristi Recchia

**Sept. 17,18,19** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Irvine Ranch Water District | Irvine | Christopher S. Frederick

**Sept. 18** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of San Bruno | Kelsey Cropper

**Sept. 24** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Monterey Park | Laura Drottz Kalty

**Sept. 24** **"Maximizing Supervisory Skills for the First Line Supervisor"**
Mono County | Lee Vining | Gage C. Dungy

**Sept. 25** **"Maximizing Supervisory Skills for the First Line Supervisor"**
City of Glendale | Stacey H. Sullivan

**Sept. 25** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Pittsburg | Kelsey Cropper

**Sept. 26** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Glendale | Jenny Denny

**Sept. 27** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
County of San Luis Obispo | San Luis Obispo | Jenny Denny

**Sept. 30** **"Preventing Workplace Harassment, Discrimination and Retaliation"**
County of San Luis Obispo | San Luis Obispo | Laura Drottz Kalty

**Speaking Engagements**

**Sept. 25** **"Harassment Training"**
Public Employer Labor Relations Association of California (PELRAC)2019 Annual Conference | Cathedral City | Laura Drottz Kalty

**Sept. 27** **"Tactical Considerations When Conducting Internal Affairs Investigations"**
Association of Workplace Investigators (AWI) Annual Conference | Marina del Rey | Laura Drottz Kalty

**Sept. 27** **"Tackling Challenges in Accommodating Mental Disabilities in the Workplace"**
Public Agency Risk Managers Association (PARMA) Central Valley Chapter Fall Training | Clovis | Michael Youril

**Sept. 27** **"Advanced Negotiations" and "Legal Update"**
Public Employer Labor Relations Association of California (PELRAC) Annual Conference | Cathedral City | Peter J. Brown

**Seminars/Webinar**

For more information and to register, please visit www.lcwlegal.com/events-and-training/webinars-seminars.

**Sept. 4** **"Effectively Using Public Safety FLSA Work Periods"**
Liebert Cassidy Whitmore | Webinar | Peter J. Brown

**Sept. 12** **"Nuts & Bolts of Negotiations"**
Liebert Cassidy Whitmore | Alhambra | Melanie L. Chaney & Kristi Recchia

**Sept. 17** **"Is it Pensionable? Hybrids, Lump Sums, & Other Pensionable Compensation Challenges"**
Liebert Cassidy Whitmore | Webinar | Laura Drottz Kalty

The ***Briefing Room*** is available via email. If you would like to be added to the email distribution list or if you know someone who would benefit from this publication, please visit www.lcwlegal.com/news. **Please note:** By adding your name to the e-mail distribution list, you will no longer receive a hard copy of the ***Briefing Room***. If you have any questions, contact Jaja Hsu at 310.981.2091 or at jhsu@lcwlegal.com.

6033 West Century Blvd., 5th Floor | Los Angeles, CA 90045

CalPublicAgencyLaborEmploymentBlog.com | @lcwlegal

Copyright © 2019 LCW Liebert Cassidy Whitmore

Requests for permission to reproduce all or part of this publication should be addressed to Cynthia Weldon, Director of Marketing and Training at 310.981.2000.

***Briefing Room*** is published monthly for the benefit of the clients of Liebert Cassidy Whitmore. The information in ***Briefing Room*** should not be acted on without professional advice. To contact us, please call 310.981.2000, 415.512.3000, 559.256.7800, 619.481.5900 or 916.584.7000 or e-mail info@lcwlegal.com.