LCW Liebert Cassidy Whitmore

Client Update

Monthly news and developments in employment law and labor relations for California Public Agencies.

December 2019

INDEX

Consortium Call of the Month . . . 8
Did You Know? . . . 8
Discrimination . . . 6
Firm Victory . . . 1
Labor Relations . . . 5
Retaliation . . . 3
Retirement . . . 2
Wage & Hour . . . 2

LCW NEWS

Firm Activities . . . 9
Firm Publications . . . 11
On-Demand Training . . . 8

Client Update is published monthly for the benefit of the clients of Liebert Cassidy Whitmore. The information in ***Client Update*** 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/news

FIRM VICTORY

LCW Defeats Former Police Officer's Attempt To Revive FLSA Lawsuit.

LCW Partner Geoffrey Sheldon, and Associate Attorneys Danny Yoo, and Emanuela Tala, helped a city defeat a Fair Labor Standards Act (FLSA) lawsuit that a police officer brought.

Before filing this case, the officer had pursued two other FLSA collective action cases. First, he opted into an FLSA "donning and doffing" collective action on February 13, 2007. The trial court held that the "donning and doffing" of police uniforms was not compensable and dismissed the case. Two months later, the officer pursued a second FLSA case against the city, which the court dismissed on April 6, 2015. The officer appealed the dismissal of both cases. The Ninth Circuit affirmed both dismissals in 2018. The officer filed the present case on June 24, 2019. The officer claimed the Ninth Circuit did not notify him of its decision until early 2019, and therefore he did not know his obligations under the FLSA statute of limitations.

The FLSA statute of limitations is generally two years. For willful FLSA violations, however, the limitations period is three years. Here, the lawsuit alleged that the city "knew or should have known" of the alleged FLSA violations, thus the three-year statute of limitations applied.

The court reasoned that the officer retired in 2008, so he had to file his FLSA claim no later than December 31, 2011. The officer opted into the first case within that period. When the court dismissed the first case, the limitations period had expired. However, the district court tolled the statute for 60 days. The officer then joined the second lawsuit within the 60-day tolling period, but the court dismissed that case on April 6, 2015. The court found that there was no evidence that the officer requested an additional tolling period or that the officer refiled his individual claims at that time. The officer filed the present case over four years later.

The officer offered three alternative theories why the running of the statute of limitations should have been suspended from the time of the dismissal of the second case to the Ninth Circuit's decision. The court agreed with LCW that there was no basis to stop the running of the statute of limitations. The court held that the officer's lawsuit was time-barred, and dismissed with prejudice.

Note:

This case confirms that courts do not generally extend a statute of limitations unless there is a legal or equitable reason to do so.

RETIREMENT

Whether Employee Could Have Been Reasonably Accommodated In A Different Work Location Was Irrelevant To Her Entitlement To CalPERS Disability Retirement.

Cari McCormick worked as an appraiser for Lake County from a location within a courthouse. She developed symptoms she felt were caused by the courthouse environment, including pain, fatigue, and dizziness. McCormick asked the County for accommodations, such as permission to telecommute, but her supervisors declined to let her work anywhere other than in the courthouse. She filed a claim for workers' compensation and took an extended leave of absence. As part of the workers' compensation process, the courthouse was tested. The tests revealed no mold and showed acceptable air quality. Her workers' compensation claim was denied and the County terminated her employment because she had exhausted her medical leave.

After her termination, McCormick applied for disability retirement through the California Public Employees' Retirement System (CalPERS). In her application, she stated her disability was respiratory and that she had systemic health problems because of her exposure to the courthouse's indoor environment. She explained that she could work in another building as long as she remained asymptomatic, but the County would not allow her to work outside the courthouse. CalPERS denied her application. McCormick appealed the decision. The administrative law judge (ALJ) concluded that her condition did not prevent her from performing her job duties. The CalPERS Board of Administration adopted the ALJ's decision. The trial court denied the petition for writ of administrative mandate that McCormick filed to challenge the CalPERS decision. The trial court stated that McCormick could perform her job duties, but not in the courthouse.

The California Court of Appeal considered whether McCormick was incapacitated, within the meaning of the CalPERS standard at Government Code section 21156, because of her inability to perform her duties in a particular location – the courthouse. The court noted that some 2006 legislative changes to section 21156 focused the CalPERS disability retirement standard on whether employees were substantially incapacitated from performing their duties for their actual employer. The court found that McCormick's theoretical ability to perform the duties of an appraiser for another employer, did not mean that she was not disabled under the CalPERS standard. The court concluded that CalPERS must grant disability retirement under section 21156 when, due to a disability, the employee can no longer perform her duties at the only location where her employer will allow her to work.

The court then turned to CalPERS' argument that members are ineligible for disability retirement when they are "physically capable of performing all of the usual duties for their actual employer, and the only impediment to performing the duties is [the] employer's alleged failure to provide reasonable accommodations." State and federal laws require employers to make reasonable accommodation for the known disability of an employee, unless doing so would produce undue hardship to the employer's operation. But the court did not address whether a reasonable accommodation was possible. Instead, the court analyzed what role, if any, the existence of a theoretical accommodation plays in determining a member's eligibility for disability retirement. The court concluded that CalPERS could not deny disability retirement under section 21156 when, due to a medical condition, employees can no longer perform their duties at the only location where their employer will allow them to work.

McCormick v. California Public Employees' Retirement System, 41 Cal.App.5th 428 (2019).

NOTE:

This decision shows how an employer's failure or inability to provide a reasonable accommodation might result in an employee's CalPERS disability retirement. Furthermore, a failure to accommodate may violate state and federal anti-disability discrimination laws.

WAGE & HOUR

ABC Independent Contractor Test Is Retroactively Applicable To Wage And Hour Claims.

Francisco Gonzales worked as a driver for San Gabriel Transit (SGT), a company that coordinates with public and private entities to arrange transportation services. In February 2014, Gonzales filed a class action seeking to represent over 550 drivers that SGT had engaged

as independent contractors from February 2010 to the present. Gonzales alleged that by misclassifying drivers as independent contractors, SGT violated various provisions of the California Labor Code and wage order provisions.

The trial court found that Gonzales failed to demonstrate that SGT misclassified drivers as independent contractors under the standard described in *Borrello v. Department of Industrial Relations*, and denied the motion for class certification. While this appeal was pending, the California Supreme Court decided *Dynamex v. Superior Court of Los Angeles*, in which it adopted the "ABC test" to analyze the distinction between employees and independent contractors.

Under the ABC test, an individual providing services for compensation is an employee rather than an independent contractor unless the hiring entity demonstrates that: (1) the individual is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract terms and in fact; (2) the individual performs work that is outside the usual course of the hiring entity's business; and (3) the individual is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

On appeal, the court concluded that the ABC test in *Dynamex* is retroactively applicable to pending lawsuits regarding wage and hour claims. The court noted that the *Dynamex* opinion did not address whether the ABC test applies to non-wage order related Labor Code claims. The court answered that question by concluding that it would apply the ABC test to Labor Code claims that allege wage orders violations. On the other hand, the court will apply the *Borello* test to claims not directly based on wage order protections.

The court reasoned that when an employee seeks primarily to enforce provisions of the Labor Code, which incorporates the California wage orders, the employee is actually seeking to enforce the applicable wage order. The court further reasoned that because most of the statutory claims alleged in the case were rooted in wage order protections and requirements, the ABC test applied.

The court reversed the order denying the motion for class certification and remanded the case to apply the ABC test to determine whether the class certification requirements are satisfied in light of the ABC test factors.

Gonzalez v. San Gabriel Transit, 40 Cal.App.5th 1131, 252 Cal. Rptr.3d 681 (2019).

NOTE:

The ABC test is a pro-employee departure from the previous standard for determining whether an individual is an independent contractor or employee. Starting January 1, 2020, the ABC test is codified in California Labor Code section 2750.3. LCW can assist public agencies to evaluate all independent contractor arrangements under the ABC test and Labor Code.

RETALIATION

A Violation Of Guidelines Employee Created Was Not Sufficient To Support His Whistleblower Claim.

Patrick Nejadian worked for the County of Los Angeles (County) as a Chief Environmental Health Specialist in the land use program. That program dealt with private wells and on-site waste water treatment systems (i.e., septic systems) on properties without access to public water or sewer systems.

After working in the land use program for several years, Nejadian took it upon himself to develop guidelines that would standardize the requirements for septic systems across all County offices. By the end of 2009, he had completely rewritten the former set of guidelines and procedural documents for on-site wastewater treatment systems. His guidelines are now used throughout the County, with only minor modifications.

After the 2010 Station Fire destroyed multiple homes in Tujunga Canyon, the County's Director of Environmental Health Division, Angelo Bellomo, told Nejadian to disregard several of the guidelines' requirements in order to have several homes rebuilt. Nejadian refused, but the projects were ultimately approved by Nejadian's superiors. Nejadian responded by refusing to cooperate with the changes and requested a transfer every six months thereafter.

Nejadian also revised a set of guidelines that addressed rebuilding structures following a fire or other natural disaster. He revised the guidelines, but according to Nejadian, management amended them by watering down the requirements he had drafted, and disregarding the County Code sections that were involved. Nejadian told Bellomo and other managers that he disagreed with management's amendments and that they violated the County Code.

Nejadian sued the County for retaliation in violation of Labor Code section 1102.5(c), and other claims. The jury found for Nejadian and awarded him almost $300,000 in damages. The County appealed the decision, claiming that Nejadian had failed to prove his claims.

Labor Code section 1102.5(c) prohibits employers from retaliating "against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

The California Court of Appeal held that in order for Nejadian to prevail Section 1102.5(c), he was first required to prove that the conduct he refused to participate in would result in an actual violation of or noncompliance with a local, state, or federal statute, rule, or regulation. But, Nejadian failed to show that any actual laws, rules, or regulations were violated. In fact, Nejadian appeared to rely on the fact that his guidelines were being violated. The Court of Appeal held that the fire-rebuild guidelines were not statutes, rules, or regulations; they were simply guidelines, and did not fall within the scope of section 1102.5(c). Therefore, as a matter of law, Nejadian failed to establish the minimum requirements to support his case for violation of Section 1102.5(c).

Nejadian v. County of Los Angeles, 40 Cal.App.5th703, 235 Cal. Rptr.3d 404 (2019).

NOTE:

This case confirms that a violation of a guideline is not sufficient to support a Labor Code Section 1102.5(c) violation. Instead, an employee bears the burden of proving that an actual violation of a local, state, or federal statute, rule, or regulation would occur if he participated in a specific activity.

Employees Win Whistleblower Lawsuit By Showing A Causal Link Between Their Protected Activity And Their Terminations.

City of Los Angeles Department of Transportation (City DOT) hearing examiners Todd Hawkins and Hyung Kim sued the City. They claimed that they were fired in retaliation for whistleblowing on the City DOT's alleged conduct to pressure hearing examiners to change their decisions. The employees prevailed on their Labor Code section 1102.5 whistleblower retaliation claim, and received an award of attorneys' fees. The City appealed the verdict.

The parking adjudication division of the City DOT handles appeals from individuals who contest their parking fines, citations, and impounds. Dissatisfied individuals can request a hearing. A hearing examiner presides over the hearing, which provides "an independent, objective, fair, and impartial review of contested parking violations." Hawkins and Kim were part-time hearing examiners, who worked on an as-needed basis.

In 2012, Hawkins and Kim began reporting City DOT Office Manager Carolyn Walton-Joseph for pressuring hearing officers to change their decisions, which they claimed deprived individuals of their due process. In August 2012, Kim wrote a letter to his division head reporting Walton-Joseph's actions. In May 2013, Hawkins wrote to DOT's General Manager, Jamie de la Vega, regarding Walton-Joseph's actions, and included Kim's 2012 letter. The City opened an investigation into Hawkins's and Kim's allegations.

In October 2013, the investigator concluded that although Walton-Joseph and another manager, Kenneth Heinsius, forced hearing examiners to change decisions, they had not abused their authority. The City DOT then fired Hawkins in November 2013, and fired Kim in December 2013.

At trial, the jury found that the City DOT had violated the Labor Code section 1102.5 whistleblower statute by retaliating against Hawkins and Kim. On appeal, the court held that Hawkins and Kim had established a causal link by the one to two months' proximity in time between the completion of the investigation into their complaints and their firings. Additionally, the court found that the City DOT's reasons for firing

Hawkins and Kim were pretextual, in part, because they were not fired soon after their allegedly poor behavior, but soon after they complained about being pressured to change their decisions.

In the published portion of the case, the California Court of Appeal upheld the attorneys' fees award, due to the interference in the hearing process, which deprived the public "of independent and impartial hearings." The City had to pay attorneys' fees due to depriving the public of fair and impartial hearings.

Hawkins v. City of Los Angeles, 40 Cal.App.5th 384, 252 Cal. Rptr.3d 849 (2019).

NOTE:

This case demonstrates that an employer must be able to show a legitimate reason for terminating an employee whistleblower. The court was influenced by the fact that the employer continued to employ the whistleblowers despite their allegedly poor behavior.

LABOR RELATIONS

County's Security Staffing Decision Was Non-Negotiable, But Union Should Have Received Opportunity For Effects Bargaining.

The County of Santa Clara (County) staffed its hospitals and medical clinics with non-sworn Protective Service Officers (PSO) to provide security services. Due to security concerns at the Hospital's Emergency Department in 2013 or 2014, the County began augmenting security by adding roving deputy sheriffs. The use of deputy sheriffs at the sites caused the number of incidents at the Emergency Department to drop by 44%.

The County acquired a new site for a primary care clinic in 2016, known as Valley Health Center Downtown (VHCD). During construction, the PSOs patrolled VHCD to protect its fixtures. After construction was completed, the County decided to assign a deputy sheriff during the swing shift at VHCD as the regular security presence, in lieu of a PSO. A County official allegedly did not provide the union with notice of the staffing decision because he did not believe the deputy sheriffs would be performing bargaining unit work. Although a PSO would sometimes work the swing shift if no deputy was available, the County's decision was to assign a deputy sheriff as the regular swing shift security presence, in lieu of a PSO.

SEIU, Local 521, the union that represents the PSOs, filed an unfair practice charge with the Public Employment Relations Board (PERB). The PERB charge alleged that the County unilaterally removed bargaining unit work from SEIU by staffing the VHCD with a deputy sheriff during the swing shift, rather than a PSO, in violation of the Meyers-Milias-Brown Act (MMBA) and PERB Regulations.

The California Public Employees Relations Board (Board) adopted the Administrative Law Judge's proposed decision. That decision found that assigning deputy sheriffs in security positions at the VHCD constituted a change in policy. During the construction of VHCD, the County had exclusively employed PSOs to perform VHCD security work. Although the County had previously used deputies at the Hospital's Emergency Department, those deputies were only supplemental to PSOs. At VHCD, the deputy sheriff displaced the PSO who would have been assigned to the swing shift. Testimony at the hearing indicated that the deputies and the PSO's were performing the same work at VHCD -- checking on clinic staff, securing the premises, and preventing and deterring crimes. The Board found only minor differences in the duties of PSOs and the deputy sheriffs at VHCD.

The Board noted that while the County's decision to use deputies on the swing shift at VHCD did eliminate some bargaining unit work, the decision also involved the County's freedom to manage its affairs unrelated to any employment-specific concerns. The Board found that bargaining would be required only if the benefit for labor-management relations and the collective bargaining process outweighed the burden placed on the County. The Board concluded that the County did not violate its duty to meet and confer by failing to bargain with SEIU over its staffing decision, because the County's concern for employee and patient safety outweighed the benefits of bargaining.

The Board did find, however, that the County violated its duty to meet and confer over the implementation and effects of its staffing decision. The MMBA duty to bargain also includes the implementation of a non-negotiable management decision that has a foreseeable effect on matters within the scope

of representation. Staffing VHCD with a deputy sheriff, rather than a PSO, had foreseeable effects on wages, hours, and other terms and conditions of employment for PSOs. The Union was not required to demand effects bargaining because the Union had no prior notice of the staffing decision. The County was required to provide SEIU with notice and an opportunity to bargain the reasonably foreseeable effects of its staffing decision before it implemented the change.

County of Santa Clara (2019) PERB Decision No. 2680-M (10/31/2019).

NOTE:

Although a managerial decision is not subject to meet and confer, the public agency must still meet and confer over the implementation and effects of a management decision that has a foreseeable effect on matters within the scope of representation.

DISCRIMINATION

Employee Who Was Terminated Because Of A Mistaken Belief He Was Unable To Work Need Not Prove Employer Had A Discriminatory Intent.

John Glynn worked for Allegran as a pharmaceutical sales representative. His job required him to drive to doctors' offices to promote pharmaceuticals. In January 2016, Glynn requested, and Allegran approved, a medical leave of absence for his serious eye condition. Glynn's doctor indicated that Glynn was unable to work because he could not safely drive. While on medical leave, Glynn repeatedly requested reassignment to a vacant position that did not require driving, but he was never reassigned.

On July 20, 2016, while on medical leave, Glynn became eligible for long-term, as opposed to short-term, disability benefits. That day, a temporary employee in Allegran's benefits department sent Glynn a letter informing him that his employment was terminated due to his "inability to return to work by a certain date with or without some reasonable accommodation." The temporary employee who sent Glynn the letter mistakenly believed that Allegran policy required termination once an employee transitioned from short-term to long-term disability benefits. In reality, Allegran's policy only required termination once the employee had applied and been approved for long-term disability benefits.

The day after Glynn received the termination letter, he emailed a letter to the Human Resources Department stating that: he never applied for long-term disability benefits; he could work in any position that did not require driving; and he disputed the termination decision. After Allegran did not reinstate Glynn, he sued the company alleging various disability discrimination and other claims.

In the lawsuit, Allegran moved for summary judgment, and the district court dismissed a number of Glynn's claims, including his disability discrimination claim. However, the Court of Appeal concluded that the trial court erred in dismissing Glynn's disability discrimination claim.

California has adopted a three-stage burden-shifting test for Fair Employment and Housing Act (FEHA) discrimination claims. However, this three-stage test does not apply if the employee presents direct evidence of discrimination. In disability discrimination cases, the threshold issue is whether there is direct evidence that the motive for the employer's conduct was related to the employee's physical or mental condition.

Here, the court concluded there was direct evidence of discrimination. An employee alleging disability discrimination can establish the employer's intent by proving: (1) the employer knew that employee had a physical condition that limited a major life activity, or perceived him to have such a condition; and (2) the employee's actual or perceived physical condition was a substantial motivating reason for the employer's decision to terminate or to take another adverse employment action. Allegran terminated Glynn because a temporary employee perceived, albeit mistakenly, that he was totally disabled and unable to work.

The court further reasoned that even if the employer's mistake was reasonable and made in good faith, a lack of discriminatory intent does not preclude liability for a disability discrimination claim. This is because California law does not require an employee with an actual or perceived disability to prove that the employer's adverse employment action was motivated by animosity or ill will against the employee. Instead, California's law protects employees from an employer's erroneous or mistaken beliefs about the employee's

physical condition. In short, the Legislature decided that the financial consequences of an employer's mistaken belief that an employee is unable to safely perform a job's essential functions should be borne by the employer, not the employee, even if the employer's mistake was reasonable and made in good faith. Accordingly, the court found that the trial court should not have dismissed Glynn's disability discrimination claim.

Glynn v. Superior Court of Los Angeles County (Allergan), 2019 WL 5955999 (2019).

Note:

This case highlights that even good faith mistakes can be the basis of a discrimination claim. Public agencies should ensure that employees responsible for making or approving termination decisions are well versed in the agency's reasonable accommodation policies to limit the risk of mistakes.

Each Disability Retirement Check That Was Based On An Allegedly Discriminatory Policy Was A New Unlawful Employment Action.

Joyce Carroll started working for the City and County of San Francisco (City) when she was 43 years old. After 15 years of service, Carroll retired at age 58 due to rheumatoid arthritis. On June 22, 2000, Carroll applied for disability retirement, and the City granted her request. Accordingly, Carroll received monthly disability retirement benefit payments.

On November 17, 2017, more than 17 years after her retirement, Carroll filed a complaint with the Department of Fair Employment and Housing (DFEH) alleging that the City violated the Fair Employment and Housing Act (FEHA) by discriminating against employees on the basis of age. Specifically, Carroll alleged that the City intentionally discriminated against employees hired over the age of 40 by providing them with reduced retirement benefits.

The City's charter provides that the maximum disability benefit a disabled employee can receive is one-third of average final compensation. If an employee's benefit falls below one-third of final average compensation, but the employee has worked for the City for at least 10 years before retiring, the City credits additional service time to the employee to increase the benefit. However, the City limits this imputed service time to the number of years the disabled employee would have worked for the City had he or she continued City employment until age 60. Accordingly, Carroll alleged that the City violated the FEHA by using a standard policy that had a disparate impact on older employees because older employees were entitled to less imputed service and thus, reduced retirement benefits.

The City moved to dismiss Carroll's lawsuit arguing that the statute of limitations barred her claims because she failed to timely file an administrative charge. The City argued that the limitations period began running in 2000 when it granted Carroll's disability retirement. Accordingly, the City argued the charge Carroll filed in 2017 was well outside the one-year statute of limitations. The trial court agreed and dismissed the lawsuit. Carroll appealed.

On appeal, Carroll argued that each retirement check she received constituted a new FEHA violation. The Court of Appeal sided with Carroll and concluded that an unlawful event occurred each time Carroll received a discriminatory disability retirement payment. Accordingly, the limitations period restarted with each allegedly discriminatory check. The court reasoned that an employer's discriminatory decision to take an unlawful employment action is actionable not only when made but also when prohibited acts or practices occur because of that decision.

The court noted that an unlawful action occurred each time the City paid the allegedly discriminatory retirement benefits. This interpretation is consistent with the FEHA and the command that courts liberally interpret its provisions. Moreover, the court noted that federal cases, that addressed whether paychecks issued pursuant to a discriminatory compensation scheme under Title VII, and other state court decisions, also support this conclusion.

Carroll also argued that her lawsuit was timely under a specific variation of the "continuing violation theory." That theory applies when an employee alleges a systematic corporate policy of discrimination against a protected class that was enforced during the limitations period and the employee is seeking to recover for injury during the limitations period. The court also agreed that Carroll's lawsuit was timely under this theory because she alleged the City used a fixed discriminatory policy to pay reduced retirement benefits to employees hired over the age of 40, and that the City used this policy each month by paying reduced retirement benefits.

The court also determined that Carroll could maintain a "disparate impact" claim against the City. An employee can establish a disparate impact claim by demonstrating that an employer uses a particular employment practice that causes a disparate impact on one of the protected classes. The court noted that because the City's monthly application of an employment policy has a disparate impact on employees who began their employment over 40, she could sue for these payments under that theory as well.

Carroll v. City and County of San Francisco, 2019 WL 5617019 (2019).

NOTE:

The impact of periodic payments – such as disability checks or paychecks – on a discrimination or wage and hour claim – greatly expands the time in which an employee or former employee can sue the employer. It is critical for employers to compensate employees consistently with all laws. LCW offers audit services to prevent lawsuits and can also provide an effective defense if a lawsuit occurs.

DID YOU KNOW....?

Whether you are looking to impress your colleagues or just want to learn more about the law, LCW has your back! Use and share these fun legal facts about various topics in labor and employment law.

- Effective January 1, 2020, covered individuals will now have three years from the date of an unlawful employment practice to file a complaint with the Department of Fair Employment and Housing ("DFEH"). Previously, covered individuals only had one year to file a DFEH complaint. (Assembly Bill 9 – Gov. Code section 12960.)
- Public employers cannot maintain a "use it or lose it" vacation leave policy unless it is provided for in a collective bargaining agreement. (Labor Code section 227.3.)
- Neither federal nor state law require an employer to pay out accrued sick leave to an employee. (See, e.g., Labor Code section 246(g).)

CONSORTIUM CALL OF THE MONTH

Members of Liebert Cassidy Whitmore's employment relations consortiums may speak directly to an LCW attorney free of charge regarding questions that are not related to ongoing legal matters that LCW is handling for the agency, or that do not require in-depth research, document review, or written opinions. Consortium call questions run the gamut of topics, from leaves of absence to employment applications, disciplinary concerns to disability accommodations, labor relations issues and more. This feature describes an interesting consortium call and how the question was answered. We will protect the confidentiality of client communications with LCW attorneys by changing or omitting details.

Question: A city's Human Resources Manager contacted LCW asking whether his agency needed to provide an employee's final paycheck immediately upon the employee's termination.

Answer: The attorney advised the Human Resources Manager that while Labor Code section 201(a) requires an employer to pay a terminated employee "the wages earned and unpaid at the time of discharge" immediately, Labor Code section 220 explicitly excludes counties, cities, and other municipal corporations from that requirement. Thus, public agencies only need to provide an employee's final paycheck at the next regular payday.

On-Demand Harassment Prevention Training Available Now!

Learn more:
https://www.lcwlegal.com/harassment-prevention-training-services

§

Management Training Workshops

Firm Activities

Consortium Training

Dec. 12 **"Maximizing Performance Through Evaluation, Documentation and Corrective Action"** & **"Difficult Conversations"**
North State ERC | Redding | Jack Hughes

Jan. 8 **"Managing the Marginal Employee"**
North State ERC | Webinar | Michael Youril

Jan. 9 **"Public Sector Employment Law Update"** & **"Navigating the Crossroads of Discipline and Disability Accommodation"**
East Inland Empire ERC | Fontana | Geoffrey S. Sheldon

Jan. 9 **"Finding the Facts: Employee Misconduct & Disciplinary Investigations"**
Gateway Public ERC | Lakewood | James E. Oldendorph

Jan. 9 **"Legal Issues Regarding Hiring and Promotion"**
San Mateo County ERC | Brisbane | Lisa S. Charbonneau

Jan. 15 **"Public Sector Employment Law Update"**
Bay Area, Ventura/Santa Barbara & San Diego ERC | Webinar | Richard S. Whitmore

Jan. 15 **"Advanced Investigations of Workplace Complaints"**
San Diego Fire Districts | Bonita | Stefanie K. Vaudreuil

Jan. 16 **"Labor Code 101"**
South Bay ERC | Webinar | Stephanie J. Lowe

Jan. 16 **"Preventing Workplace Harassment, Discrimination and Retaliation"** & **"Public Service: Understanding the Roles and Responsibilities of Public Employees"**
West Inland Empire ERC | Diamond Bar | Ronnie Arenas

Jan. 23 **"Managing the Marginal Employee"**
LA County Human Resources Consortium | Webinar | Melanie L. Chaney

Jan. 29 **"Exercising Your Management Rights"**
Gold Country ERC | Webinar | Richard Bolanos

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.

Dec. 17 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Menifee | Stephanie J. Lowe

Dec.18,19 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Beverly Hills | Christopher S. Frederick

Dec. 9,13,16,17 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Beverly Hills | Jenny Denny

Dec. 9 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Beverly Hills | Alison R. Kalinski

Dec. 10 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Glendale | Laura Drottz Kalty

Dec. 10 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Mountain View | Lisa S. Charbonneau

Dec. 11 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Carlsbad | Stephanie J. Lowe

Dec. 11 **"Maximizing Supervisory Skills for the First Line Supervisor"**
City of Menifee | Kevin J. Chicas

Dec. 12 **"Negotiations and MOUS"**
City of Ontario | Laura Drottz Kalty

Dec. 18 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Port of Stockton | Stockton | Jack Hughes

Dec. 19 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Livermore | Lisa S. Charbonneau

Jan. 8 **"Communications"**
City of San Bernardino Municipal Water Department | San Bernardino | Kristi Recchia

Jan. 8 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Mono County | Mammoth Lakes | Gage C. Dungy

Jan. 15 **"Labor Negotiations from Beginning to End!"**
Port of Stockton | Stockton | Gage C. Dungy

Jan. 30 **"The Future is Now - Embracing Generational Diversity & Succession Planning"**
Employment Risk Management Authority | Merced | Michael Youril

Speaking Engagements

Dec. 10 **"New Labor & Employment Laws for 2020"**
Sacramento County Bar Association (SCBA) Annual New Employment Laws MCLE Luncheon | Sacramento | Gage C. Dungy

Dec. 11 **"Legislative and Legal Update"**
League of California Cities 2019 Fire Chiefs Leadership Seminar | Garden Grove | Morin I. Jacob

Dec. 11 **"Managing the Marginal Employee"**
League of California Cities City Clerks New Law & Elections Seminar | Garden Grove | T. Oliver Yee

Dec. 11 **"Making the FLSA Work For You - Tips and Tricks to Ensure Compliance"**
League of California Cities Municipal Finance Institute | Garden Grove | T. Oliver Yee

Dec. 12 **"2019 Government Tax and Employee Benefits Seminar"**
Government Tax Seminars (GTS) Annual Government Tax and Employee Benefits | Ontario | Heather DeBlanc & Marcus Wu & Bill Morgan

Dec. 17 **"2019 Government Tax and Employee Benefits Seminar"**
GTS Annual Government Tax and Employee Benefits | Milbrae | Erin Kunze & Marcus Wu & Bill Morgan

Jan. 9 **"2020 Public Sector Employment Law Updates"**
International Public Management Association for HR (IPMA-HR) Sacramento-Motherlode Chapter | Auburn | Gage C. Dungy

Jan. 16 **"2020 Public Sector Employment Law Updates"**
IPMA-HR Sacramento-Motherlode Chapter | West Sacramento | Gage C. Dungy

Jan. 22 **"Costing Labor Contracts"**
LCW Pre-Conference 2020 | San Francisco | Kristi Recchia & Che I. Johnson

Jan. 23-24 **"LCW Conference General Sessions"**
LCW Conference 2020 | San Francisco

Jan. 29 **"Hiring CalPERS Retirees the Right Way"**
California Society of Municipal Finance Officers (CSMFO) Annual Conference | Anaheim | Steven M. Berliner & Renee Ostrander

Seminars/Webinar

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

Dec. 9 **"Harassment Prevention: Train the Trainer Refresher"**
Liebert Cassidy Whitmore | San Francisco | Erin Kunze

Dec. 12 **"2020 Legislative Update for Public Agencies"**
Liebert Cassidy Whitmore | Webinar | Gage C. Dungy

Dec. 17 **"Harassment Prevention: Train the Trainer"**
Liebert Cassidy Whitmore | Los Angeles | T. Oliver Yee

FIRM PUBLICATIONS

To view these articles and the most recent attorney-authored articles, please visit: **www.lcwlegal.com/news.**

Los Angeles' Managing Partner **J. Scott Tiedemann** and Attorney **Paul Knothe** authored an article for the *Daily Journal* on two new bills (AB 392 and SB 230) passed into laws this year relating to the state's use of force and training requirements for police officers.

Fresno Partner **Che Johnson** and Sacramento Attorney **Lars Reed** authored an article for *Law360* titled, "How Calif. Public Agencies Can Reform Pension Benefits."

Los Angeles' Managing Partner **J. Scott Tiedemann** and Attorney **Alison Kalinski** authored an article for the League of California Cities' magazine *Western City.* The article is about the #MeToo movement and some of the major legislative changes affecting employees in the workplace as well as best practices to protect your agency and create a harassment-free workplace.

Sacramento Partner **Jesse Maddox** authored an article for the *Santa Monica Observer* titled, "Use It or Lose It: SCOTUS Decision Clarifies that Employers Must Assert an Administrative Exhaustion Defense Early During Litigation."

The ***Client Update*** is available via e-mail. If you would like to be added to the e-mail distribution list, please visit https://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 ***Client Update***.

If you have any questions, contact **Jaja Hsu** at 310.981.2000 or at info@lcwlegal.com.

LCW Liebert Cassidy Whitmore
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.

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