LCW Liebert Cassidy Whitmore

Briefing Room

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

May 2017

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LCW NEWS

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.

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WAGE AND HOUR

Court Drastically Reduces Police Officers' Claim for Attorneys' Fees After Years of FLSA Litigation.

Los Angeles office Partners **Brian Walter** and **Geoff Sheldon** and a team of associates secured a significant reduction in attorney's fees sought by attorneys who represented thousands of Los Angeles Police Department ("LAPD") officers. Litigation that wound up lasting over a decade began when approximately 2,500 current or former LAPD officers at the rank of lieutenant or below alleged that the City failed to pay them for overtime that they worked pre-shift, post-shift, during unpaid meal periods or on regular days off. The officers alleged that the City "should have known" that they did not accurately report all their overtime because LAPD gave them more work than allegedly could be done during their regular duty hours, the LAPD's overtime policy (which required the accurate reporting of all overtime worked) was allegedly not enforced and certain LAPD supervisors (Sergeants and Lieutenants – many of whom were plaintiffs themselves) allegedly dissuaded them from reporting all time worked under an "unwritten" practice or rule to not report overtime of less than one hour. The officers also sought to be paid overtime for the time they spent "donning" and "doffing" their police uniforms and related gear (Sam Browne belt and Kevlar vest) before and after their shifts.

Earlier in the case, the District Court granted the City's motion for summary judgment on the officers' "donning" and "doffing" claims. The Court then granted the City's motion to decertify the officers' various "off-the-clock" work claims on the grounds that the officers were not "similarly situated" to one another. The officers then attempted to file 28 smaller collective action lawsuits, but those attempts were thwarted by misjoinder motions, which resulted in the dismissal of all but the first-named officer in each lawsuit. The end result was that only 20 of the approximately 2,500 officers remained in the lawsuits, and only their "off-the-clock" claim remained viable for trial.

The City then settled with the 20 officers at mediation. Because the officers' attorneys were unwilling to settle their claim for attorney's fees and costs for an amount the City deemed reasonable, the parties agreed to submit the issue of fees and costs to a District Court judge for deter-

mination. Collectively, the officers' attorneys sought more than $8 million from the City. LCW opposed the fee motions on behalf of the City, and the District Court awarded the three law firms representing the officers less than $500,000 for work performed over a decade of litigation.

Acevedo v. City of Los Angeles (USDC Central Distr. 2016.)

POBR

Interrogation by Criminal Investigators from another Department Did Not Trigger POBR Protections.

A veteran officer of the Oxnard Police Department ("OPD") began dating a woman who had been indicted for murder. The officer discovered that the woman was under investigation early in their relationship, but continued dating her and even brought her inside the police station and on ride-alongs on multiple occasions.

The officer's relationship was contrary to an OPD policy providing, in relevant part, "Except as required in the performance of official duties or, in the case of immediate relatives, employees shall not develop or maintain personal or financial relationships with any individual they know or reasonably should know is under criminal investigation."

When the OPD caught wind of the relationship, it contacted the Santa Monica Police Department ("SMPD"), which was the agency handling the murder investigation. At the time, the prevailing belief at OPD was that the officer was not aware of the woman's status.

SMPD investigators then requested to interview the officer, so OPD had him come to the station but did not tell him why. During the interview with the SMPD investigators, the officer said he knew the woman was being investigated for murder and added that he had been to court with her on several occasions. An OPD commander sat in on the interview, but did not ask any questions.

Immediately after the interview, the OPD commander placed the officer on administrative leave and initiated a personnel investigation. The officer retired three days later.

Ultimately, the OPD's investigation concluded that the officer violated multiple department policies, including the policy prohibiting a relationship with an individual under criminal investigation. Had the officer not retired, the OPD would have terminated him. Due to the officer's policy violations, OPD issued a post-retirement written reprimand. It also denied the officer a retirement badge, concealed weapons (CCW) endorsement, and the ability to purchase his service weapon – items for which he otherwise may have qualified.

The officer asserted various causes of action, all of which the trial court and Court of Appeal rejected. Among other things, he claimed entitlement to a CCW endorsement under OPD policy, or, alternatively, a CCW hearing pursuant to California law. He also argued that OPD violated his First Amendment rights to freedom of association by penalizing him for his relationship with a woman who had not been convicted of a crime. In addition, he claimed he was denied his procedural rights under Government Code section 3303, and the opportunity for an administrative appeal under Government Code section 3304. Both of these Government Code sections fall within the Public Safety Officers' Procedural Bill of Rights Act (POBR).

The officer contended that his interview with the SMPD investigators was a POBR-covered interrogation entitling him to various procedural protections under Government Code section 3303. However, the statute expressly states that

it only applies when a police officer is "under investigation and subjected to interrogation by his commanding officer, or any other member of the employing public safety department, that could lead to punitive action." The statute also provides that the POBR's interrogation provisions do not apply to an investigation "concerned solely and directly with alleged criminal activities."

Here, the Court found there was substantial evidence that section 3303 was inapplicable. It reasoned that it was the SMPD investigators, not members of the OPD, who conducted the interview. Further, the officer was not under administrative investigation, given that the prevailing belief at OPD was that he was unaware of the woman's status.

The officer also claimed that OPD failed to provide him an opportunity for an administrative appeal, in violation of Government Code section 3304 of the POBR. Under the statute, officers are entitled to administratively appeal a "punitive action," defined as "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." The Court found that the only relevant "punitive action" in this case was OPD's written reprimand, but it held that the reprimand was not actionable because section 3304 did not apply to "persons such as appellant who have voluntarily retired while a disciplinary investigation was pending against them."

The officer also asserted that OPD was required to issue him a CCW endorsement, since OPD policy entitled officers to a CCW endorsement "upon honorable retirement." The officer claimed that by receiving a service retirement, he automatically was honorably retired. The Court rejected this argument, based on the specific language of the OPD policy.

The Court of Appeal also upheld the trial court's finding that it was unnecessary to require the City to provide the officer a CCW hearing. The officer was entitled to such a hearing pursuant to OPD policy and Penal Code section 26305, subdivision (d), which provides that a CCW endorsement "may be permanently revoked or denied by the issuing agency only upon a showing of good cause" that "shall be determined at a hearing, as specified in Section 26320." However, the City presented evidence that it was willing to provide the officer such a hearing, so the Court held that the officer had failed to exhaust his administrative remedies.

Finally, the Court addressed the officer's contention that the OPD violated his First Amendment right to associate freely with the woman. The Court found no error in the trial court's rejection of this claim, noting that "[i]t is well established that there is no constitutional impediment to police department rules prohibiting officers from maintaining close personal relationships with persons charged with felonies such as murder."

Chronister v. City of Oxnard (2017) 2017 WL 1056115 [unpublished].

NOTE:

Although this case is unpublished, and therefore not citable, it signals how other courts may decide cases that address limitations on officer rights pertaining to interrogations, administrative appeals, freedom of association, and CCW endorsements.

Proposed POBR Statute Would Require Clear and Convincing Evidence to Establish Officer Dishonesty.

AB 1298, currently making its way through the California Assembly, could significantly affect the outcomes of administrative hearings where police officer dishonesty is at issue.

Generally, when a public employee, including a police officer, appeals a disciplinary action, the prevailing evidentiary standard at the administrative hearing is the "preponderance of the evidence" standard. This is the same standard used in most civil lawsuits, and it imposes upon the employer the burden of proving that it "is more likely than not" that the misconduct occurred.

AB 1298 would raise this standard to "clear and convincing evidence" for allegations of police officer dishonesty. The bill proposes to add Government Code section 3303.5 to the Public Safety Officers' Procedural Bill of Rights Act (POBR). The proposed statute states: "When any public safety officer is under investigation and subjected to interrogation . . . , on the allegation of making a false statement, an administrative finding of a false statement by that public safety officer shall require proof based on clear and convincing evidence." Section 3303.5 would apply only to allegations of false statements and would not affect the evidentiary standard for other allegations.

According to the legislative record for the bill, "clear and convincing" means "the evidence is highly and substantially more likely to be true than untrue; the trier of fact must have an abiding conviction that the truth of the factual contention is highly probable." The legislative record acknowledges that the standard is generally reserved for civil lawsuits where something other than money is at stake, such as restraining orders, dependency cases, probate of wills, and conservatorships.

The bill was introduced by Assembly Member Miguel Santiago. According to the author's statement in the legislative record, AB 1298 "takes a step to standardize the burden of proof required" to establish officer dishonesty, with the intention of "ensur[ing] that only officers who intend to deceive will be found guilty of making a false or misleading statement."

Employee dishonesty is a serious offense in any public employment setting. But when a police officer makes a false statement, the resulting harm to the public can be far more detrimental. This is partially because in criminal cases where the police officer is a prosecution witness, the prosecutor may be required to turn over evidence of the officer's past dishonesty, which the defendant can then use to attack the officer's credibility. This right derives from the U.S. Supreme Court case of *Brady v. Maryland* (1963) 373 U.S. 83. Under California law, evidence of police officer dishonesty may be discoverable through what is commonly known as a "Pitchess motion," after the California Supreme Court case of *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

Accordingly, even one false statement by a police officer may taint the prosecution of all cases in which the officer is involved. For this reason, California courts have consistently upheld the termination of police officers charged with dishonesty, even in instances where the officer was a long-term employee with little or no record of prior discipline.
It is already difficult to prove intentional dishonesty, and if AB 1298 passes it will only become harder. We will continue tracking the bill and provide any updates as they become available.

EXCESSIVE FORCE

San Diego County deputy sheriffs responded to a 5150 report that an intoxicated man with health issues was acting aggressively. The man's family told the deputies that the man was bipolar, schizophrenic, diabetic, and under the influence of Valium and alcohol.

The deputies entered the man's house, one with a gun drawn and another with a Taser at the ready. The deputies rounded a corner and

found the man with kitchen knives sticking out of his pockets. They ordered the man to drop to his knees, which he did. The deputies' accounts of what happened from that point on were somewhat inconsistent, but all testified that the man reached for his knife despite orders to place his hands on his head and that a deputy then shot him multiple times.

The man's heirs sued the County, alleging excessive force in violation of the Fourth Amendment and wrongful death under California law. Reversing the District Court, the U.S. Court of Appeals for the Ninth Circuit held that although the deputies' level of force may not have been objectively reasonable under the circumstances, they were entitled to qualified immunity as to the Fourth Amendment claim. (The Court did not address the California wrongful death claim.)

In determining whether an officer is entitled to qualified immunity, courts consider (1) whether there has been a violation of a constitutional right and (2) whether that right was clearly established at the time of the officer's alleged misconduct. Under the Fourth Amendment, law enforcement may use force that is "objectively reasonable." In evaluating whether a use of force meets this standard, courts look at various factors, including whether the subject posed an immediate threat and whether he or she was emotionally disturbed. The Ninth Circuit held that the discrepancies in the deputies' testimony, among other factors, could lead a reasonable juror to find a Fourth Amendment violation.

Nevertheless, the Ninth Circuit concluded that it was not "clearly established" at the time of the incident that using deadly force under the circumstances would be considered excessive under the Fourth Amendment. To be clearly established, the right must be sufficiently clear that a reasonable officer would understand that what he or she is doing violates that right. Courts do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate.

The Ninth Circuit found that the most similar Court of Appeals case predating the incident was *Glenn v. Washington County* (9th Cir. 2011) 673 F.3d 864. In that case, the Court held that there was potentially excessive force where officers fatally shot a suicidal and intoxicated man in his driveway who did not comply with orders to put down a pocketknife. In the case at bar, the Ninth Circuit found the *Glen* facts insufficiently analogous to have placed the deputies on notice, reasoning that in *Glen* the man held the pocketknife to his own neck whereas the circumstances here were more threatening.

Since at the time of the incident it was not clearly established that the deputies' use of force was excessive, the Ninth Circuit held they were entitled to qualified immunity as to the Fourth Amendment claim.

S.B. v. County of San Diego (9th Cir. 2017) ___ F.3d ___ [2017 WL 1959984].

NOTE:

Although this case arose outside the employment context, it aids in delineating what kind of force is considered "reasonable" under the Fourth Amendment, which may be a factor in a disciplinary decision where use of force is an issue. At the same time, just because an officer is entitled to qualified immunity against liability does not necessarily mean the officer is also immune from discipline, particularly if the force is not objectively reasonable, and the qualified immunity results merely from the fact that the courts have not yet addressed analogous circumstances to place the officer on notice.

DISCRIMINATION

Twice Terminated Employee Defeats Employer's Motion for Summary Judgment on Wrongful Termination.

Gilberto Santillan worked as a garbage truck driver for USA Waste in Manhattan Beach, California for 30 years. In January 2009, USA Waste assigned Steve Kobzoff to be Santillan's route manager. Kobzof attempted to discipline Santillan six times between January 2009 and July 2010. In March 2011, USA Waste's contract with the City of Manhattan Beach was up for renewal. A number of Manhattan Beach residents supported the renewal of the contract and praised Santillan's services as their garbage collector.

On December 5, 2011, USA Waste fired Santillan. USA Waste alleged it terminated Santillan because he had four accidents within a 10-month period. Santillan disputed the accidents and alleged USA Waste failed to follow the relevant collective bargaining agreement procedures. After Santillan's termination, USA Waste replaced him with an employee who was13 years younger. Santillan was one of multiple, older, Spanish-speaking employees who USA Waste fired or suspended.

On December 7, 2011, Santillan filed a formal grievance to challenge his termination. After Santillan filed the grievance, USA Waste received hundreds of letters from Manhattan Beach residents demanding USA Waste reinstate Santillan.

On May 17, 2012, USA Waste and Santillan signed a settlement agreement. Santillan agreed to dismiss the grievance, and USA Waste agreed to reinstate his employment if he passed a drug test, physical exam, and criminal background check, and provided proof of his right to work in the United States through "e-Verify."

Santillan completed the requirements as requested. Maria Diaz, a USA Waste human resources employee told Santillan he would start on July 16, 2012. Diaz also told Santillan that he would need to provide a completed I-9 form showing his eligibility to work in the United States. When Santillan reported to work, he produced his driver's license and social security card to complete the I-9 form. Diaz informed Santillan that he also needed to provide a work authorization number and its expiration date. Santillan twice provided the identification number, but did not provide an expiration date. Therefore, Diaz sent Santillan home and USA Waste terminated him a second time for failing to provide proof of his right to work.

Santillan sued USA Waste for wrongful termination in violation of California's public policies against: (1) age discrimination; and (2) retaliation for having an attorney represent him during the settlement agreement negotiations. USA Waste filed a motion for summary judgment, which the district court granted. Santillan appealed.

The Court of Appeals applied the burden shifting framework under McDonnell Douglas Corp v. Green to the wrongful termination claims. Under the first prong of the framework, the employee must establish a *prima facie* case of discrimination or retaliation. Under the second prong, the employer can rebut the presumption by providing a legitimate, non-discriminatory reason for its adverse employment action. If the employer is able to present legitimate reasons for its decision, the employee must show that the reason the employer provided is pretext for discriminatory conduct.

The Court first addressed Santillan's claim for wrongful termination in violation of California's public policy against age discrimination. To state a *prima facie* case of age discrimination under the Fair Employment and Housing Act (FEHA), the employee must establish: (1)

membership in a protected class; (2) competent work performance; (3) an adverse employment action; and (4) circumstances that suggest a discriminatory motive.

The Court determined that Santillan provided evidence of the first three elements of age discrimination. In analyzing whether Santillan provided evidence of discriminatory motive, the Court determined that two pieces of evidence were sufficient. First, Santillan testified that Kobzof fired or suspended multiple, older Spanish-speaking employees. Second, the Court identified the 13-year age gap between Santillan and his replacement. Not only was his replacement younger, but Santillan also had approximately 21 more years of experience. The Court also determined that USA Waste failed to provide a legitimate, non-discriminatory reason for firing Santillan. USA Waste argued that Santillan failed to provide proof he was eligible to work in the United States, but Santillan provided two appropriate documents to prove his right to work, as allowed by the Immigration Control and Reform Act.

The Court also found that Santillan established a *prima facie* case of retaliation. First, Santillan showed that having an attorney represent him during settlement negotiations was a protected activity under California law. California's Labor Code section 923 gives an employee the right to representation as to the terms and conditions of employment. Second, USA Waste could not rebut the presumption that it retaliated against Santillan because it fired him within two months after his attorney negotiated the settlement agreement.

Santillan v. USA Waste of California (9th Cir. 2017) ___ F.3d ___ [2017 WL 1289971].

NOTE:

Age discrimination claims can still be viable even if the terminated employee and the replacement employee are over 40. Both employees were over 40 in this case, but Santillan was significantly older -- 13 years older -- than his replacement.

Rejection of Former Employee's Request to Rescind Voluntary Resignation Does Not Constitute an Adverse Employment Action.

Ruth Featherstone, at at-will employee, worked for the Southern California Permanente Medical Group (SCPMG). During her employment, she had a temporary disability as a side effect of medication she was taking. Unbeknownst to SCPMG, the medication caused her to have an "altered mental state." During that altered mental state, Featherstone called her supervisor and resigned. Her supervisor asked her to confirm her resignation in writing, which she did. Featherstone later informed SCPMG that she had an altered mental state when she resigned and asked to rescind the resignation. SCPMG declined.

Featherstone sued SCPMG for discrimination, failure to prevent discrimination, failure to accommodate, failure to engage in the interactive process, and wrongful termination under the California Fair Employment and Housing Act ("FEHA"). FEHA prohibits employment discrimination against an employee on the basis of a physical disability or medical condition. An employee in a disability discrimination case must prove that: (1) she has a disability; (2) she was otherwise qualified to do her job; (3) an adverse employment action occurred; and (4) her employer had a discriminatory intent.

The Court acknowledged that FEHA is silent on whether refusing to allow a former employee to rescind a voluntary resignation is considered an adverse employment action.

Due to a lack of case law from California courts, the Court reviewed federal decisions. That case law overwhelmingly supported a finding that refusing to accept an employee's

request to rescind a voluntary resignation is not an adverse employment action absent unusual circumstances, such as constructive termination, or an employer's coercion or misconduct. As a result, the Court decided that SCPMG did not have a duty to allow Featherstone to rescind her voluntary resignation. Since Featherstone could not show an adverse employment action, her discrimination claims under the FEHA failed.

On the failure to accommodate claim, the Court noted that an employer's duty to accommodate only applies to known disabilities. When Featherstone resigned and SCPMG accepted the resignation, SCPMG did not know Featherstone was temporarily disabled because of the adverse drug reaction. Therefore, Featherstone was unable to establish SCPMG's duty to accommodate or engage in the interactive process.

Finally, the Court addressed the wrongful termination claim. The Court rejected the claim because California law provides that a claim for wrongful termination in violation of public policy fails if an employer did not violate the FEHA. Since Featherstone did not establish a FEHA violation, her wrongful termination claim also could not proceed.

Featherstone v. Southern California Permanente Medical Group (2017) ___Cal.App.4th ___ [2017 WL 1399709].

NOTE:

This case also discusses the importance of promptly accepting an employee's offer to resign. If there is no contradictory procedure in an employment contract or policy, a binding contract to resign occurs if the employer accepts the resignation before the employee rescinds her offer to resign. In this case, SCPMG had already accepted the resignation by the time Featherstone asked to rescind it. A written resignation, followed by a written acceptance, can provide valuable evidence that a binding contract to voluntarily resign occurred.

SETTLEMENTS

Below are a couple of recent settlements in the public safety arena. We are providing this information to give readers an understanding of what employment litigation can cost public safety employers.

- The City of Glen Rock, New Jersey paid out $750,000 to settle a lawsuit with a terminated police officer who claimed that other officers harassed him due to his sexual orientation by making derogatory comments and lewd gestures, resulting in a hostile work environment. As part of the settlement, the officer was also reinstated. Under the FEHA, California employees are similarly protected against harassment based on sexual orientation.

- A federal court in Virginia approved a settlement between Henrico County and a group of fire captains to resolve a lawsuit alleging the captains were misclassified as exempt in violation of the Fair Labor Standards Act (FLSA). In total, the County agreed to pay more than $580,000, including attorney's fees. Earlier in the case, the district court granted summary judgment to the County, finding that the captains were exempt under the FLSA's executive exemption. In so holding, the trial court concluded that the firefighters were not covered by the FLSA's "first responder" regulation, which states that the white collar exemptions "do not apply to … fire fighters … regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims … or other similar work." On appeal, the U.S. Court of Appeal for the Fourth Circuit (which covers Virginia, among other states) directed the trial court to reconsider the case in light of *Morrison v. County of Fairfax*, VA (4th Cir. 2016) 826 F.3d 758. In *Morri-*

son, a case we reported on in July 2016, the court applied the first responder regulation to a group of Fairfax County, Virginia fire captains. That case ultimately also settled for $7.85 million.

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Liebert Cassidy Whitmore Welcomes New Associates

Ashley Bobo, working out of Liebert Cassidy Whitmore's Los Angeles Office where she provides assistance to clients in matters pertaining to employment law and litigation. Ashley has experience researching and drafting pre-trial motions which include reply briefs, oppositions, and motions for summary judgment in employment litigation. She has also managed discovery tasks including form interrogatory responses and objections, document production, and incoming response and document organization. Ashley can be reached at 310.981.2018 or abobo@lcwlegal.com.

Dalisai Nisperos, working out of Liebert Cassidy Whitmore's San Francisco Office. She represents and advises public sector agencies in all aspects of labor, employment, and education law. This includes: state and federal court litigation, labor relations, responding to EEOC/DFEH charges, wage and hour, and advice and counsel on an array of personnel issues. She has first-chaired administrative hearings and arbitrations, and continues to represent clients in state and federal court matters. Dalisai can be reached at 415.512.3025 or dnisperos@lcwlegal.com.

Jenny-Anne S. Flores, working out of Liebert Cassidy Whitmore's Los Angeles Office where she provides representation and legal counsel to the Firm's education and public agency clients. An experienced litigator, Jenny-Anne has extensive experience in all aspects of the litigation process including pleadings, discovery, dispositive motion practice, settlement/mediation and trials. Jenny-Anne can be reached at 310.981.2006 or jflores@lcwlegal.com.

LCW WEBINAR: NEGOTIABLE ITEMS – WAGES, HOURS, AND WORKING CONDITIONS

Tuesday, June 6, 2017 | 10 AM - 11 AM

Presented by:

Peter Brown

The scope of bargaining is broad and not specifically defined by the law. There is both the obligation to negotiate over a decision to modify a term or condition of employment within the scope of bargaining and the obligation to negotiate over the impact of an agency decision even if the agency has the right to make the decision unilaterally. This is confusing and frustrating. Confusing because the scope of bargaining has generally expanded based on cases issued by the Public Employment Relations Board, and frustrating because it often unclear as to whether a decision or just the impact of a decision must be negotiated. Come listen to an hour where Peter Brown tries to makes this difficult topic easier to understand.

Who Should Attend? *HR and Labor Relations professionals, Managers and Directors.*

Workshop Fee: *Consortium Members: $70, Non-Members: $100*

LCW WEBINAR: HIRING CALPERS RETIREES: DOING IT RIGHT?

Wednesday, June 14, 2017 | 10 AM - 11 AM

Presented by:

Frances Rogers

Michael Youril

Join us for a presentation that will focus on the restrictions and requirements governing post-retirement work for CalPERS retirees. This webinar will discuss common pitfalls, mistakes, and misinterpretations of the post-retirement work restrictions governing CalPERS retired annuitants. Specific issues will include:

- independent contractors and third party employers,
- appointments of limited duration, and
- the limitations on “extra help” and interim appointments.

We will also discuss liability for violations of the post-retirement work restriction.

Who Should Attend? *Risk Managers, Human Resources, Supervisors and Managers*
Workshop Fee: *Consortium Members: $70, Non-Members: $100*

Register Today: www.lcwlegal.com/events-and-training

LCW Liebert Cassidy Whitmore

LCW Seminar: How to Avoid Claims of Disability Discrimination: The Road to Reasonable Accommodation (With Special Guest – Assistant Chief Counsel Paula Pearlman from DFEH)

LCW is pleased to offer this seminar presented by our attorney, Jennifer Rosner and Assistant Chief Counsel at DFEH, Paula Pearlman.

Agencies are faced with many challenges when presented with employees with disabilities in the workplace. Presented by a state-wide leading Liebert Cassidy Whitmore attorney in the areas of employee disability and discrimination and **Special Guest Assistant Chief Counsel from the Department of Fair Employment and Housing (DFEH)**, this seminar will help employers successfully navigate through the reasonable accommodation process and provide a framework to answer the difficult questions such as: What are an employer's responsibilities when it suspects a disability but the employee hasn't requested an accommodation? How far is an employer required to go to accommodate a disability, and what happens when that conflicts with other statutory schemes or possibly the rights of other employees? What are the employer's responsibilities when discipline and disability intersect?

This workshop will also provide key information on what you should do when the interactive process breaks down and whether you can separate an employee or must file for disability retirement.

Attendees will learn:

- Real case studies from litigation handled by the DFEH and LCW, including a discussion about what went right and what went wrong in those cases;
- Practical ways to avoid claims of disability discrimination, failure to accommodate, and failure to engage in the disability process;
- Tips to identify known and unknown disabilities;
- Triggers to know your duty to accommodate;
- Medical certifications you can require;
- Tactics to handle seemingly endless leaves; and
- Preventive strategies directly from DFEH.

We invite you to take this unique opportunity to get extensive insight and best practices from LCW and DFEH, and hope you'll join us!

Who Should Attend?
Human Resources professionals, Risk Managers, Supervisors

Details:
Tuesday, July 11, 2017 | 9:00AM - 12:00PM
Fullerton Community Center | 340 W Commonwealth Ave, Fullerton, CA 92832

Pricing:
$250 per person for Consortium Members
$300 per person for Non-Consortium Members

Register Today: www.lcwlegal.com/events-and-training/webinars-seminars

TRAIN THE TRAINER REFRESHER SESSIONS

SAN FRANCISCO - JUNE 2, 2017
SAN DIEGO - JUNE 9, 2017
FRESNO - JUNE 14, 2017
LOS ANGELES - JUNE 16, 2017

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

Liebert Cassidy Whitmore is offering "Train the Trainer" refresher sessions to provide you with the necessary tools to continue conducting mandatory AB 1825 (Govt. Code Section 12950.1) training for your agency. As you know, a key component of AB 1825 compliance is the provision of preventing harassment training to all supervisory employees every two years and to new supervisors within 6 months of their assumption of a supervisory position.

If you have attended one of LCW's previous Train the Trainer sessions, you are eligible to attend the Refresher course.

ATTENDEES WILL RECEIVE:

- 3 hours of instruction to be completed in one day
- Guide, PowerPoint slides and case studies (on CD and hard copy) complete with detailed speakers' notes for use in their future presentations
- Participant Guide for distribution in their future presentations
- Legal updates, where warranted, through 2019, including updated slides and facilitator / participant guides
- Certificate of Attendance for "Train the Trainer session"

REGISTRATION:

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

LCW
Labor Relations Certification Program

Developing Positive Partnerships and Leadership Excellence for Labor Relations Professionals

The Liebert Cassidy Whitmore Labor Relations Certification Program© is designed for labor relations and human resources professionals who work in public sector agencies. It is designed for both those new to the field as well as experienced practitioners seeking to hone their skills. These workshops combine educational training with experiential learning methods ensuring that knowledge and skill development are enhanced. Participants may take one or all of the Certification programs, in any order. Take all of the classes to earn your certificate!

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MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Training

June 1	"Disciplinary and Harassment Investigations: Who, What, When and How" Gateway Public ERC | Santa Fe Springs | Laura Kalty & Hengameh S. Safaei
June 1	"The Future is Now - Embracing Generational Diversity and Succession Planning" Los Angeles County Human Resources Consortium | Los Angeles | Mark Meyerhoff
June 1	"Advanced Investigations of Workplace Complaints" San Mateo County ERC | Burlingame | Erin Kunze
June 7	"A Guide to Implementing Public Employee Discipline" & "Prevention and Control of Absenteeism and Abuse of Leave" Monterey Bay ERC | Hollister | Kimberly A. Horiuchi
June 8	"Maximizing Supervisory Skills for the First Line Supervisor" Orange County Consortium | Buena Park | Kristi Recchia

Customized Trainings

June 1,15	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Glendale | Danny Y. Yoo
June 2	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Rocklin | Kristin D. Lindgren
June 2	"Train the Trainer Refresher: Harassment Prevention" Liebert Cassidy Whitmore | San Francisco | Heather R. Coffman
June 5,6,8	"Captains Toolbox" Aptos/La Selva Fire Protection District | Aptos | Heather R. Coffman
June 6	"Competencies for Successful Supervisory Skills and Building the Best Management Skills Toolbox" City of Ontario | Kristi Recchia
June 7,8	"Preventing Workplace Harassment, Discrimination and Retaliation" Merced County | Merced | Che I. Johnson
June 9	"Freedom of Speech and Right to Privacy" Labor Relation Information System - LRIS | Las Vegas | Mark Meyerhoff
June 9	"Train the Trainer Refresher: Harassment Prevention" Liebert Cassidy Whitmore | San Diego | Judith S. Islas
June 13	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Hesperia | Lee T. Patajo
June 13	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Stockton | Kristin D. Lindgren
June 14,22,29	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Newport Beach | Christopher S. Frederick
June 14	"Mandated Reporting" East Bay Regional Park District | Oakland | Erin Kunze

June 14	"Train the Trainer Refresher: Harassment Prevention" Liebert Cassidy Whitmore | Fresno | Shelline Bennett
June 15	"Public Service: Understanding the Roles and Responsibilities of Public Employees" City of Ontario | Kristi Recchia
June 15	"MOU's, Leaves and Accommodations" City of Santa Monica | Laura Kalty
June 16	"Train the Trainer Refresher: Harassment Prevention" Liebert Cassidy Whitmore | Los Angeles | T. Oliver Yee
June 20	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Concord | Heather R. Coffman
June 21	"Preventing Workplace Harassment, Discrimination and Retaliation" City of La Habra | Lee T. Patajo
June 22	"Maximizing Supervisory Skills for the First Line Supervisor" City of Manhattan Beach | Kristi Recchia
June 22	"Performance Management: Evaluation, Discipline and Documentation and Guide to Implementing Public Employee Discipline" Mariposa County | Mariposa | Kimberly A. Horiuchi
June 28	"Preventing Workplace Harassment, Discrimination and Retaliation" City of Modesto | Che I. Johnson

Speaking Engagements

June 27	"The GM Toolbox: Doing Business Contracts Yourself with Confidence" California Special Districts Association (CSDA) General Managers Summit | Newport Beach | Heather DeBlanc

Seminars/ Webinars

Register Today: www.lcwlegal.com/events-and-training

June 6	"Negotiable Items - Wages, Hours, and Working Conditions" Liebert Cassidy Whitmore | Webinar | Peter J. Brown
June 14	"Hiring CALPERS Retirees: Doing it Right?" Liebert Cassidy Whitmore | Webinar | Frances Rogers & Michael Youril
June 21	"LCW Labor Relations Certification Program: Nuts and Bolts of Negotiations" Liebert Cassidy Whitmore | Fullerton | Laura Kalty & Kristi Recchia

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