

FIRE WATCH

News and developments in employment law and labor relations for
California Fire Safety Management

DECEMBER 2021

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

FIRM VICTORIES

Peace Officer's Termination Upheld Following Off-Duty Altercation With Civilian.

LCW Partner **Jennifer Rosner** and Associate **Marek Pienkos** successfully represented a county in a peace officer's termination appeal.

In June 2019, an off-duty deputy sheriff with a county sheriff's department (Department) was dumping rocks and dirt in an open field. A civilian driver stopped to take pictures of the deputy dumping the materials. The civilian told the deputy that she would post the dumping on social media. In response, the deputy threw a rock towards the civilian, which struck her car and caused significant damage. Another law enforcement agency conducted a criminal investigation into the civilian's allegations, but the deputy failed to notify his supervisor about that investigation in violation of Department policy.

In July 2020, the Department terminated the deputy for: (i) conduct that caused discredit and embarrassment to the Department; (ii) failing to notify a supervisor that he was the subject of a criminal investigation; and (iii) conduct unbecoming of a deputy.

The deputy appealed his termination. He alleged the civilian threw a rock at his vehicle first – while his children were inside. He then threw a "clump of something" towards the civilian's vehicle to convince her to get away from him and his children. The deputy admitted that he was angry and used profanity. The deputy claimed his actions were appropriate because he thought his children were in danger. The deputy contended, however, that the civilian was already in her vehicle when he threw the object.

The hearing officer found that despite the dispute over who threw what first, the deputy failed to act in a reasonable or professional manner when he threw something towards the civilian. The hearing officer further noted that the deputy's statement that the civilian was already in her vehicle when he threw did not support his allegation that he did so in self-defense out of fear for his children's safety.

The deputy also alleged that he did not violate California Penal Code Section 374.3 because he was dumping dirt rather than garbage. The hearing officer disagreed, noting that a subsection of Section 374.3 prohibits the dumping of dirt and rocks. The hearing officer found that the deputy's failure to recognize this, regardless of whether he intended to violate the law, constituted an error in judgment that caused discredit to the Department.

Based on the foregoing, the hearing officer upheld the deputy's termination. The hearing officer also noted that the deputy's belief that his conduct was justified was "astounding" and meant that the deputy could repeat similar conduct in the future.

NOTE:

Peace officers are held to high standards of conduct, whether on-duty or off, given their position of trust with the public. Here, the hearing officer found that the officer's belief that his conduct was justified further supported the penalty of termination.

Hearing Officer Upholds Termination Of Police Officer Involved In Fatal Shooting.

LCW Managing Partner **Scott Tiedemann** and Associates **Paul Knothe** and **Kaylee Feick** recently prevailed in a police officer termination appeal. The case concerned a field training officer (FTO), who was one of two officers involved in a fatal shooting. The other officer was a probationary officer who had lateraled from another agency.

The probationary officer fired 75 rounds, many of which were through the windshield of a moving vehicle, during a slow speed pursuit on a Saturday morning through a quiet residential neighborhood. During the pursuit, the FTO fired 11 rounds with a high-powered AR-15 rifle. The FTO also failed to: provide effective feedback to the probationer; give the suspect an opportunity to surrender; and use appropriate felony traffic stop tactics. For these reasons, the hearing officer concluded that the police department had just cause to terminate the officer's employment.

Peace Officer's Termination Upheld After His Unsafe Driving Killed Two People.

LCW Associate **Paul Knothe** successfully represented a county in a peace officer's termination appeal.

In December 2013, a deputy sheriff with a county sheriff's department (Department) was parked in a patrol car when a civilian volunteer with the Department requested assistance regarding a fight. After numerous units requested additional information on the fight, it was determined that emergency assistance was not needed. Despite this, the deputy drove up to 86 mph in a residential neighborhood to respond to the volunteer's request without activating his vehicle's emergency equipment (i.e., vehicle lights and siren). The deputy collided with another vehicle, killing two passengers in the other vehicle.

Another law enforcement agency responded to and investigated the collision. The investigation determined that the primary cause of the collision was that the deputy was driving at an unsafe speed. The investigation further determined that the deputy was responding to an emergency call without lights or siren.

After the county District Attorney's Office declined to file criminal charges against the deputy, the Department

initiated its own investigation. Based on this investigation's findings, the Department terminated the deputy in September 2016 for: failing to conform to the standards of a deputy sheriff; displaying an unwillingness and/or inability to operate a patrol vehicle in a safe and responsible manner; and displaying poor behavior by driving at speeds above the posted speed limit, among other reasons.

The deputy appealed his termination. He admitted to speeding prior to the collision and that he was not using his lights or siren. He argued that termination was not the appropriate level of discipline. In support, he alleged that he was not the primary cause of the collision and the resulting fatalities because: (i) the driver of the other vehicle was under the influence of marijuana; and (ii) the passengers killed in the collision were not wearing seatbelts. The hearing officer found that, even if those facts were true, the deputy unnecessarily drove at a dangerously high speed and failed to use his emergency equipment to make his vehicle more visible. Moreover, the other agency's investigation supported that the deputy's unsafe driving was the primary cause of the collision.

The deputy also alleged termination was inappropriate given: his lack of prior discipline for on-duty driving; his tenure with the Department; the level of discipline issued to other deputies involved in fatal collisions; and because he was responding to an emergency call. The hearing officer disagreed, finding that the deputy demonstrated an inability to perform to the standards required of peace officers operating Department-issued vehicles. The hearing officer also noted that the Department need not impose the same level of discipline for all deputies involved in fatal collisions since the circumstances of each collision will be different. Based on the foregoing, the hearing officer upheld the deputy's termination.

NOTE:

The deputy sheriff did not refute key facts underlying his discipline. Instead, he alleged that termination was excessive discipline. In preparation for such an argument on appeal, agencies should ensure that any notice of termination outlines: all of the reasons why the officer's misconduct harms the public service; and why the agency believes the officer can no longer safely perform peace officer duties.

Peace Officer's Termination Upheld Following Failure To Adequately Investigate Child Abuse Allegations.

LCW Partner **Geoffrey Sheldon** and Senior Counsel **Stefanie Vaudreuil** successfully represented a city in a peace officer's termination appeal.

In April 2018, a civilian reported to city's police department (Department) that her husband physically abused her and her children. The Department then

dispatched a police officer to investigate. The officer spoke with the family, including one of the abused children who showed the officer their injuries and confirmed that their father hit them. Although the family spoke Spanish, the officer did not speak Spanish fluently and failed to request any translation assistance. The officer also failed to report the abuse following the visit. The next day, the children's school contacted Child Protective Services to report the abuse, and another Department investigator responded. That investigator noted the visible injuries on the children and their mother.

The Department then investigated the first officer's response to the child abuse allegations. In August 2018, the Department terminated the officer for failing to investigate the report of child abuse and turning off his body worn camera during the interview with the family without reasonable excuse. The officer appealed his termination.

Following an appeal, a hearing officer issued a non-binding recommendation that officer be reinstated due to a lack of credible evidence to support the termination. Specifically, the hearing officer found that the officer's failure to submit a child abuse report was reasonable because: (i) the Department did not notify the officer that he was being dispatched for a child abuse call; and (ii) the officer believed the children were being disciplined rather than abused. As to the latter issue, the officer alleged he: did not hear certain family members' statements about the child abuse; and believed that some family members were lying to him.

The City Manager reviewed the hearing officer's recommendation in accordance with the applicable memorandum of understanding. Based on this review, the City Manager sustained the officer's termination because: the dispatch call to the officer indicated alleged child abuse; the officer knew that the children were being hit; the officer saw the children's injuries; and the officer failed to ask follow-up questions from other potential witnesses.

The officer filed a petition for writ of mandate to challenge the City Manager's decision in superior court. The officer contended that the City Manager abused his discretion because there was insufficient evidence that the officer failed to report child abuse. The officer alleged he had a subjective belief that there was no abuse to report. The court disagreed, noting that the officer's failure to report the child abuse is viewed under an objective standard as to what a reasonable person would do. The Court found that a reasonable person would have heard key statements by dispatch and the reporting family members about the alleged abuse. The court found that it was the officer's poor investigation – including his failure to request a translator when interviewing the family and his lack of observation and questioning skills--that overlooked the child abuse.

Based on the foregoing, the court denied the officer's petition on the grounds that the City Manager's decision to uphold the termination was within his discretion and supported by the evidence.

Police Chief Had Good Cause To Revoke CCW Privileges From Retired Peace Officer Who Has Severe Emotional Distress And PTSD.

LCW Associates [Christopher Frederick](#) and [Michael Gerst](#) successfully represented a city in a retired peace officer's appeal of his revoked endorsement to carry a concealed weapon (CCW).

In November 2019, a police officer retired after 17 years with a city's police department (Department). Prior to his retirement, he was involved in three officer-involved shootings between 2005 and 2017. From 2005 to the present, the officer received psychological counseling and treatment for various issues, including post-traumatic stress disorder (PTSD). Upon his retirement, the officer received a retirement certification card with a CCW endorsement.

California Penal Code Section 26305 and the Department's policies provide that no CCW endorsement shall be issued to an officer retiring because of a psychological disability. Between November 2019 and January 2021, the officer treated with multiple doctors for his continuing PTSD and severe emotional distress, including increased anxiety and irritability. One of the doctors noted that it would not be advisable for the officer to return to law enforcement due to his chronic and significant PTSD.

In February 2021, after reviewing the officer's medical records, the Department's police chief revoked the retired officer's CCW privilege in accordance with Department policies and the Penal Code. The officer appealed to a three-member panel board for hearing. The officer argued that the police chief did not have good cause to revoke the CCW endorsement. The panel board disagreed, unanimously finding that the officer's medical records detailing his severe emotional distress and PTSD symptoms established good cause to revoke his CCW privilege. The hearing board stated explicitly that the law required the chief of police to revoke the retired officer's CCW endorsement.

NOTE:

The retired officer presented commendations, performance evaluations, and letters of appreciation he received during his employment. The panel board noted that while the officer's personnel records show a distinguished career in law enforcement, that information had no relevance as to whether good cause existed to revoke a CCW endorsement.

DISCIPLINE

Corrections Officer's Termination Reversed Due To Department's Failure To Adequately Train And Provide PPE.

In April 2017, Billy Bush, a Corrections Officer with the Merced County (County) Sheriff's Department (Department) was working the graveyard shift when a jail inmate, who was HIV positive, began significantly harming himself in his cell. A number of correctional officers, including Bush, entered the cell, but they were concerned about the inmate's HIV positive status and the amount of blood on the inmate and around the cell. At the time, the only personal protective equipment (PPE) the officers had was latex gloves.

As the most senior line officer, Bush took the lead in controlling the situation. Bush and another officer gave verbal commands to the inmate to stop ramming his head into the glass window of his cell, but the inmate did not comply. At that point, Bush used his expandable baton to strike the inmate twice on his thigh, and the inmate then followed instructions to get into a prone position on the floor. The second officer started to handcuff the inmate, but the inmate refused to move his right arm. Bush then twice tapped on the inmate's right arm with his baton, using "medium to light" force, and ultimately reached over and grasped the inmate's arm and moved it so he could be handcuffed.

A nurse then attended to the inmate's wounds, but the inmate still refused to comply with officers' orders to remain still. Bush then briefly placed his boot over the inmate's head to prevent movement, and later placed his boot on the inmate's chest for approximately one minute. At a later point, the inmate tried to sit up and Bush briefly placed his boot on the inmate's right forearm. Bush later explained that his actions were due to the inmate's erratic behavior and failure to comply with verbal commands. Bush also expressed concern with using his hands to restrain the inmate due to his HIV positive status and the lack of adequate PPE. Following the incident, the Department obtained additional PPE for its officers, including cover outfits and face shields.

The Department's investigation into the incident determined that Bush violated several County and Department policies. Specifically, the investigating sergeant determined that Bush's use of the baton and his boot to control the inmate were unjustified uses of force. Based on these findings, the Department terminated Bush in August 2017.

Bush appealed his termination, and an administrative hearing officer determined that Bush: (i) was inadequately trained on how to deal with a combative and bleeding HIV positive inmate; (ii) had inadequate PPE; and (iii)

was inadequately supervised because Bush's supervisor left during the course of the incident and did not question Bush's use of force until after the Department initiated its investigation. Given these findings, the hearing officer found that Bush's termination was without just cause because Bush did not violate any applicable Department or County policies.

The County then filed a petition for writ of mandate, alleging that no reasonable person, based on the entire record, would reach the same findings as the hearing officer. The trial court, applying an "independent judgment" standard, disagreed and denied the petition, finding that Bush's use of force was reasonable given the exceptional circumstances of the incident.

The County appealed, alleging that the trial court inadvertently applied a lower "substantial evidence" standard in denying its petition. The Court of Appeal found that the trial court was legally required to review the hearing officer's decision under the substantial evidence standard of review, and not the independent judgment standard. However, since the latter standard was more favorable to the County and the trial court still denied the County's petition, the Court of Appeal determined that the trial court's error was neither prejudicial nor reversible. The Court of Appeal also found the trial court's factual findings were supported by substantial evidence. Based on the foregoing, the Court of Appeal affirmed judgment for Bush.

Merced County v. Kong-Brown, et al., 2021 WL 5407446 (Cal. Ct. App. Nov. 19, 2021)-- unpublished.

NOTE:

The hearing officer, trial court, and Court of Appeal all noted that the circumstances of the correctional officer's use of force were out of the ordinary, but reasonable.

FIRST AMENDMENT

Court Allows Police Officers To Proceed With Their Defamation Claim Based On City Councilmember's Statements.

In February 2016, Scott Miller and Michael Spaulding, two police officers in the City of Seattle, Washington, shot and killed Che Taylor, a Black man, while attempting to make an arrest. A few days after the shooting, Kshama Sawant, a member of the Seattle City Council, told a crowd in front of the Seattle Police Department: "The brutal murder of Che Taylor, just a blatant murder at the hands of the police, show[s] how urgently we need to keep building our movement for basic human rights for black people and brown people." Sawant called for the Seattle Police Department to be held "accountable for their

reprehensible actions, individual actions. We need justice on the individual actions and we need to turn the tide on the systemic police brutality and racial profiling.” In June 2017, following the fatal shooting of another person of color, Sawant repeated her allegation that “Taylor was murdered by the police.”

In 2018, Miller and Spaulding filed an action against Sawant, claiming that she had defamed them by falsely accusing them of racial profiling and murder. Although Sawant did not identify the officers by name in her comments, they alleged that their families, friends, colleagues, and members of the public all knew that they were the officers who shot Taylor. The officers alleged that Sawant’s remarks were thus “of and concerning” them, as required to state a claim for defamation under Washington law.

The district court dismissed the officers’ defamation claims on the ground that their complaint failed to plausibly allege that Sawant’s remarks were “of and concerning” them. Specifically, the district court concluded that Sawant’s statements did not target the officers, but rather spoke to broader issues of police accountability.

The officers appealed, and the Ninth Circuit Court of Appeals reversed. The Ninth Circuit noted that although Sawant’s remarks appeared to be aimed in part at the police generally, some of her words referred specifically to the officers who shot Taylor, including her reference to the “individual actions” taken. The Ninth Circuit noted that this language suggested that Sawant was singling out Miller and Spaulding—characterizing them as murderers and calling for them to be held individually accountable.

The Ninth Circuit also noted that some who heard the remarks may have understood Sawant’s remarks as communicating criticism of police generally, but stated that the officers plausibly alleged that their family, friends and community understood the comments to be directed at Miller and Spaulding. They were the only police officers involved in the shooting, and the only “police” to whom the statements could apply. Thus, the officers’ allegations met the “of and concerning” standard under Washington law.

Sawant alleged that she could not be held liable, even if readers and listeners reasonably understood her remarks to refer to the two officers, because she was not responsible for making their identities public. The Ninth Circuit disagreed, noting that no applicable case authority distinguishes between information acquired from the speaker of the alleged defamatory remarks and information acquired from other sources in the context of a viable defamation claim.

Sawant also alleged that allowing police officers to file defamation claims based on the knowledge and conclusions of friends, families, and colleagues of those officers will allow officers to silence critics of law enforcement. The Ninth Circuit again disagreed, noting that case authority is clear that defamation claims may be based on how a communication is understood by individuals who know the plaintiffs.

Based on the foregoing, the Court reversed and remanded the case to the district court for further proceedings.

Miller v. Sawant, 2021 WL 5227171 (9th Cir. 2021).

NOTE:

The Ninth Circuit noted that it was not deciding whether the City Councilmember was liable for defaming the officers. Rather, the Ninth Circuit only held that the officers plausibly pleaded a single element of their defamation claims at issue on appeal – the “of and concerning” element.

RETIREMENT

Retirees Had No Vested Right To Health Insurance Benefits Under County Retirement Plan.

In January 1993, the County of Orange and the Orange County Employee Retirement System (OCERS) entered into a memorandum of understanding (MOU). That MOU allowed the County to access surplus investment earnings controlled by OCERS and to deposit a portion of the surplus into an Additional Retirement Benefit Account (“ARBA”) to pay for health insurance of present and future County employees. In April 1993, the County adopted the Retiree Medical Plan, funded by investment earnings from the ARBA account and mandatory employee deductions. The Retiree Medical Plan explicitly stated that the plan did not create any vested rights to benefits. The County’s intent was to induce employees to retire early.

Labor unions then entered into MOUs with the County providing that the County would administer a Retiree Medical Insurance Plan and retirees would receive a Retiree Medical Insurance Grant. As a result, County employees received a monthly grant to defray the cost of health care premiums from 1993 through 2007. However, beginning in 2004, the County negotiated with its labor unions to restructure the retiree medical program, which was underfunded. The County ultimately approved an agreement with the unions that reduced benefits for retirees.

A group of County retirees, then filed a class action complaint alleging, among other claims, that the County intended in the 1993 MOU to create an implied vested

right to the monthly grant, and then breached that MOU by reducing the benefit in 2004. The district court granted judgment in the County's favor, and retirees appealed. The case made its way to the Ninth Circuit.

First, the Ninth Circuit held that the April 1993 Retiree Medical Plan did not create any vested right to the monthly grant benefits. Under California precedent, a person bears a "heavy burden" to overcome the presumption that the legislature did not intend to create vested rights. The evidence of a vested implied right in an ordinance or resolution must be "unmistakable." Since the April 1993 Retiree Medical Plan explicitly said that the plan did not create any vested right to the benefit, the retirees' claim to an implied vested right was foreclosed.

Next, the Ninth Circuit rejected the retirees' argument that the MOUs contained a contradictory implied term. The court held that at the summary judgment stage, the County provided evidence that the Retiree Medical Plan was adopted by resolution and therefore became governing law with respect to the monthly grant benefits. As existing County law, the Retiree Medical Plan became part of the MOUs, which were of limited duration and expired on their own terms by a specific date. Absent express language that the monthly grant benefits vested, the right to the benefits expired when the MOUs expired.

Moreover, the Ninth Circuit disagreed with retirees' argument that the plan was void because the County drafted and imposed the anti-vesting provisions in the Retiree Medical Plan without collective bargaining. As a preliminary matter, the court held that any claim the Retiree Medical Plan was void based on a failure to bargain was barred under the three-year statute of limitations in effect at that time for unfair practice charges. In any event, the Ninth Circuit further held that the Retiree Medical Plan was not unilaterally imposed on the unions and their employees without collective bargaining because the unions had the option to reject the plan or to negotiate different terms. Instead, the unions signed the MOUs that adopted the Retiree Medical Plan. Thus, the process was consistent with the Meyers-Milias Brown Act.

Finally, the Ninth Circuit concluded that the monthly grant benefits were not deferred compensation, which would vest upon retirement like pension benefits. The court reasoned that the Retiree Medical Plan did not provide insurance benefits, but rather it provided the opportunity for employees to purchase health insurance at a reduced cost. Unlike deferred compensation, which is earned by merely accepting employment, access to the health benefit required the employee to choose to pay his portion of the health insurance premium.

For these reasons, the Ninth Circuit affirmed the district court's decision in favor of the County.

Harris v. Cty. of Orange, 17 F.4th 849 (9th Cir. 2021).

NOTE:

One judge on the panel dissented in part. That judge argued that in order to prevail at the summary judgment stage, the County needed to demonstrate – without relying on the Retiree Medical Plan's anti-vesting term – that the retirees had no evidence proving that the pre-plan MOU created an implied vested right. Because the County did not do this, that judge would have reversed the district court's decision. The majority stated that the dissent relied upon the "mistaken assumption" that the Grant Benefit was deferred compensation, instead of an optional benefit.

GOVERNMENT CLAIMS ACT

Former Employee's Failure To Timely File A Claim For Damages With A Fire Protection District Prevented Lawsuit.

On March 9, 2018, Katherine Wood resigned from her position as an administrative secretary with the Pioneer Fire Protection District (District). Under the Government Claims Act (Act), no lawsuit for damages may be maintained against a public entity unless a written claim has first been presented to the entity. Any claim for personal injury must be presented no later than six months after the "accrual of the cause of action." Wood presented a claim to the County of El Dorado (County) on the last day to present a claim. Her claim alleged that she was constructively discharged, harassed, and retaliated against for reporting improper use of District funds. The County rejected Wood's claim because the District is a separate public agency over which the County has no control.

Wood then presented her claim to the District, which the District returned as untimely because it was not presented within six months of her alleged constructive discharge. Wood submitted an application to the District for leave to present a late claim based on mistake, inadvertence, surprise, and excusable neglect because her legal counsel was not aware that the District required claim forms to be submitted directly to the District rather than to the County. The District denied Wood's application.

Wood filed a petition for relief from the claim presentation requirement with the superior court on the same grounds of mistake and excusable neglect. Wood alleged that her counsel reviewed Wood's personnel file, which included County personnel forms, and confirmed that District personnel were paid by the County. Wood further alleged that the District's website does not provide information

about submitting a claim, and that her counsel had previously submitted other claims to small fire districts within the County directly to the County's Board of Supervisors, which were then processed through the County. The superior court denied the petition.

Wood appealed. She alleged that the superior court abused its discretion by ignoring her "uncontradicted evidence" of mistake and excusable neglect. The California Court of Appeal disagreed, noting that the District submitted evidence that contradicted Wood's version of events, and that demonstrated a lack of diligence by Wood's counsel. For example, the Court stated that Wood's counsel obtained her personnel file from the District itself and that, while County checks are used to pay District employees, all employee compensation and benefits come from the District alone. The Court of Appeal noted that Wood's counsel should have done more to discern the relationship between the District and the County. Under these circumstances, the Court of Appeal concluded that a reasonably prudent person would have submitted a timely claim to the District and affirmed the superior court's denial of Wood's petition.

Wood v. Pioneer Fire Protection District, 2021 WL 4962699 (Cal. Ct. App. Oct. 26, 2021).

NOTE:

A person may seek relief for failing to present a timely claim for damages to a public agency in limited circumstances, such as excusable mistake. This case demonstrates that courts are very exacting on those who do not carefully follow the claims' filing requirements. Agencies can avoid lawsuits based on untimely or improperly filed claims for damages.



**NEW
TO THE
FIRM!**

Hannah Dodge is an associate in our San Francisco office where she advises clients on education, labor and employment law matters. She is experienced in facilitating discovery motions, evidentiary hearings and trial conferences, and has further expertise managing motions and trials, and mediating and resolving student-parent-university disputes.

Alicia Arman is an associate in our San Francisco office where she advises clients on education, labor and employment law matters. Aly has worked in both private schools and charter schools and as such has particular interest in education law.

Jack Begley is an associate in our Los Angeles office. He is experienced in labor and employment matters, including wage and hour law and the Fair Employment and Housing Act, and has handled varied phases of litigation, defended client depositions, conferred with clients on case status and discovery responses, and is a keen legal researcher.



LCW
2022

**Public Sector
Employment Law
Annual Conference**

February 3 - 4, 2022

**At our LCW Conference, we have sessions specifically for you —
our public safety clients!**

Police and Fire Legal Update

The Public Safety Legal Update is a conference staple. During this session, the most significant new court decisions, administrative decisions and statutes impacting personnel management of employees in law enforcement and fire departments will be discussed. Please join the presenter in an analysis of how these new laws impact your public safety agency, and learn practical tips for navigating new challenges that these laws create for managers, supervisors and human resources professionals.

Top 10 Things Public Safety Management Needs to Know About HR and Personnel Law

Your department's most important assets are its employees. Your employees will also present you with your most significant leadership challenges. It is imperative that you are aware of the key legal issues that you will confront as you work to ensure your strategic plan stays on track and is not derailed. This session covers labor relations, discipline, fitness for duty and disability retirement issues to help you stay ahead of the curve.

The Public's Perception of Public Safety and Its Impact on Employment Litigation

In light of wide-spread civil unrest following highly-publicized police use of force incidents, such as those resulting in the deaths of George Floyd and Breonna Taylor, calls have grown louder in California and nationally for significant reform to law enforcement. At the same time, a polarized perception of law enforcement has materialized. Likewise, publicized incidents of racial and gender disparity within the firehouse have also led to poor public opinion. The impact of these often strongly held-viewpoints on jurors, judges and arbitrators is something that litigators must prepare for in those cases that involve law enforcement or fire safety departments and personnel. This presentation will cover the impacts that those viewpoints, as influenced by current events, have on civil litigation and administrative appeals involving public safety personnel.

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LCW In The News

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

- In response to President Biden's Nov. 15, 2021 signing of the Infrastructure Investment and Jobs Act, Associate [Alex Volberding](#) explores Project Labor Agreements in the Nov. 22 *American City & County* piece "Infrastructure Bill Paves Path for Expanded Use of Project Labor Agreements, More Equity in the Building Trades." In the article, Alex explains PLAs, their importance and how the infrastructure bill may facilitate PLA use and provide job opportunities to historically marginalized communities that have traditionally been excluded by the building and construction trades.
- In the Dec. 1 *HR Dive* article "Back to Basics: The fluctuating workweek method doesn't give employers an overtime pass," Associate [Stephanie Lowe](#) breaks down what the Fair Labor Standards Act states about the fluctuating workweek method and overtime pay in regard to nonexempt employees as well as the four requirements employers must meet to use this method.
- Partner [Peter Brown](#) and Associates [Alex Volberding](#), [Brian Dierzé](#) and [Daniel Seitz](#) weighed in on the Occupational Safety and Health Administration's (OSHA) new COVID-19 Emergency Temporary Standard in a Nov. 15 *Daily Journal* column entitled "Will OSHA's new COVID regulation reach California employers?" The ETS would impose numerous COVID-19-related requirements on medium and large private employers that are subject to OSHA jurisdiction.
- KNX News interviewed Associate [Alex Volberding](#) on November 8 on the recent passing of the Infrastructure Investment and Jobs Act. The segment mentioned the bill was passed with the hope of boosting job openings in low-income communities and helping marginalized communities earn a pathway to the middle class through careers in the building and construction trades. "There's a massive infusion of resources into communities across the country," said Volberding. "One of the things this bill does is establish project owners to do local hiring and establish a preference for individuals in the communities where the development or project is being constructed." He added that historically many of the building and construction trades have not provided equal opportunities to women or people of color.
- Managing Partner [Scott Tiedemann](#) weighed in on Senate Bill 2 and what it means for policing practices in the Oct. 12 *23ABC News Bakersfield* article "ACLU, Faith in the Valley say Department of Justice, Bakersfield Police reform plan not enough." Concerning the newly signed bill that allows for police decertification based on misconduct, Scott said, "The accountability division is going to investigate police officers for what they call serious misconduct and the police accountability board is going to make recommendations to the overall post-commission about revoking certification for police officers that they believe have engaged in serious misconduct." He added that police officers will be investigated for misconduct due to the bill.
- Partner [Steve Berliner](#) penned "Public Agency Risks Grow Under New Calif. Pension Law," which was published in the Oct. 8 Employment Authority section of *Law360*. In the piece, Steve addresses Senate Bill 278, which was recently signed into law by Gov. Gavin Newsom and takes effect on Jan. 1, 2022. Steve explains how the bill will impact public agencies that contract with the California Public Employees' Retirement System and details how employee pensions are affected.
- Managing Partner [Scott Tiedemann](#) commented on Governor Gavin Newsom's recent signing of SB 2 into law, which will decertify peace officers who have committed serious misconduct. In the Oct. 4 *Daily Californian* article "Gov. Newsom signs bill to decertify peace officers for serious misconduct," Tiedemann stated that while POST was previously used only to deliver certificates to peace officers who work in California, POST will now be able to revoke certificates under the new bill. Tiedemann also said SB 2 has its shortcomings. For instance, the definition of "unreasonable" use of force is still unclear and the bill does not address police force retention issues or how increased police scrutiny may attract lower quality applicants who may be prone to more police misconduct. "When you look at this law in general, there are ideas that are really good. When the details are examined and they're applied to different situations, there are going to be problems," said Tiedemann.
- Partner [Heather DeBlanc](#) weighed in on cafeteria plans—optional spending accounts and insurance benefits that meet health and caregiving needs—in the Oct. 5 *SHRM* piece "Taking Another Look at Cafeteria Plans." Heather states that, "Cafeteria plans are a necessity if your employees are making salary-reduction elections so that a portion of their salary, pretax, is directed toward [health or other insurance] premiums and tax-advantaged spending accounts. In order for an employee to divert salary to pretax premiums, a cafeteria plan document must be in place and approved by the governing body of the employer."
- In the article "ERMA Legal Update: Legal Obligations Related to Managing Employee Requests for Religious Accommodations," Associate [Alex Volberding](#) explores religious accommodations in regard to COVID-19 vaccination mandates and sheds light on employees' rights pertaining to religious beliefs. The piece was written in partnership with the Employment Risk Management Authority.

Firm Activities

Consortium Trainings

- Dec. 9** **“Human Resources Academy II”**
East Inland Empire ERC & Gold Country ERC & Imperial Valley ERC & San Diego ERC | Webinar | Erin Kunze
- Dec. 9** **“To Purge or Not to Purge: Best Practices for Maintaining Supervisors’ Files and IA Files”**
San Diego Fire Districts ERC | Webinar | Mark Meyerhoff
- Dec. 15** **“A Guide to Implementing Public Employee Discipline”**
Monterey Bay ERC & NorCal ERC & Orange County Consortium | Webinar | Stephanie J. Lowe & Joel Guerra
- Jan. 12** **“Public Sector Employment Law Update”**
Gold Country ERC & Ventura/Santa Barbara ERC | Webinar | Richard S. Whitmore
- Jan. 12** **“A Guide to Implementing Public Employee Discipline”**
North State ERC & San Joaquin Valley ERC | Webinar | Michael Youril & Joel Guerra
- Jan. 13** **“Public Sector Employment Law Update”**
Coachella Valley ERC & East Inland Empire ERC & San Diego ERC | Webinar | Richard S. Whitmore
- Jan. 13** **“Supervisor’s Guide to Understanding and Managing Employees’ Rights: Labor, Leaves and Accommodations”**
Los Angeles County Human Resources Consortium | Webinar | Laura Drottz Kalty
- Jan. 27** **“Public Sector Employment Law Update”**
North San Diego County ERC & South Bay ERC | Webinar | Richard S. Whitmore

Customized Trainings

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.

- Dec. 8 & 14** **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of Monterey Park | Laura Drottz Kalty
- Jan. 11** **“Disability Leave Management Training”**
County of Los Angeles Fire Department | Webinar | Christopher S. Frederick
- Jan. 13** **“File That! Best Practices for Employee Document & Record Management”**
California Joint Powers Risk Management Authority | Webinar | Erin Kunze
- Jan. 18** **“FLSA”**
Metropolitan Water District | Webinar | T. Oliver Yee
- Jan. 24** **“Managing the Marginal Employee”**
County of Monterey, Health Department | Webinar | Heather R. Coffman
- Jan. 25** **“Training Academy for Workplace Investigators: Core Principles, Skills & Practices for Conducting Effective Workplace Investigations”**
City of Hanford | Shelline Bennett

- Jan. 25** **“Workplace Bullying: A Growing Concern”**
City of Santa Rosa | Heather R. Coffman
- Jan. 27** **“Writing/Conducting Performance Evaluation”**
California Sanitation Risk Management Authority (CSRMA) | Webinar | Erin Kunze
- Jan. 27** **“Law and Standards or Supervisors”**
Orange County Probation Department | Santa Ana | Danny Y. Yoo
- Jan. 28** **“Maximizing Performance Through Evaluation, Documentation, and Corrective Action”**
Cal Matters | Webinar | T. Oliver Yee

Speaking Engagements

- Dec. 8** **“Recruiting, Hiring and Promoting the Right People for Your Agency”**
League of California Cities 2021 Fire Chiefs Leadership Seminar | Universal City | Geoffrey S. Sheldon
- Jan. 27** **“Annual Employment Law Update”**
California Special Districts Association (CSDA) Webinar | Webinar | Michael Youril

Seminars/Webinars

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

- Dec. 9** **“Communication Counts! - Part 1”**
Liebert Cassidy Whitmore Labor Relations Academy | Webinar | Melanie L. Chaney
- Dec. 16** **“Communication Counts! - Part 2”**
Liebert Cassidy Whitmore Labor Relations Academy | Webinar | Melanie L. Chaney

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