LCW Liebert Cassidy Whitmore

Education Matters

News and developments in education law, employment law, and labor relations for School and Community College District Administration.

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LCW NEWS

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ARBITRATION

College's Ability To Propose Amendments To Arbitration Provision In Athletic Association's Constitution After It Became Member And After It Signed The Contract Is Irrelevant To The Unconscionability Analysis.

Bakersfield College is a member of the California Community College Athletic Association, which exclusively administers intercollegiate athletics for the California community college system. As a condition of participating in the intercollegiate football league, the College agreed to follow the Athletic Association's constitution and bylaws. The Football Association is a football conference organized under the Athletic Association that may impose sanctions on the College for violations of the Athletic Association's constitution and bylaws.

The Football Association and Athletic Association discovered the College provided football players with meals and access to work and housing opportunities not available to other students in violation of Athletic Association's bylaws, so they sanctioned the College.

The College appealed the sanctions through the first three steps of the appeals process required by the arbitration agreement the College signed with the Athletic Association. The steps included appealing to the Football Association commissioner, the Football Association appeals board, the Athletic Association appeals board, and the Athletic Association board who all denied the appeal. According to the arbitration agreement, the College could then continue the appeal by requesting binding arbitration before a panel of three individuals selected from a pool of 12 individuals identified by the Athletic Association. The arbitration panel would have sole discretion to determine whether to hold a hearing, call for testimony, or receive evidence. If the College lost the arbitration, it would be responsible for the costs of arbitration and the Athletic Association's legal fees.

The College did not pursue binding arbitration and instead filed a lawsuit alleging the Athletic Association and Football Association breached the contract and requested the court force the Athletic Association to withdraw the sanctions against the College. The Athletic Association and Football Association argued the College could not sue them because it failed to request binding arbitration. The College

argued it did not have to comply with the binding arbitration requirement because the arbitration provision in the contract was unconscionable. Unconscionability consists of both procedural and substantive elements. Procedural unconscionability deals with contract negotiation and formation, focusing on unequal bargaining power. Substantive unconscionability pertains to the fairness of an agreement's actual terms and whether they are overly harsh or one-sided. Both elements must be present for a court to refuse to enforce an arbitration agreement. The trial court ruled in favor of the Athletic Association and Football Association. The College appealed.

The Court of Appeal reviewed the facts identified by the trial court: the Athletic Association drafted the arbitration agreement, the College could not individually negotiate its terms, the College could not opt-out of its provisions, and the College did not have meaningful choice but to accept the arbitration agreement if it wanted to participate in intercollegiate athletics, which was substantially important to the College and its students. However, the trial court reasoned the arbitration agreement was not procedurally unconscionable because although the College could not negotiate the arbitration provisions at the time it signed, it could propose amendments to the arbitration provision once it became a member of the Athletic Association. The Athletic Association also argued the College was a sophisticated party that was not "surprised" by the arbitration provisions. The Court of Appeal held the College's ability to propose and vote on amendments to the Athletic Association's constitution and bylaws after it became a member did not matter in determining whether a contract provision was unconscionable at the time the College agreed to it. Furthermore, a lack of surprise did not alter the Court's analysis that the arbitration agreement was an adhesive contract that was procedurally unconscionable.

The Court of Appeal also found the arbitration agreement to be substantively unconscionable because it was unreasonably favorable to the more powerful party—the Athletic Association. The Court cited multiple examples: the binding arbitration requirement only applied to appeals by the College and not the Athletic Association; the contract required the College to pay the Athletic Association's legal fees if the College did not prevail in arbitration, but the Athletic Association was not required to pay the College's legal fees if it did not prevail in arbitration; the contract granted the College and Athletic Association 10 days for each step of the appeals process, but the arbitration agreement allows only five days for the College to request arbitration; and, the arbitration panel selection process allowed the Athletic Association to unilaterally select 12 individuals in the arbitration panel pool, which it did in secrecy, precluding member colleges from commenting on or objecting to any potentially biased panel member.

Ultimately, the Court of Appeal found the arbitration agreement was severely procedurally and substantively unconscionable, so the Court could not simply severe the unconscionable provisions to save the rest of the arbitration agreement. The Court of Appeal held the arbitration agreement was unenforceable and reversed the judgment of the trial court.

Bakersfield Coll. v. California Cmty. Coll. Athletic Ass'n (2019) 41 Cal.App.5th 753.

EDUCATION LAW

Government Code Section 818 Prohibits The Imposition Of Punitive Damages Against School Districts Sued Under The Reporting By School Employees Of Improper Governmental Activities Act.

The Visalia Unified School District ("District") employed Natalie Harlan ("Harlan") until the end of the 2016-2017 school year. Harlan alleged she lost her job in retaliation for refusing to follow instructions from another employee to backdate certain documents. Harlan reported the issue and subsequently found out the District did not re-elect her to her position for the following school year.

Harlan filed a lawsuit against the District and two employees for retaliation in violation of the Reporting by School Employees of Improper Governmental Activities Act (Education Code sections 44110–44114) and other causes of action. The Act prohibits a public school employee from using his or her official authority or influence to retaliate against "any person for the purpose of interfering with the right of that person" to make an Act-protected disclosure. An offended party may sue a public school employee who violates subdivision (a) for civil damages. Harlan sought compensatory damages against all three defendants under Education Code section 44114, subdivision (c), which stated a person who intentionally engaged in acts of retaliation was liable for punitive damages if the acts were malicious. The Act defined "person" as "any state or local government, or any agency or instrumentality of any of the foregoing."

The District and employees asked the trial court to strike the claim for punitive damages. The District argued Government Code section 818 barred courts from awarding punitive damages against public agencies. Harlan argued the Legislature clearly intended the Act supersede Government Code section 818 because the Legislature enacted the Act later in time, and the Act permitted punitive damage awards against persons including state and local governments.

The trial court denied the District's and employee's request. Specifically, the trial court found legislative intent that the Act superseded Government Code section 818, making punitive damages available against a public agency such as the District. The District appealed the trial court's decision.

The Court of Appeal held that when a later statute superseded or substantially modified an earlier law without expressly referring to it, the earlier law is repealed or partially repealed by implication. Here, the Act did not contain express repeal language. Therefore, absent an express declaration of legislative intent, a court will find an implied repeal only "when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are 'irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.'" Accordingly, the Court of Appeal did not find the Legislature created an implied repeal when it adopted the Act after Government Code section 818. The Court presumed the Legislature was aware of Government Code section 818 when it adopted the Act, and the laws must be read in harmony. The Court found that when it read the Act and Government Code section 818 in conjunction, the laws correlated perfectly to mean that a court may impose punitive damages under Education Code section 44114, subdivision (c), against all "persons," except public entities. This interpretation was consistent with strong public policy reasons for a ban on awarding punitive damages against public agencies.

Ultimately, the Court of Appeal directed the trial court to strike the punitive damages claim against the District. However, the remainder

of the trial court's original order denying the motion to strike the claim for punitive damages against the employees stood.

Visalia Unified School District v. Superior Court (2019) __ Cal. App.5th __ [2019 WL 6885154].

NOTE:

This case interprets the K-12 version of the Reporting by School Employees of Improper Governmental Activities Act found in Education Code sections 44110 – 44114. The Community College equivalent, the Reporting by Community College Employees of Improper Governmental Activities Act is in Education Code sections 87160 – 87164. We expect a court would apply the same reasoning from this case to the community college district sections.

Courts May Recognize School Board Policies And Regulations As Official Acts By Judicial Notice. School Districts Do Not Have A Statutory Duty To Eliminate Or Reduce The Amount Of Processed Meats Or To Label Or Identify Processed Meats As Unhealthy.

The Physicians Committee for Responsible Medicine opposed the Los Angeles Unified School District and Poway Unified School District serving processed meat such as hotdogs, sausages, deli meat, bacon, and turkey bacon to students due to an alleged connection between eating this food and developing cancer, diabetes, and cardiovascular disease. The Physicians Committee also wanted the Districts to revise their policies to reflect the goal of reducing or eliminating processed meats in meal service.

The Physicians Committee exhausted administrative remedies within the Districts then filed a special petition with the trial court, called a writ of mandate, asking the court to force the Districts to comply with the Physicians Committee's demands. The Districts asked the court to dismiss the motion because they did not have a statutory duty to do as the Physicians Committee asked. The Physicians Committee argued federal law required the Districts to discuss and identify problem foods. It reasoned that processed meats are a problem food based on scientific literature identified in the motion; thus, the Districts' failure to discuss the problem in their wellness policies demonstrated a failure to comply with federal law. However, the Physicians Committee never pointed to a statute that required Districts to have a written discussion of such foods in wellness policies. The court dismissed the lawsuit, and the Physicians Committee appealed.

The Physicians Committee first objected to the requests for judicial notice the Districts filed with the trial court. One district filed its request for judicial notice that stated attached "Exhibits 1 through 8" but actually listed and attached nine documents. The ninth document was the district's local wellness policy. The other district filed its request for judicial notice and noted the relevant documents were regulations and legislative enactments issued under the authority of a governmental entity or consisting of official acts of that entity. The district attached the documents to the memorandum in support of dismissal request, not to the request for judicial notice.

The majority of Physicians Committee's arguments centered on procedural defects it contended should have prevented the trial court from granting the Districts' requests. The Court of Appeal concluded the trial court did not abuse its discretion by granting the requests for judicial notice. Specifically, the Court held that one district's typographical error was not procedurally fatal to the request for judicial notice. Additionally, because school board actions can be official acts, the court may recognize school board policies and regulations such as one district's wellness policies through judicial notice, which the trial court did.

Next, the Physicians Committee argued the trial court's determination that the Districts did not have a mandatory duty to stop serving processed meat and revise their wellness policies was improper because the trial court did not consider all the mandatory duties alleged in the Physician Committee's motion. The Physicians Committee brought its original motion for writ of mandate to prevent the Districts from serving processed meat to children due to the recognized association between eating processed meat and developing cancer, diabetes, and cardiovascular disease. However, the Court found the Physicians Committee did not identify any statutes that required the Districts to eliminate or reduce the amount of processed meats or to label or identify processed meats as unhealthy. Therefore, the Physicians Committee failed to meet the first requirement for issuance of a writ of mandate. Specifically, the Court did not find that the National School Lunch Program, the Healthy, Hunger-Free Kids Act of 2010, the Child Nutrition and WIC Reauthorization Act of 2004, nor the California Education Code created mandatory duties for the Districts to act in a way the Physicians Committee demanded. Furthermore, the Court of Appeal could not conclude that the Districts abused their discretion in developing their wellness policies.

Ultimately, the Court of Appeal affirmed the trial court's ruling in favor of the Districts.

Physicians Comm. for Responsible Med. v. Los Angeles Unified Sch. Dist. (2019) __ Cal.App.5th __ [2019 WL 6766459].

BUSINESS AND FACILITIES

Contract Provision That Required Contractor To Defend And Indemnify Employer Against Contractor's Own Meritorious Actions Against Employer Declared Unconscionable.

In 2006, Margaret Williams formed Williams LLC. Williams formed the corporation at the direction of and for the sole purpose of entering into a contract with the Long Beach Unified School District to perform construction management and environmental compliance work for the District. As part of the contract, the District required that Williams LLC execute a standard pre-printed contract with non-negotiable terms.

One of the terms of the contract between Williams LLC and the District related to indemnification. The term provided that Williams LLC would indemnify and hold the District harmless for all injuries sustained by the Williams LLC employees, and that Williams LLC would defend, at its own expense, all claims against the District and would pay any judgments, including those brought by Williams LLC and Williams herself.

Under these terms, Williams worked for the District for ten years on a nearly exclusive full-time basis. During this time, Williams's duties included overseeing environmental compliance on construction projects, including acting as project manager for the removal of contaminated materials and the cleanup of job sites.

On one such project, Williams alleged that a District employee and a consultant retained by the District deliberately interfered with her efforts to prevent the mishandling of contaminated material. As a result, Williams stated to the District that she would no longer work on projects with the District employee and consultant. Williams alleged that the

District refused to discuss this matter with her, and instead terminated her access to her District email address. Thereafter, Williams indicated to the District that she would not allow her corporation's employees to return to work until the District discussed the matter with her. Williams and the employees of her corporation did not return to work. Thereafter, Williams requested assistance from the Department of Toxic Substance Control in order to ensure the District's compliance with the cleanup.

Soon thereafter, Williams became ill, and was admitted to the hospital and diagnosed with arsenic poisoning after Williams was exposed to arsenic at the construction site. Shortly thereafter, the District informed Williams LLC that the District was terminating its contract with the corporation based on the failure of the corporation's employees to return to work.

Williams and Williams LLC then filed a lawsuit against the District, claiming that the District terminated the corporation's contract in retaliation for the efforts by Williams and Williams LLC to stop the District employee and its consultant from violating environmental requirements. In return, the District filed a complaint against Williams LLC in which it argued that the corporation breached its contract with the District by failing to uphold its obligations to defend and indemnify the District pursuant to the terms of the contract that Williams LLC executed with the District.

Williams LLC then filed a motion to strike the District's complaint in its entirety, arguing that the District's claim that required that Williams LLC fund the District's defense would effectively impair the corporation's ability to pursue its claims against the District. Therefore, Williams argued that the indemnity provision was unconscionable if applied in the manner that the District sought. The District opposed Williams LLC's motion, contending that the indemnity provision was enforceable as written and applied to the present lawsuit.

At trial, the court stated that its understanding was that the District's complaint against Williams LLC sought indemnity for all potential liability, and that "regardless of how [Williams] prevails or fails to prevail on the main complaint, that no monies will be paid because she has agreed to indemnify everyone in the case." Thereafter, the court granted Williams LLC motion to strike the District's complaint. The District then appealed the court's grant of Williams LLC's motion.

On appeal, the Court of Appeal analyzed several distinct issues, including: (1) Whether Williams and Williams LLC engaged in protected activity by filing the lawsuit; (2) Whether the District's complaint against Williams LLC was based on Williams LLC engaging in protected activity; and (3) Whether the District was likely to prevail on its complaint and overcome Williams LLC's defense that the indemnity provision was unconscionable.

First, the Court of Appeal analyzed whether Williams and Williams LLC engaged in protected activity by filing its lawsuit against the District. The Court determined that filing and prosecuting lawsuits is considered a protected activity generally, and that the specific lawsuit was also brought in the public interest because it concerns an environmental hazard at a public school site, violations of state requirements for remedying the hazard, and a public school district's punishment of resistance to these problems. In conclusion, the Court determined that the District's complaint arose from Williams's protected activity.

Second, the Court considered the basis of the District's complaint against Williams LLC. The Court concluded that the District's complaint that Williams LLC's failure to defend and

indemnify the District would have no basis if Williams and Williams LLC did not file the suit against the District in the first place.

Next, the Court of Appeal considered the District's probability of prevailing on its claims against Williams. Here, Williams LLC argued that the District could not prevail in its lawsuit because the indemnity provision in the contract was unconscionable as applied to a suit that Williams and Williams LLC brought against the District.

In order to assess the District's likelihood of prevailing on its complaint, the Court considered whether the District imposed the indemnity term in an unfair fashion and whether the term itself was so unfairly one-sided that that it should not be enforced as Williams argued.

To assess this defense, the Court looked to determine who was the more powerful part in the contracting relationship by analyzing whether there were standardized contract terms and whether the contract was offered on a take-it-or-leave-it-basis. To these points, Williams produced the following evidence: (1) The District's contract was a standard form contract; (2) The District presented the contract to Williams on a take-it-or-leave-it basis; (3) Williams was unable to negotiate any terms, including the indemnity provision; and (4) Williams was not allowed to enter into the contract herself, but rather required to form corporation for the purpose of contracting with the District. The District failed to rebut this evidence, and the Court therefore concluded this evidence established that the District was the more powerful party in the relationship.

The Court then reviewed the contract between the parties and concluded that the indemnity provision was unreasonably favorable to the more powerful party – the District. The Court found that the indemnity provision effectively barred the possibility of meaningful recovery for meritorious claims brought by Williams or Williams LLC. Further, the Court found that the indemnity provision's requirement that Williams LLC defend and pay meritorious claims brought by Williams herself was also unfair.

In conclusion, the Court of Appeal determined that the District failed to show a probability of overcoming Williams LLC's defense that the indemnity provision was unconscionable.

The Court therefore affirmed the trial court's grant of Williams's LLC motion to strike the District's lawsuit. The Court of Appeal then exercised its discretion to limit the applicability of the indemnity provision, holding that the provision did not apply where its application would produce an unconscionable result as in claims brought by Williams or Williams LLC against the District.

Long Beach Unified School District v. Margaret Williams (2019) __ Cal. App. 5 __ [2019 WL 6695764]

Commercial Timberlands In State Responsibility Areas Are Exempt From Special Local Taxes.

In 2014, the Albion Little River Fire Protection District in Mendocino County adopted an ordinance that levied a special parcel tax for fire protection, suppression, and prevention services within the District. That November, District voters approved the ordinance, which appeared on the ballot as Measure M.

Beginning in July 2015, Mendocino County, on behalf of the District, assessed the special tax on parcels owned by the Mendocino Redwood Company, LLC ("MRC"). MRC paid the first two installments of the tax under protest before filing claims with Mendocino County seeking refunds for those payments.

When the Mendocino County Board of Supervisors denied the refund claims, MRC filed a complaint against the County seeking a property tax refund. In 2017, MRC amended its complaint against the County, alleging that the MRC parcels "were not included in the District because they were commercial forest lands and timbered lands declared to be in a state responsibility area within the meaning of [Health and Safety Code section] 13811."

Health and Safety Code section 13811 provides, in pertinent part:

Territory which has been classified as a state responsibility area may be included in a district, except for commercial forest lands which are timbered lands declared to be in a state responsibility area. . . . Upon inclusion of a state responsibility area in a district, whether by formation or annexation, the state shall retain its responsibility for fire suppression and prevention on timbered, brush, and grass-covered lands. The district shall be responsible for fire suppression and prevention for structures in the area and may provide the same services in the state responsibility area as it provides in other areas of the district.

MRC argued that "[t]he County of Mendocino unlawfully assessed, levied and collected the Albion Parcel Tax on the MRC Parcels" and MRC requested a refund of all Measure M taxes that it paid to the County.

In September 2018, the trial court issued a decision, concluding that MRC's parcels were not part of the District, that the County had "erroneously and illegally assessed and charged" MRC for the Measure M special taxes, and that MRC was entitled to a refund of all such taxes it had paid with interest. The District appealed.

On appeal, the District contended that the trial court judgment should be reversed because MRC's claims challenged the validity of Measure M. The District claimed that Measure M had been validated and therefore the measure was immune from review. The District further argued that the provisions of Code of Civil Procedure section 863 required that MRC challenge the validity of Measure M within 60 days, and that MRC failed to do so in a timely manner.

MRC argued that its action did not challenge the validity of Measure M, but rather that Measure M did not apply to MRC because Health and Safety Code section 13811 exempted MRC from the special tax.

The Court of Appeal reviewed the trial court's statement of decision, which provided, in part, that "[t]he court's ruling in this case does not require the court invalidate any portion of the District's Ordinance… MRC's parcels are by statute not within the District and, therefore, the Ordinance does not apply to the parcels in question. The court finds that this is a matter of applicability, not validity." The Court of Appeal then retraced the steps outline in the trial court's statement of decision.

First, The Court of Appeal held that MRC's action did not challenge the validity of Measure M, but rather its application to the parcels in question. Next, the Court of Appeal reviewed the portion of Health and Safety Code section 13811 that pertains to the MRC parcels. The Court of Appeal concluded that the plain language of that section provided that territory "classified as a state responsibility area may be included in a district, except for commercial forest lands which are timbered lands declared to be in a state responsibility area." Lastly, the Court concluded that Health and Safety Code section 13811 applied to the MRC's commercial timberland parcels and that Measure M was, therefore, inapplicable to those parcels.

As a result, the Court of Appeal affirmed the trial court decision and ordered that the

County refund the taxes, which it erroneously collected.

Mendocino Redwood Company, LLC v. County of Mendocino (2019) __ Cal.App.5th __ [2019 WL 6464220].

Conflict Of Interest Rules Under Government Code Section 1090 Only Apply When An Independent Contractor Provides Contracting Advice In An "Official Capacity."

In October 2013, the Mount Diablo Unified School District published two requests for proposals ("RFPs") for an HVAC modernization project. The first RFP involved preconstruction consulting services, including reviewing existing documents and site conditions, scheduling, estimating, constructability review and development of a maximum price for the construction work. The second RFP involved performance of the construction needed to modernize the facilities HVAC systems under a lease-leaseback agreement.

Taber Construction, Inc. submitted responses for both RFPs, and the School District selected Taber for both components. In November 2013, the School District and Taber entered into a preconstruction services agreement for work covered by the first RFP. Six months later, in March 2014, the parties entered into the lease-leaseback agreement for the HVAC modernization work.

After the School District contracted with Taber for the construction component of the project, the California Taxpayers Action Network ("CTAN") sued the School District and Taber. CTAN alleged that Taber's receipt of the construction contract constituted an impermissible conflict of interest under Government Code section 1090, which prohibits self-interested contracting by individuals acting in an official capacity.

In the trial court, CTAN argued that the parties' construction contract violated the conflicts of interest provisions in Government Code section 1090 and was void because Taber, by nature of its provision of preconstruction services to the School District, assumed an official capacity with the District that then precluded its subsequent receipt of the construction contract. Taber countered that there was no conflict of interest because the preconstruction services agreement and construction contract constituted one single transaction, and that the School District contemplated "one fluid transaction in which one contractor would carry out the entirety of the work." CTAN opposed Taber's "one transaction" argument, pointing out that the RFPs did "not create a binding contract or a duty to contract in the future" and that the agreements were separate and executed months apart, and therefore could not be viewed as "one transaction."

The trial court agreed with Taber, and found that "there can be no conflict of interest because the intent of the process was 'one fluid transaction' whereby the District would engage preconstruction services with a contractor and then perform lease/leaseback services with that same contractor." The court reasoned that there was no conflict of interest under Government Code section 1090 because there was no meaningful separation between Taber's consultant role under the preconstruction services agreement and its role as contractor under the lease/leaseback agreement. CTAN appealed the trial court's decision.

On appeal, CTAN argued that the trial court misunderstood the basis of its conflict of interest claim. CTAN conceded that there was no evidence that Taber influenced the School District's decision to award it the construction contract. However, CTAN argued that Taber's provision of preconstruction services included "participating in the making" of the construction contract, and that therefore Taber

could not receive the construction contract under any circumstances without violating section 1090.

The Court of Appeal then discussed the purpose of Government Code section 1090, which is to remove or limit the possibility of personal influence on official decision-making, and to void contracts obtained through fraud or dishonest conduct.

The Court of Appeal then addressed whether, and under what circumstances, the section applied to independent contractors retained by public entities. The Court determined that, in order for the conflict of interest rules to apply to an independent contractor, the contractor must be in a position to influence how the public entity spends public money (i.e., "transacting on behalf of the Government"). For example, Government Code section 1090 would preclude a contractor retained to advise a public entity on public contracting from then receiving a contract on which it advised in an "official capacity." However, the Court stated that section 1090 liability did not extend to a contractor that advised the Government on how to spend public money, but was not acting in an "official capacity" or otherwise authorized to expend the funds in question.

The Court of Appeal concluded that the School District did not retain Taber to engage in or advise the School District on public contracting for the construction work, and that the School District did not select Taber for the preconstruction consulting work in order to select a firm to complete the construction work. Rather, the Court of Appeal concluded, the District contracted with Taber to provide preconstruction services in anticipation of Taber itself completing the associated construction.

The Court of Appeal rejected CTAN's claim of a conflict of interest under Government Code section 1090, and affirmed the trial court judgment.

California Taxpayers Action Network v. Taber Construction, Inc. (2019) __ Cal.App.5th __ [2019 WL 6336264].

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 Court should suspend the statute of limitations 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 (2019) 41 Cal.App.5th 428.

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 (2019) 40 Cal.App.5th 1131.

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 wastewater 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. The County now uses his guidelines 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 Nejadian's superiors ultimately approved the projects. 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 disregarded the County Code sections that were involved. Nejadian told Bellomo and other managers that he disagreed with

management's amendments, and they violated the County Code.

Nejadian sued the County for retaliation in violation of Labor Code section 1102.5, subdivision (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 failed to prove his claims.

Labor Code section 1102.5, subdivision (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, subdivision (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 the County violated any actual laws, rules, or regulations. In fact, Nejadian appeared to rely on the fact the County violated his guidelines. The Court of Appeal held 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, subdivision (c). Therefore, as a matter of law, Nejadian failed to establish the minimum requirements to support his case for violation of Section 1102.5, subdivision (c).

Nejadian v. County of Los Angeles (2019) 40 Cal.App.5th 703.

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 ("Hawkins") and Hyung Kim ("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 (2019) 40 Cal.App.5th 384.

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 Allegran never reassigned him.

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 Allegran terminated his employment 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) 42 Cal.App 5th 47.

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 based on 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) 41 Cal. App.5th 805.

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 LCW answered the question. We will protect the confidentiality of client communications with LCW attorneys by changing or omitting details.

ISSUE: An HR director at a community

college called and wondered if the district was required to provide a faculty member with 24-hours' notice before the Board of Trustees considered the faculty member's appeal of the district's administrative determination regarding a discrimination complaint the faculty member filed.

RESPONSE: The attorney responded that the Brown Act does not require 24-hours' notice if the Board does not consider charges or complaints against the faculty member. In this case, the faculty member's appeal was not regarding any discipline, charges, or complaints against the faculty member, so 24-hours' notice was not required.

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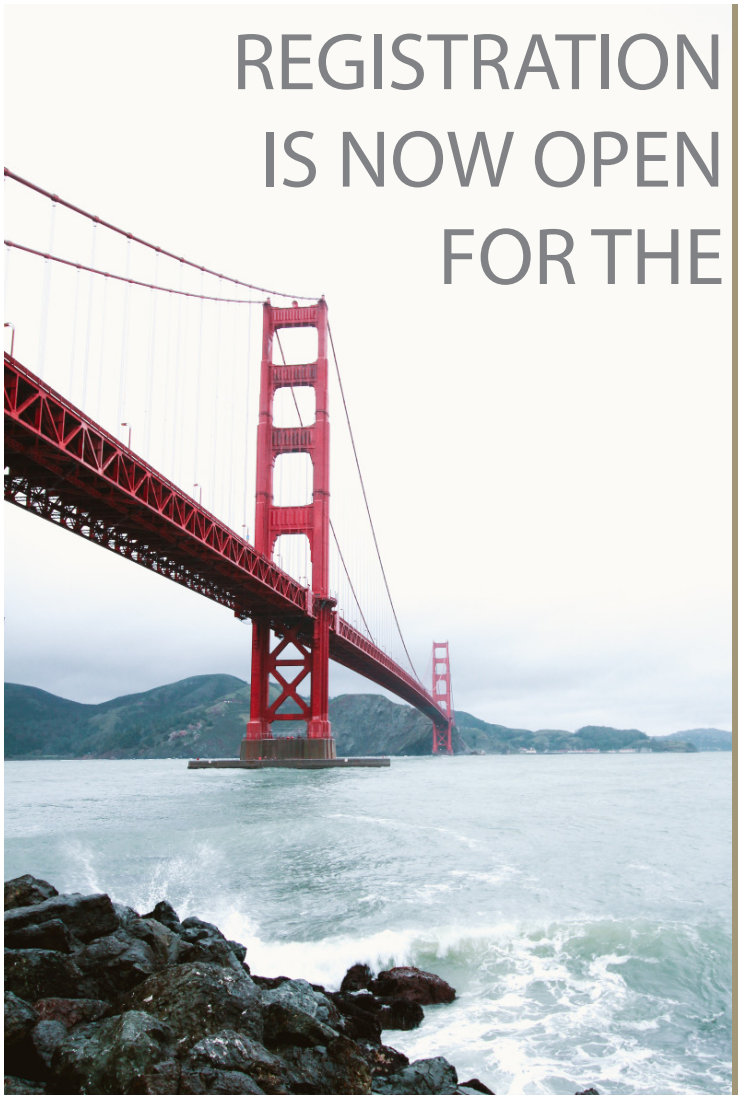
Education Matters is available via e-mail. If you would like to be added to the e-mail distribution list, please visit **www.lcwlegal.com/news**.

Please note: by adding your name to the e-mail distribution list, you will no longer receive a hard copy of our *Education Matters* newsletter.

If you have any questions, contact Selena Dolmuz at 310.981.2000 or info@lcwlegal.com.



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FIRM PUBLICATIONS

To view these articles, please visit: **www.lcwlegal.com/news**

Partner **Gage Dungy** and **Savana Manglona** authored an article for Law.com's *The Recorder* on "What Employers Should Know About California's New Lactation Accommodation Requirements."

Partner **Oliver Yee** and associate **Kaylee Feick** authored an article for the *Daily Journal* on "Navigating the Impacts of AB5 for Public Agency Employers."

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Training

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. 17 **"Human Resources Academy II for Community College Districts"**
SCCCD ERC | Anaheim | Frances Rogers

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

Jan. 31 **"Public Works Construction Project: From Bidding Through Completion"**
Central CA CCD ERC | Webinar | Christopher Fallon

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.

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. 10 **"Hiring the Best While Developing Diversity in the Workforce: Legal Requirements and Best Practices for Screening Committees"**
Contra Costa Community College District | Martinez | Laura Schulkind

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

Jan. 22 **"Hiring the Best While Developing Diversity in the Workforce: Legal Requirements and Best Practices for Screening Committees"**
Ohlone College | Fremont | Laura Schulkind

Jan. 28 **"The Brown Act"**
San Jose-Evergreen Community College District | San Jose | Laura Schulkind

Speaking Engagements

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

Feb. 26 **"Title IX Crisis Response: Practical Steps for Administrations"**
Association of California Community College Administrators (ACCCA) Annual Conference | Riverside | Pilar Morin & Jenny Denny & Dr. Valyncia Raphael

Feb. 27 **"The Key 'Human Resource' Skills that All Administrators Should Have: and a Training Series Designed to Build Those Skills"**
ACCCA Annual Conference | Riverside | Laura Schulkind

Feb. 28 **"Legal Eagles"**
ACCCA Annual Conference | Riverside | Laura Schulkind & Eileen O'Hare-Anderson & Pilar Morin

Feb. 29 **"AB 5"**
Community College League of California (CCLC) CEO Symposium| Sonoma| Eileen O'Hare-Anderson

LCW Conference
For more information and to register, please visit https://www.lcwlegal.com/events-and-training/lcw-conference/2020-lcw-annual-conference

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

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