LCW Liebert Cassidy Whitmore

Education Matters

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

February 2019

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LCW NEWS

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

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STUDENT PRIVACY

U.S. Department of Education Issues FAQs on Schools' and Districts' Responsibilities under the Family Educational Rights and Privacy Act (FERPA) in the Context of School Safety.

The U.S. Department of Education released a comprehensive set of frequently asked questions on schools' and colleges' responsibilities under FERPA in the context of school safety.

The FAQ document, entitled "School Resource Officers, School Law Enforcement Units and FERPA," consolidates previously issued guidance and technical assistance into a single resource to help raise schools' and colleges' awareness of these provisions.

The document consists of 37 commonly asked questions about schools' and colleges' responsibilities under FERPA relating to disclosures of student information to school resource officers (SROs), law enforcement units and others and clarifies how FERPA protects student privacy while ensuring the health and safety of students and others in the school and campus community.

The FAQ document includes answers to common FERPA questions involving campus safety, such as:

- Can law enforcement officials who are school employees be considered school officials under FERPA and, therefore, have access to students' education records?
- Does FERPA permit schools and colleges to disclose education records, without consent, to outside law-enforcement officials who serve on a school's threat assessment team?
- When is it permissible for schools or colleges to disclose student education records under FERPA's health or safety emergency exception?
- Does FERPA permit school officials to release information that they personally observed or of which they have personal knowledge?

While the information in the guidance is applicable to all educational agencies and institutions that receive funds under any program administered by the Secretary of the US Department of Education, the discussion is generally focused on health or safety emergencies faced by public elementary and secondary schools.

For additional information on FERPA's application to health or safety emergency situations in the postsecondary institution context, please refer to previously issued Department guidance entitled, "Addressing Emergencies on Campus," issued in June 2011, available here.

U.S. Dept. of Education, School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act (FERPA) (Feb. 2019), available here.

NOTE:

Although this guidance is focused on FERPA, there may be other federal and state laws, such as privacy laws, that are relevant to decision-making regarding when and to whom schools and districts may disclose, without consent, student information. LCW attorneys can help you determine whether disclosure is appropriate under all applicable laws.

CRIMINAL HISTORY

California Community Colleges Chancellor's Office Encourages Community Colleges to Conduct Individualized Assessments of Criminal History Records In Employment Decisions.

The California Community Colleges Chancellor's Office issued an advisory regarding the use of criminal history records in hiring. The advisory provides an overview of applicable federal and state laws regarding the use of criminal history records in the employment process and suggests approaches to employment decisions that will help community colleges comply with their legal obligations.

The advisory recognizes the California Fair Chance Act (also known as "Ban the Box") generally regulates the use of criminal history by California employers. However, colleges are exempt from complying with the Act, unless they are filling a non-instructional student position. The Act exempts employers from the requirements of the law "where an employer… is required by any… law to conduct criminal background checks for employment purposes, or to restrict employment based on criminal history." Community colleges are such employers.

Although the Education Code requires the use of criminal history for many categories of workers, the advisory states the Education Code does not prevent community colleges from adopting hiring processes that allow job applicants notice and an opportunity to respond to adverse employment decisions based upon criminal history records.

Despite being exempt from the Act, the advisory encourages community colleges to base their employment decisions upon individualized assessments of job-related qualifications and business necessities in order to ensure compliance with federal and state laws governing both employment discrimination and the use of criminal history records.

California Community Colleges Chancellor's Office, Office of General Counsel Advisory 2018-04 (Dec. 31, 2018) available here.

LITIGATION

Use of Surreptitiously Recorded Conversations During Arbitration Proceeding is Not a Protected Activity for Purposes of the Anti-SLAPP Law.

The president of a private company suspected a business associate violated a contractual agreement between the two companies. In anticipation of arbitration, the president secretly recorded at least two conversations with the business associate about the businesses' relationship.

The president's company subsequently filed an arbitration demand, and the arbitrators

allowed the company to introduce the recorded conversations as evidence in the arbitration. The arbitrators found in favor of the president's company, and a federal district court in Texas affirmed the arbitration award.

The business associate filed a lawsuit against the president alleging a cause of action for eavesdropping on or recording confidential communications under Penal Code sections 632 and 637.2, which prohibits recording communications without the consent of the other party and allows financial penalties against anyone who violates the law. The business associate also alleged a second cause of action for common law invasion of privacy.

The president filed an anti-SLAPP motion, a special motion to strike the lawsuit pursuant to California Code of Civil Procedure section 425.16 and argued the lawsuit arose from the exercise of his constitutional right of petition or free speech in connection with the arbitration proceeding. The business associate argued the lawsuit did not arise from protected activity because contractual arbitration is not a judicial or official proceeding and because the claims arose from the recording and not the subsequent use of the recordings in the arbitration. The trial court denied the president's motion, concluding neither recording the conversations nor using them as evidence in a contractual arbitration was protected activity. The president appealed.

On appeal, the president argued the causes of action against him arose from protected activity under California Code of Civil Procedure section 425.16, subdivision (e)(1), because the business associate alleged he recorded the conversations to gather evidence in anticipation of, and used the recordings in, an arbitration, which the president contended was a "judicial proceeding" or an "official proceeding authorized by law" as defined by the law.

The Court of Appeal held contractual arbitration is not an "official proceeding authorized by law" under California law. The Court noted that courts limit "official proceeding" anti-SLAPP protection to quasi-judicial proceedings that are part of a "comprehensive" statutory licensing scheme and "subject to judicial review by administrative mandate," and proceedings "established by statute to address a particular type of dispute."

Because the president's actions in recording the conversations and using the recordings in the arbitration were not in connection with a judicial or official proceeding authorized by law, they were not protected activities under California law, and the Court of Appeal affirmed the trial court's decision.

Xuming Zhang v. Jenevein (2019) 31 Cal.App.5th 585, as modified on denial of reh'g.

DISABILITY

Online Pizza Ordering App Must Be Accessible to the Blind or Visually Impaired.

Guillermo Robles, a blind man who used screen-reading software to access the internet, also used apps on his smart phone. Robles attempted at least two times to use a website and app to order Domino's Pizza for delivery (at an exclusive online discount) but was unsuccessful.

Robles asserted that the website and app were designed in a way that made them inaccessible for visually impaired people, in violation of the federal Americans with Disabilities Act (ADA). That statute prohibits discrimination in public accommodations on the basis of disability. The federal trial court initially dismissed Robles' claims on summary judgment, but the Ninth Circuit Court of Appeals reversed and allowed Robles to proceed with his lawsuit.

The Ninth Circuit cited well-settled precedent that "brick and mortar" restaurants offering goods and services are "public accommodations" within the meaning of Title III of the ADA. They

are physical places where goods or services are offered to the public. The website and app were designed to facilitate access to Domino's products and services. Therefore, ADA protections apply:

> "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges….of any place of public accommodation …" (42 U.S.C. § 12182 subd. (a).)

Under the ADA, Domino's Pizza was also required to provide Robles with auxiliary aids to enable him to access its goods and services. Auxiliary aids specifically include "accessible electronic and information technology" or "other effective methods of making visually delivered materials available to individuals who are blind or have low vision." (28 C.F.R. § 36.303 subd. (b)(2).) A public accommodation must ensure a blind person is not "excluded, denied services, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services."

(42 U.S.C. § 12182 subd. (b)(2)(A)(iii).) Failure to provide auxiliary aids to make the website and app available to blind or visually impaired people violates the Act.

Because Domino's online pizza delivery services were public accommodations under the ADA, the Ninth Circuit allowed Robles' lawsuit to proceed.

Robles v. Domino's Pizza, LLC (2019) 913 F.3d 989.

NOTE:

This case examined Title III of the ADA, which applies to many private entities. This case still provides guidance for local public entities, however, because Title II of the ADA also protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Public agencies who offer online bill pay or other web-based public services, for example, should ensure that their online services are ADA compliant.

PUBLIC RECORDS

City's Ability to Access Electronically-Stored Data Did Not Equate to a Form of Possession of the Data under California Public Records Act.

The Los Angeles Police Department (LAPD) uses privately-owned companies to tow and store impounded vehicles. When an LAPD officer needs to impound a vehicle, he or she contacts a contracted tow company to tow and store the vehicle. The officer prepares a form that documents the vehicle seizure, and the officer and the tow company each retain a portion of the form. The tow company enters some information regarding the impoundment into a database a group of tow companies maintains. The tow company also scans a portion of each form into a different database owned and maintained by an independent document storage company.

In 2015, an attorney submitted a California Public Records Act request to the LAPD seeking disclosure of data recorded in the tow companies' database and all forms for any vehicle seized at LAPD's direction including documents indexed in the document storage company's database. LAPD provided the forms located in the LAPD's investigative files, but it declined to provide any data from the databases. The LAPD explained that it did not own the materials in the databases.

The attorney filed a petition with the trial court to compel the City to disclose the information from the databases. She argued the data in the database was subject to disclosure under the CPRA because the City, who contracted with the tow companies on behalf of LAPD, had "unfettered access" to that data based on the contracted terms. The City argued that the data was not subject to disclosure because the City did not have actual or constructive possession

of the data. The City contended that to establish possession, the attorney had to show it had a right to control the data in question; the mere fact that it had a right to access the data was insufficient. In support of its opposition, the City provided two declarations that explained the databases were not stored on City servers, and City personnel had no authority to control or modify any of the information in the databases.

The trial court ultimately denied the attorney's request to force the City to disclose the requested information and concluded the City did not have a duty to disclose the requested data because the evidence showed it did not "possess or control" the databases. The attorney appealed.

The CPRA requires that, upon request, state and local agencies make available for inspection and copying any public record "[e]xcept with respect to public records exempt from disclosure." (Government Code section 6253, subd. (b).) The law defines "public record" to mean "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

To establish an agency has a duty to disclose under CPRA, the party seeking the records must show that: the record qualifies as a "public record" and the record is "in the possession of the agency."

The attorney argued the City had possession of the data because the contracts required the tow companies to provide the City "unfettered access" to the data, which is sufficient to establish "constructive possession." The attorney did not cite any legal authority supporting her proposition that an agency's right to access the records of a private entity constitutes a form of constructive possession. The City acknowledged it had a contractual right to access the data in question, but asserted that merely having access to a record is insufficient to establish constructive possession.

The Court of Appeal concluded the City might have a duty under the CPRA to disclose any data it has actually extracted from the databases and then used for a governmental purpose. However, the attorney sought disclosure of all information the entered into the databases regarding City-related impoundments based solely on the fact that the City had authority to access that information. Mere access to privately-held information was not sufficient to establish possession or control of that information.

The Court denied the attorney's petition.

Anderson-Barker v. Superior Court of Los Angeles County (2019) 31 Cal.App.5th 528.

Agencies' Deliberative Process Documents Could Be Withheld Under Freedom of Information Act.

In a case decided under the Federal Freedom of Information Act (FOIA), the Ninth Circuit Court of Appeals found that documents generated by two Federal agencies were exempt from disclosure under the FOIA's deliberative process privilege.

In 2011, the Environmental Protection Agency proposed new regulations governing facilities that draw water from lakes, streams, and some waterways to be used in private manufacturing processes. As part of the rule-making process, the EPA consulted with the agencies regarding the potential impact of the new regulations on endangered species. In early November 2014, the agencies provided the EPA with a summary of what they believed the proposed rule would do, and the EPA responded with corrections. The agencies and the EPA exchanged further communications and documents during the rulemaking process. The EPA's final rule was published in March 2014. The Sierra Club then made a FOIA request asking the agencies for records generated during the rule-making process. When the agencies declined, the Sierra Club sued.

The Ninth Circuit ordered disclosure of some documents but found that several items were protected by the agencies' "deliberative process privilege." FOIA, like the California Public Records Act, requires broad disclosure of government documents. However, FOIA does not require disclosure of "inter- agency or intra-agency memorandums or letters" that come within the "deliberative process privilege." The privilege protects agency decisions by "ensuring that the frank discussion of legal or policy matters in writing, within the agency, is not inhibited by public disclosure." To qualify for the privilege, documents must: 1) be generated by a government agency prior to the agency's final decision on the issue reflected in the documents; and 2) must be deliberative. Applying this standard, the Ninth Circuit found that two categories of items the Sierra Club sought did not have to be disclosed.

First, the court found that the agencies' draft opinions that were created in November 2014 could remain secret. After reviewing the EPA's proposed rule, the agencies concluded that the rule would jeopardize species protected by the Endangered Species Act and their habitats and proposed reasonable and prudent alternatives in the form of draft opinions. One agency generated multiple drafts of the draft opinions. The court found that because the agency's drafts would reveal their "internal vetting process" and were generated before the agencies issued a formal opinion on the EPA regulations, they were not subject to disclosure.

Second, the court found that a draft opinion the second agency created in April 2014 that addressed the impact of a revised version of the EPA's rule, and which was only circulated internally to the agency, was protected from disclosure. The agency prepared a subsequent opinion in May 2014 (also prior to the EPA's final rule). The court found reading the two opinions could reveal the agency's deliberations about the proposed rules.

Thus, the Ninth Circuit reversed the trial court's order to disclose those categories of documents.

Sierra Club, Inc. v. United States Fish and Wildlife Service (2018) 911 F.3d 967.

NOTE:

California's Public Record Act utilizes a balancing test to determine whether an agency's withholding of documents that could reveal an agency's deliberative process is appropriate. An agency must show "that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code section 6255 (a)). Although the Sierra Club decision involved the FOIA, courts addressing CPRA matters could find the decision persuasive.

BUSINESS & FACILITIES

New Bid Limit of $92,600 for School and Community College District Contracts.

As of January 1, 2019, the bid threshold over which community college district and school district governing boards must competitively bid and award certain contracts was raised to $92,600. This threshold level applies to the following types of contracts:

Purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district; Services, other than construction services; and Repairs, including maintenance as defined in Public Contract Code (PCC) sections 20656 or 20115, as applicable, which are not public projects as defined in PCC section 22002 subdivision (c). PCC sections 20111 subdivision (a) and 20651 subdivision (a) require school and community college district governing boards, respectively, to competitively bid and award any contracts involving an expenditure of more than $50,000, adjusted for inflation, to the lowest responsible bidder. The State Superintendent of Public Instruction and the Board of Governors of the

California Community Colleges are required to annually adjust the $50,000 amount specified in the PCC. Both entities have increased the bid limit 3.39% to $92,600 for 2019.

Contracts for construction of public projects, as defined in PCC section 22002 subdivision (c), still have a bid threshold of $15,000. Public projects include contracts for reconstruction, erection, alteration, renovation, improvement, demolition, and repair. This $15,000 threshold is not adjusted for inflation.

The notice adjusting the bid limits is posted on the California Department of Education's website. The California Community Colleges Chancellor's Office also posted its notice adjusting the bid limits.

DISCRIMINATION

School Board's Prayers and Religious Commentary Violated U.S. Constitution's Establishment Clause.

The Establishment Clause of the U.S. Constitution protects an individual's freedom of religious expression by prohibiting government from establishing any form of religion. The Ninth Circuit Court of Appeals found that a school board's policy and practice of permitting religious exercise during public board meetings, including a prayer and religious commentary, violated the Establishment Clause.

The Chino Valley School Board adopted a prayer policy that allowed any member of the clergy, any religious leader, or a volunteer from the audience to deliver a prayer (or invocation) to initiate the public portion of the Board meetings. School children were frequently present during Board meetings to give presentations, act in a student advisory capacity, participate in extracurricular activities, or see the adjudication of student discipline. During the public meetings, several Board members often commented on the Christian religion. Among other things, Board members invoked Christian beliefs, gave Bible readings, endorsed prayer, and commented regarding the Board's goals that "one goal is under God, Jesus Christ." The Ninth Circuit observed that these comments linked "the work of the Board, teachers, and the school community to Christianity."

The Ninth Circuit applied a three-part test that the U.S. Supreme Court devised in *Lemon v. Kurtzman* (1971) 403 U.S. 602 to analyze the Board's actions. In order to avoid an Establishment Clause violation, government action: 1) must have a secular legislative purpose; 2) its principal or primary effect must be one that neither advances nor inhibits religion; and 3) it must not foster an excessive "entanglement" between government action and religion.

The court decided that the Board's prayer policy and practice did not have the secular purpose that has been found in cases in which a prayer was directed toward adult lawmakers and was historically used to open a legislative session. Instead, the court found a religious purpose in the Board's prayer policy and practice because the prayers took place in front of large numbers of school children who were not present voluntarily and who did not have an equal relationship with the Board. The court found that the Board's reasons for giving the invocation – to solemnize Board meetings and celebrate religious diversity - did not satisfy the first part of the *Kurtzman* test. The court found that a non-religious message could have been sufficient to solemnize the proceedings. Moreover, there was no religious diversity or non-religious individuals among those on the Board's list of those eligible to lead the prayer or invocation. Unlike a session of Congress or a state legislature, or a meeting of a town board, the court decided that the Board meetings functioned as extensions of the educational experience of the district's public schools.

The Board's actions also failed the second and third parts of the *Kurtzman* test because

the prayers frequently advanced the religion of Christianity, and created an excessive entanglement between the Board and religion.

The court found that the existence of secular means of achieving the Board's purposes to provide a solemn tone to the meetings, coupled with the history of Christian prayer and commentary at the Board meetings, demonstrated that the prayer policy was predominantly religious and therefore violated the Establishment Clause.

Freedom From Religion Foundation, Inc. v. Chino Valley Unified School District Board of Education (2018) 896 F.3d 1132 (reh'g denied by (9th Cir. 2018) 910 F.3d 1297).

NOTE:

An important factor that distinguished this case from cases that allowed prayer invocations at the outset of government legislative meetings was that many school children were present at the Board meetings as part of their educational activities. Another factor was that only the Christian religion was involved.

BENEFITS CORNER

IRS Issues Notice Regarding Anticipated Guidance on Individual Coverage HRAs.

Last month, we reported on proposed regulations issued by the IRS and other federal agencies expanding permitted uses for health reimbursement arrangements (HRAs). In follow up to these proposed regulations, the IRS has issued Notice 2018-88, describing approaches the government may take in developing certain guidance related to HRAs that are integrated with – and may be used to reimburse premiums for – individual health insurance coverage. Such HRAs, which the Notice refers to as "Individual Coverage HRAs," are currently prohibited, but may become permissible, subject to certain requirements, if and when final regulations are issued.

The Notice specifically addresses anticipated guidance on the application to Individual Coverage HRAs of the Affordable Care Act's employer shared responsibility provisions (aka the "Employer Mandate") and the prohibition on discrimination in favor of highly compensated individuals.

Below are key points from the Notice:

- Employer Mandate: The Employer Mandate requires "applicable large employers" (those with 50 or more full-time employees and full-time equivalents) to offer minimum essential coverage that is "affordable" and provides "minimum value" to at least 95% of their full-time employees (including dependents) or potentially incur penalties. The Notice indicates that an Individual Coverage HRA would be deemed an "eligible employer-sponsored plan" that could apply toward satisfying the 95% threshold for offering coverage. In addition, the Notice describes anticipated safe harbors for an Individual Coverage HRA to satisfy the Employer Mandate's affordability requirement. The Notice also states that an Individual Coverage HRA, if "affordable" (taking into account applicable safe harbors), would be treated as providing minimum value under the Employer Mandate.
- Non-Discrimination Rules: An Individual Coverage HRA is subject to the prohibition on discrimination in favor of highly compensated employees if it permits reimbursement for certain medical care expenses. The IRS observes that the proposed regulations may conflict with the requirement in existing nondiscrimination regulations that require any maximum limit on employer contributions to be uniform for all HRA participants. That is, under the proposed regulations, employers could choose to divide employees into separate classes (subject to certain limitations) and vary, among other things, the maximum employer contribution for Individual Coverage HRAs between

these classes. According to the Notice, the IRS anticipates that future guidance will provide that an Individual Coverage HRA will be treated as not violating the uniformity requirement, as long as it provides the same maximum dollar amount to all employees within a particular class. The Notice also describes potential relief from the uniformity requirement for age-based differences in the maximum limit on employer contributions to account for the higher price of an individual health insurance coverage policy as individual's age.

The Notice, like the proposed regulations, should not be relied upon as official guidance. We will continue to provide updates on new developments.

Affordable Care Act Reporting - Deadline Reminder.

Applicable Large Employers must file Forms 1094-C and 1095-C with the IRS by February 28, 2019 if filing on paper (or April 1, 2019, if filing electronically). Employers using a vendor to complete this reporting should ensure the vendor is using the proper affordability safe harbor and codes. For example, employers should not use Code 1A on Line 14 of Form 1095-C unless the employer is using the Federal Poverty Line Safe Harbor.

§

CONGRATULATIONS ON YOUR RETIREMENT, MELANIE POTURICA!

While many individuals spend years contemplating what they want to do with their careers, **Melanie Poturica** knew exactly what she wanted to do at 10 years old – become an attorney. From working tirelessly as a passionate litigator to becoming the firm's first female Managing Partner, Melanie Poturica paved the way for future Liebert Cassidy Whitmore attorneys and staff. A fierce advocate and dedicated leader, Melanie helped grow the firm from six passionate attorneys to nearly 100 trusted advisors and experts in offices across California. Harmonizing an incredibly successful professional career filled with victories on behalf of her clients with the equally rewarding responsibilities associated with motherhood, Melanie's unique ability to create long-lasting relationships with Liebert Cassidy Whitmore attorneys and clients is a major contribution to the firm's continued success.

The San Francisco native's journey as a Liebert Cassidy Whitmore attorney began in 1980. Beginning her career as an associate, Melanie graduated to a partner in 1985. Much of Melanie's early work consisted of litigating lawsuits involving discrimination and harassment. Her love of being in court and researching and writing on legal issues fueled her passion for her litigation practice. While Melanie quickly established herself as a vigorous litigator at the firm, she also balanced her work with motherhood.

Melanie welcomed her first-born, Vincent, and her new responsibility as Partner in the same week in 1985. Although Melanie loved her new role as Partner, she decided to focus on her young family, and began working at the firm part-time in 1987. "While I loved the work, it was torturous to be away from my family," Melanie said. Melanie worked a reduced schedule until 1993, continuing to litigate and handle hearings. During this time, Melanie and her husband welcomed their daughter, Mari.

In 1993, Melanie came back to LCW to work full-time and became a Partner for the second time. Two years later, Melanie became LCW's first female Managing Partner. "Managing the firm was the highlight of my career," she said when asked what her favorite memory as an attorney has been. Melanie thrived on the communication aspects of her work, including human resources and client and business issues. Although Melanie is a brilliant and dedicated attorney, she acknowledges that much of her success is directly related to her supportive family. "I am deeply indebted to my husband [who is also a lawyer] and [my] children for the sacrifices they made on my and the firm's behalf," Melanie said.

As Managing Partner, Melanie regularly travelled throughout the state to visit clients and colleagues. It was during this time that she developed many meaningful, personal relationships with clients and colleagues alike. Melanie explained, "As much as I like litigating, my favorite thing [is] working with clients,"

"Melanie cares deeply about our clients' issues, both on a legal and personal basis," said LCW's current Managing Partner, J. Scott Tiedemann. Fellow Partner, Michael Blacher, echoed Scott's sentiment. "She took the founding partners' vision and turned it into our culture: an unqualified commitment to the client, a passion and purpose in our work, a dedication to one another, and an unwavering devotion to ethical behavior," expressed Michael. Melanie continued as the firm's Managing Partner until 2010. Under her leadership, LCW expanded our statewide consortiums, created our annual conference, and expanded our public sector and non-profit practice to include independent schools.

In 2010, as Scott transitioned to Managing Partner, he and Melanie co-managed the firm. With the torch successfully passed, Melanie wound down her litigation practice and began working part-time in 2014. With plans to spend more time with her family, travel, and continue serving her community, Melanie is now heading in to a new stage in her life – full retirement.

Melanie has made it her duty to establish not only a firm built on integrity and leadership but also family and balance. Her retirement is well earned and much deserved and we send her off with gratitude and love.

LCW Liebert Cassidy Whitmore

2-DAY FLSA ACADEMY

Registration is Now Open!

Wednesday March 6th - Thursday March 7th, 2019
Almansor Court
700 Almansor Street
Alhambra, CA 91801

The Fair Labor Standards Act (FLSA) Academy offers an in-depth training program for public agencies on one of the most fundamental employment areas – items dealing with wages and hours. The FLSA governs many significant matters that supervisors, human resources, finance, and labor relations professionals need to understand and ensure agency compliance, however, the FLSA often confuses and complicates the lives of public agencies. We understand the struggle to comply and this program is designed to help you be an effective leader in your organization to ensure compliance. As we have conducted hundreds of FLSA compliance audits and handled FLSA litigation on behalf of our clients, we know that this can be difficult and designed this program to make it clearer as you move forward.

This two-day workshop will cover all you need to know to understand the key areas covered by the FLSA including:

- FLSA Basics
- Work Periods & Hours Worked
- Exemption Analysis
- The Regular Rate of Pay & Compensatory Time Off
- Conducting a Compliance Review

The program includes a combination of traditional training, case studies, calculation exercises, and hands-on practical elements. Participation in the program includes a copy of our FLSA Guide, which is a valuable resource to use in your agency on a regular basis. The seminar includes a continental breakfast and lunch.

Intended Audience: Professionals in Human Resources, Finance, Legal Counsel and Managers/Executives

Time: This is a 2-Day Event, 9:00 a.m. to 4:00 p.m both days.

Pricing: $550 pp for Consortium Members | $625 pp for Non-Consortium Member

For more information and to register, visit
www.lcwlegal.com/events-and-training/events-and-training-calendar/2-day-flsa-academy-2

NEW TO THE FIRM

Austin Dieter joins our San Francisco office where he provides advice and counsel as well as litigation assistance to the firm's public entity clients. Austin is experienced in a full array of employment matters, including wage and hour claims under FLSA, discrimination, harassment and retaliation claims under FEHA and Title VII, and disability discrimination claims under the ADA. He can be reached at 415.512.3052 or adieter@lcwlegal.com.

THREE LCW ATTORNEYS HONORED BY THE 2019 SOUTHERN CALIFORNIA SUPER LAWYERS

Peter J. Brown, partner in the Los Angeles office, is receiving this honor for the eleventh time. Peter is the Chair of the Firm's Labor Relations and Wage & Hour Practice Groups. His career has evolved from representing public agencies in litigation and all types of administrative hearings to today, where he spends most days - at the collective bargaining table or in a City Council or Board meeting advising on labor negotiations.

Geoffrey S. Sheldon, partner in the Los Angeles office, is receiving this honor for the third year in a row. Geoff is the Chair of the Firm's Public Safety Practice Group and also a member of the Litigation Practice Group's Executive Committee. He has successfully defended clients in numerous employment litigation and administrative hearings, making him one of LCW's top litigation experts.

J. Scott Tiedemann has been selected to this list for the fifth time in a row. As the Managing Partner of LCW, Scott is a leading advocate and trusted advisor to public safety agencies across California. In addition, Scott represents a wide variety of government agencies in labor and employment matters.

LCW congratulates Peter, Geoff, and Scott for this hard-earned honor!

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 Nick Rescigno at 310.981.2000 or info@lcwlegal.com.

Management Training Workshops

Firm Activities

Consortium Training

Mar. 7 **"Leaves, Leaves and More Leaves"**
Gateway Public ERC | Lakewood | Mark Meyerhoff

Mar. 7 **"Prevention and Control of Absenteeism and Abuse of Leave"** and **"Human Resources Academy I"**
San Joaquin Valley ERC | Stockton | Michael Youril

Mar. 13 **"The Future is Now-Embracing Generational Diversity and Succession Planning"** and **"Issues and Challenges Regarding Drugs and Alcohol in the Workplace"**
Coachella Valley ERC | Palm Desert | Christopher S. Frederick

Mar. 14 **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"** and **"Leaves, Leaves and More Leaves"**
Central Valley ERC | Hanford | Che I. Johnson

Mar. 14 **"Negotiating Modifications to Retirement and Retiree Medical"** and **"Issues and Challenges Regarding Drugs and Alcohol in the Workplace"**
East Inland Empire ERC | Fontana | T. Oliver Yee

Mar. 14 **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"** and **"12 Steps to Avoiding Liability"**
San Diego ERC | Vista | Mark Meyerhoff

Mar. 15 **"An Employment Relations Primer For Community College District Administrators and Supervisors"**
SCCCD ERC | Anaheim | Melanie L. Chaney

Mar. 19 **"An Agency's Guide to Employee Retirement"** and **"Human Resources Academy II"**
North San Diego County ERC | Temecula | Frances Rogers

Mar. 20 **"Unconscious Bias"**
NorCal ERC | Webinar | Suzanne Solomon

Mar. 20 **"Leaves, Leaves and More Leaves"** and **"Public Service: Understanding the Roles and Responsibilities of Public Employees"**
Sonoma/Marin ERC | Rohnert Park | Kelly Tuffo

Mar. 20 **"File That! Best Practices for Document and Record Management"** and **"The Art of Writing the Performance Evaluation"**
Ventura/Santa Barbara ERC | Thousand Oaks | T. Oliver Yee

Mar. 21 **"Workplace Bullying: A Growing Concern"** and **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"**
Orange County ERC | Brea | Danny Y. Yoo

Mar. 21 **"Administering Overlapping Laws Covering Discrimination, Leaves and Retirement"**
San Mateo County ERC | Redwood City | Richard Bolanos & WC Attorney

Mar. 27 **"The Future is Now – Embracing Generational Diversity and Succession Planning"** and **"Nuts and Bolts: Navigating Common Legal Risks for the Front Line Supervisor"**
Bay Area ERC | Santa Clara | Erin Kunze

Mar. 27 **"Managing the Marginal Employee"**
Gold Country ERC | Webinar & Placerville | Kristin D. Lindgren

Mar. 29 **"Allegations and Reports of Sexual Misconduct: Effective Institutional Compliance with Title IX and Related Statues"** and **"Promoting Safety in Community College Districts"**
Central CA CCD ERC | Monterey | Laura Schulkind

Customized Training

Mar. 5,7,20,27 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Carlsbad | Stephanie J. Lowe

Mar. 5 **"HR for Non-HR Managers"**
ERMA | Tehachapi | James E. Oldendorph

Mar. 6 **"Preventing Workplace Harassment, Discrimination and Retaliation and Mandated Reporting"**
East Bay Regional Park District | Castro Valley | Erin Kunze

Mar. 8 **"Ethics in Public Service"**
County of San Luis Obispo | San Luis Obispo | Christopher S. Frederick

Mar. 14 **"Public Service: Understanding the Roles and Responsibilities of Public Employees"**
City of Concord | Heather R. Coffman

Mar. 14 **"Trustee Ethics"**
Napa Valley College | Napa | Laura Schulkind

Mar. 15 **"Exercising Your Management Rights"**
West Valley Mission Community College District | Santa Clara | Laura Schulkind

Mar. 19 **"Managing the Marginal Employee"**
College of the Desert | Palm Desert | Kristi Recchia

Mar. 19 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Port of Stockton | Stockton | Jack Hughes

Mar. 20 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Stockton | Gage C. Dungy

Mar. 20 **"Legal Issues Update"**
Orange County Probation | Santa Ana | Christopher S. Frederick

Mar. 23 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Newport Beach | Christopher S. Frederick

Mar. 28 **"Preventing Workplace Harassment, Discrimination and Retaliation and Ethics in Public Service"**
City of Rocklin | Kristin D. Lindgren

Mar. 28 **"Bias in the Workplace"**
ERMA | Santa Fe Springs | Danny Y. Yoo

Speaking Engagements

Mar. 9 **"Medical Leaves, Disability Issues and Retirement and the Interactive Process in the Public Safety Environment"**
CPCA Annual Training Symposium | Santa Clara | Geoffrey S. Sheldon & Jennifer Rosner

Mar. 15 **"Minding the Minefield of Gender Pay Equity - Staying Compliant and Being Fair"**
CalGovHR 2019 California State Public Sector HR Conference & Expo | Rohnert Park | Kristin D. Lindgren

Mar. 25 **"Title IX : The U.S. Department of Education's Proposed Regulations"**
Chief Student Services Officers (CSSO) Annual Conference | Los Angeles | Pilar Morin & Jenny Denny

Mar. 25 **"Navigating Academic Accommodations for Students with Disabilities in Nursing Programs"**
CSSO Annual Conference | Los Angeles | Alysha Stein-Manes & Laura Schulkind

Mar. 25 **"Free Speech Issues on Campus"**
CSSO Annual Conference | Los Angeles | Pilar Morin & Eileen O'Hare-Anderson

Seminars/Webinars

Register Here: https://www.lcwlegal.com/events-and-training

Mar. 6 **"Train the Trainer Refresher: Harassment Prevention"**
Liebert Cassidy Whitmore | Los Angeles | Christopher S. Frederick

Mar. 6, 7 **"2-Day Intensive FLSA Academy"**
Liebert Cassidy Whitmore | Alhambra | Peter J. Brown & Kristi Recchia

Mar. 13 **"Train the Trainer: Harassment Prevention"**
Liebert Cassidy Whitmore | San Francisco | Erin Kunze

Mar. 13 **"Regular Rate of Pay – To Include or Not to Include?"**
Liebert Cassidy Whitmore | Webinar | Richard Bolanos

Mar. 21 **"Communication Counts!"**
Liebert Cassidy Whitmore | Roseville | Jack Hughes & Kristi Recchia

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