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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STUDENT SAFETY

Universities Have a Special Relationship With Their Students and a Duty to Protect Them From Foreseeable Violence During Curricular Activities.

Damon Thompson was a transfer student at UCLA. After enrolling, Thompson began to experience problems with other students in both classroom and residence hall settings. On multiple occasions, Thompson complained to professors, a dean, and a teaching assistant about the alleged harassing behavior of other students and professors during class and in his residence hall.

UCLA urged Thompson to seek help at the university's Counseling and Psychological Services (CAPS), but Thompson's complaints of hearing voices and threats from other students only increased. After a discussion with his residence hall director, campus police escorted Thompson to the emergency room for a psychiatric evaluation where doctors diagnosed Thompson with possible schizophrenia and major depressive disorder. Thompson agreed to take medication and begin outpatient treatment at CAPS. UCLA was informed about the incident and Thompson's mental evaluation.

However, Thompson discontinued the medication and continued to report hearing voices and being harassed by other students. At a psychiatric session, he admitted to thinking about harming others, although he had no identified victim or plan. CAPS staff agreed that Thompson did not meet the criteria for an involuntary psychiatric hold, and Thompson later withdrew from outpatient treatment.

A few months later in June 2009, Thompson accused a dormitory resident of making too much noise and pushed the resident. UCLA expelled Thompson from university housing and ordered him to return to CAPS in the fall quarter.

Throughout the summer session and fall quarter, Thompson continued to experience auditory hallucinations in the classroom and again agreed to start treatment at CAPS. In one incident in a chemistry lab, Thompson accused a specific unnamed student as one of his alleged tormentors. UCLA decided to investigate whether Thompson was having similar difficulties in other classes. The same day, Thompson missed a scheduled session at CAPS.

Two days after the incident in the chemistry lab, Thompson, without warning or provocation, stabbed fellow student Katherine Rosen in the chest and neck with a kitchen knife. Rosen survived the life-threatening injuries. Thompson admitted to campus police that he stabbed someone because the other students had been teasing him. He pleaded not guilty by reason of insanity to a charge of attempted murder, and after admission to a state hospital, was diagnosed with paranoid schizophrenia.

Rosen sued Thompson, the Regents of the University of California and several UCLA employees for negligence. Rosen alleged UCLA had a special relationship with her as an enrolled student, which entailed a duty "to take reasonable protective measures to ensure her safety against violent attacks and otherwise protect her from reasonable foreseeable criminal conduct, to warn her as to such reasonable foreseeable criminal conduct on its campus and in its buildings, and/or to control the reasonably foreseeable wrongful acts of third parties/other students." She alleged UCLA breached this duty because, although aware of Thompson's "dangerous propensities," it failed to warn or protect her or to control Thompson's foreseeably violent conduct.

UCLA argued the case should not proceed because: (1) colleges have no duty to protect their adult students from criminal acts; (2) if a duty does exist, UCLA did not breach it in this case; and (3) UCLA and one employee were immune from liability under certain Government Code provisions. Rosen argued UCLA owed her a duty of care because colleges have a special relationship with students in the classroom, based on their supervisory duties and the students' status as "business invitees"—in this case, a person invited into the classroom to receive an education. Rosen also claimed UCLA assumed a duty of care by undertaking to provide campus-wide security.

The trial court ruled against UCLA's and concluded a duty could exist under each of the grounds Rosen identified, there was a question about whether UCLA breached that duty, and the immunity statutes did not apply. UCLA appealed the ruling, and a divided panel of the Court of Appeal granted the appeal.

The majority held that UCLA owed no duty to protect Rosen based on her status as a student or business invitee or based on the failure of its campus-wide security program. The court also rejected Rosen's new theories of duty based on contract and labor laws regarding violence in the workplace. Rosen sought review in the California Supreme Court, which granted review of the decision.

In general, people have a duty to act with reasonable care under the circumstances. A duty to control, warn, or protect may be based on a defendant's relationship with either the person whose conduct needs to be controlled or with the foreseeable victim of that conduct. Specifically, a duty to control may arise if a party has a special relationship with the foreseeably dangerous person that entails an ability to control that person's conduct. One example of this type of relationship is the parent-child relationship. Similarly, a duty to warn or protect may be found if a party has a special relationship with the potential victim that gives the victim a right to expect protection. One example of this type of relationship is innkeepers and their guests.

Prior to this case, the California Supreme Court held that high schools have a duty to protect students from assault on campus, but it had not extended that duty to institutions of higher education in the same context. In this case, the Court had to decide whether postsecondary institutions have a special relationship with students while they are engaged in activities that are part of the institution's curriculum or closely related to its delivery of educational services. The Court considered the level of dependence that college students have on a college and the level of control the college has over its students and campus. Ultimately, the Court concluded the college-student relationship fits within the paradigm of a special relationship but only in the context of college-sponsored activities over

which the college has some measure of control. The duty extends to activities that are tied to the university's curriculum but not to student behavior over which the university has no significant degree of control. UCLA did not owe a duty to the public at large but only to enrolled students who are at foreseeable risk of being harmed in a violent attack while participating in curricular activities at the UCLA. Moreover, universities are not charged with a broad duty to prevent violence against their students. Such a duty could be impossible to discharge in many circumstances. Rather, UCLA's duty is to take reasonable steps to protect students when it becomes aware of a foreseeable threat to their safety. The reasonableness of a university's actions in response to a potential threat is a question of breach.

Whether a university was, or should have been, on notice that a particular student posed a foreseeable risk of violence is a case-specific question, to be examined in light of all the surrounding circumstances. Such case-specific foreseeability questions are relevant in determining the applicable standard of care or breach in a particular case, but they do not determine that a duty exists.

In this case, the incident here occurred in a chemistry laboratory while class was in session, which was a place where a student could reasonably expect their university to provide some measure of safety. UCLA argued that imposing a duty of care in this situation would discourage colleges from offering comprehensive mental health and crisis management services and incentivize post-secondary institutions s to expel anyone who might pose a remote threat to others. However, the Court stated that recognizing the duty could encourage postsecondary institutions to take steps to avoid violent episodes, which serves the policy of preventing future harm. Thus, UCLA did owe a duty to protect Rosen.

Ultimately, the Court reversed the Court of Appeal's decision with regard to the duty UCLA owed Rosen, but it sent the case back to the Court of Appeal to decide the remaining issues, including a determination of whether UCLA reasonably could have done more to prevent the assault.

Regents of the University of California v. Superior Court (Mar. 22, 2018, No. S230568) __Cal.4th __ [2018 WL 1415703].

LANDLORD-TENANT RELATIONS

Ordinance Barring No-Fault Evictions of Families with Children and Educators During the School Year is Not Blocked By State Law.

In 2016, the City and County of San Francisco and the San Francisco Board of Supervisors banned no-fault evictions involving families with children and educators during the school year. These types of no-fault evictions can be disruptive to the learning process. The ordinance established a defense to eviction if a child under the age of 18 or any educator resides in the unit, the child or educator is a tenant in the unit or has a custodial or family relationship with a tenant in the unit, the tenant has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year.

Following the ordinance's enactment, the San Francisco Apartment Association and the Small Property Owners of San Francisco Institute filed a lawsuit alleging the ordinance is invalid because state laws governing landlord-tenant issues preempted the ordinance. The trial court agreed the ordinance was preempted and ordered the City not to enforce or apply it. The City appealed.

The Court of Appeal reversed the lower court's decision and ruled in favor of the City.

The Property Owners contended the Ordinance is preempted by the state's unlawful detainer statutes, the state laws that govern the process of a landlord evicting a tenant. Under case law, a city may enact ordinances that limit the substantive grounds for tenant eviction, but it cannot procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes. In this case, the Property Owners argued the ordinance was procedural because it governs the timing of notices of eviction. The City argued the ordinance was substantive because timing is merely a component of the substantive defense to eviction.

The Court reasoned that the ordinance has a substantive component, effectively creating a new group protected from certain no-fault evictions and an impact on procedure, restricting the timing of evictions of children and educators. However, the ordinance did not impose any procedural requirements to provide written notice or to do any other affirmative act. Instead, it simply had a procedural impact, limiting the timing of certain evictions, which was necessary to "regulate the substantive grounds" of the defense it creates. Thus, the Court found the ordinance was a permissible limitation upon the landlord's property rights rather than an impermissible infringement on the landlord's unlawful detainer remedy.

In addition, the Property Owners cited two cases to argue the ordinance was unlawful based on state statutes other than the unlawful detainer statutes. Specifically, they argued that the ordinance requires landlords to wait longer to recover possession than allowed by state law. However, the ordinance did not specify an amount of notice required to terminate a tenancy. Instead, the ordinance established a permissible substantive defense to eviction that impacts when landlords may evict. The ordinance's incidental impact on the timing of landlord-tenant relations did not alone render it preempted under state law.

San Francisco Apartment Association v. City and County of San Francisco (2018) 20 Cal.App.5th 510.

STUDENT DISCIPLINE

Substantial Indirect Evidence can Support a District's Decision to Expel Student Under Education Code Section 48915.

In March 2015, after receiving a report from a school bus driver regarding the actions of a group of male students riding the bus, a middle school principal investigated a potential sexual assault and sexual battery of a female student. The principal and police officer interviewed the female student who stated she had asked the boys, including M.N. (a 13-year-old boy in the seventh grade), numerous times to stop touching her buttocks, breasts, and crotch, but they did not comply with her requests. The female student also provided a written statement about the abuse as did four other witnesses. The principal and police officer spoke with the group of boys including M.N., who admitted he had touched the female student and made comments of a sexual nature towards her. Videotape footage also confirmed the abuse and participants.

The principal immediately suspended M.N. In the notice of suspension, the principal noted that the student was subject to mandatory expulsion under Education Code section 48915 subdivision (c) for committed or the attempt to commit sexual assault or battery. The principal then made an expulsion recommendation to the director of student services based upon M.N.'s violations of Education Code section 48915 subdivision (c)(4) and section 48900 subdivisions (k), (n), and (t)(2); she specifically stated that M.N. had committed sexual battery upon another student.

The school provided M.N.'s parents with notice of an administrative hearing and provided the documents to be presented at the expulsion hearing. In June 2015, a three-member administrative panel heard the case. Three witnesses testified in the proceedings: the principal, M.N., and M.N.'s mother. Additionally, the Panel reviewed the expulsion recommendation, the discipline incident report, a discipline incident list and incident summary, the notice of suspension, student statements,

attendance report, and teacher observation checklists. The panel recommended to the District that M.N. be expelled from the District for one calendar year based upon his commission of acts of sexual battery and sexual harassment. The Board adopted the Panel's recommendation. M.N. appealed the Board's decision to the Santa Clara County Board of Education who heard the case in August 2015. The County Board denied M.N.'s appeal.

In September 2015, M.N. filed a lawsuit against the District and County Board alleging that the expulsion was invalid because the District and County Board, contrary to state law, relied exclusively upon information it received from others to prove that M.N.'s intent was sexual in nature. The trial court concluded there was substantial evidence and statements from witnesses made during the investigation to support the finding that M.N. had committed a sexual battery. However, the court ruled that the record did not contain substantial evidence to support the District's conclusion that M.N. was a continuing danger to the school. Therefore, the trial court ordered the District to prepare additional and adequate findings on the sole issue of punishment for M.N. The District requested the trial court reconsider or clarify its order and argued that the order was inappropriate because there was substantial evidence the student committed sexual battery. The trial court denied the request to reconsider the matter but it clarified that the Board must consider whether there was evidence justifying suspension of the expulsion under Education Code section 48917 subdivision (a). M.N. appealed.

The Court of Appeal considered whether substantial evidence supported the District's decision to expel M.N. M.N. argued the District's decision that he committed sexual battery was without support because there was no competent evidence to prove he acted with the purpose of sexual arousal, sexual gratification, or sexual abuse. The student acknowledged that he admitted at the administrative hearing that he touched an intimate part of another person against her will, but he denied that he acted with the requisite intent. In fact, he argued that he committed sexual battery because other boys threatened him with physical harm if he did not touch the victim. The District argued that M.N.'s argument effectively required the District to establish M.N.'s intent through direct evidence, and that position is contrary to established law that allows the District to prove intent by surrounding circumstances.

The Court was unpersuaded by M.N.'s arguments and noted there was substantial evidence supporting the Board's decision that M.N. should be expelled for sexual battery. This evidence included both oral and written statements from witnesses and M.N.'s own statements about his intent, which the District considered and found to not be credible. Furthermore, intent can be proved by inferences drawn from the facts and circumstances surrounding the offense and in a variety of contexts.

Ultimately, the Court of Appeal agreed with the trial court's ruling that there was substantial evidence to support the District's finding that M.N. had committed sexual battery under which the District was required by statute to expel the student for one year. However, the Court also instructed the District to consider whether there was evidence justifying suspension of the expulsion under Education Code section 48917 subdivision (a).

M.N. v. Morgan Hill Unified School District (2018) 20 Cal. App.5th 607.

LABOR AND EMPLOYMENT

California Supreme Court Rules that State Law Requires a Different Regular Rate of Pay Calculation than the Fair Labor Standards Act.

Hector Alvarado sued his employer under the California Labor Code for back overtime compensation under the theory that his employer had incorrectly calculated his "regular rate of pay."

Under both the California Labor Code and the Federal Fair Labor Standards Act (FLSA), the regular rate of pay is the rate an employer must use to pay overtime premiums to employees who work overtime hours. The regular rate of pay can change from workweek to workweek because it must reflect the per-hour value of all compensation the employee has earned. This includes additional compensation an employee could earn on an hourly basis (e.g., shift differentials or on-call pay) and any non-hourly compensation an employee could earn (e.g., a flat dollar amount for a bonus or bilingual pay). The issue was how to calculate the per-hour value of a lump sum bonus of $15 per day paid for work performed on a weekend day for purposes of the regular rate under California law.

Regulations promulgated by the U.S. Department of Labor (DOL) unequivocally state how to calculate an employee's regular rate under the FLSA when he or she is paid a lump sum bonus. As set forth in the DOL regulations at 29 C.F.R. section 778.110 subdivision (b), to calculate the per-hour value of a lump sum bonus under the FLSA, an employer must divide the weekly bonus amount by the total hours actually worked by the employee in the week. Here, the employer followed the FLSA in its method of calculating the regular rate when an employee was paid the $15 per day bonus. The plaintiff challenged this method as illegal under State law.

In a matter of first impression, the California Supreme Court departed from the Federal regular rate standard, opining that under State law, the per-hour value of a lump sum bonus such as that paid to Mr. Alvarado must be calculated by dividing the lump sum bonus by the number of non-overtime hours actually worked in the week.

The California Supreme Court holding is limited to flat-sum bonuses or pays (e.g., $75 a week, $300 per month or any flat dollar amount that can be converted into a weekly equivalent). As such, other types of pay that are not flat-sum amounts are likely not covered by the decision.

The significance of this decision for private sector employers in California may be great where employers have been relying on the FLSA to incorporate non-discretionary lump sum bonuses (or other flat-sum payments) into the regular rate calculation. The significance of Alvarado for most public sector employers, however, is negligible. Although it sets a new standard for calculating the regular rate under the California Labor Code, most public sector agencies are exempt from the requirements of the California Labor Code and need only comply with the overtime requirements of the FLSA. Indeed, for public sector employers, this decision offers clarity in that the California Supreme Court has confirmed that under the FLSA, the required regular rate divisor is that of all hours actually worked, not just all non-overtime hours worked.

This decision is also a reminder of the importance of clearly articulating negotiated forms of compensation in labor agreements. Failure to specify whether a payment is purely hourly, paid on a certain number of hours, or has no bearing on hours may have unintended FLSA regular rate consequences. For example, if you do not intend on paying an agreed upon additional hourly pay for overtime hours, state that clearly in your collective bargaining agreement.

Alvarado v. Dart Container Corporation of California (Mar. 5, 2018, No. S232607) __ Cal.4th __ [2018 WL 1146645].

The Information Practices Act's Definition Of "Record" and "Personal Information" Does Not Restrict an Agency's Maintenance of Qualifying Personal Information to Only a Single, Official Personnel File at a Single Location.

In December 2009, the California Department of Parks and Recreation (DPR) hired Delane Hurley and appointed Leda Seals as her supervisor. During the course of her employment, Hurley claimed Seals asked employees overly personal questions, gave them unsolicited personal advice, and often discussed sex and sexual orientation.

In September 2011, Seals and a nonsupervisory employee sat in Seals' office and discussed how Seals might more effectively manage Hurley. During this discussion, Seals allegedly disclosed information from Hurley's personnel file. At the time of the discussion, Hurley was standing outside Seals's office, heard Seals discussing her personnel file with the other employee, and saw her personnel file open on the desk. Hurley became sick and threw up. Hurley then went to her office, wrote an e-mail to a higher-ranking manager about the incident, and told Seals she was leaving work. Hurley never returned to work.

The next month, Hurley filed a formal discrimination complaint with DPR's Human Rights Office alleging discrimination, harassment, and retaliation. DPR placed Seals on administrative leave during the investigation while Human Rights Office interviewed many employees. While on administrative leave, Seals asked another employee to deliver to her a file Seals maintained on Hurley so that Seals could prepare for her upcoming Human Rights Office interview about Hurley's complaint. The employee delivered this file to Seals. After completing its investigation, DPR notified Seals in December 2012 that she was going to be fired, and Seals retired in January 2013 in lieu of termination. Seals never returned the file in her possession.

In October 2012, Hurley filed a lawsuit against DPR for discrimination and harassment based on sex and sexual orientation, and retaliation in violation of the Fair Employment and Housing Act and against Seals personally for intentional infliction of emotional distress.

During preparation for the trial, Seals's attorney provided Hurley with 9,000 pages of documents including a copy of the files Seals still had in her possession. Hurley then added causes of action against DPR and Seals for invasion of constitutional right to privacy, invasion of privacy by public disclosure, breach of medical confidentiality, and violation of the Information Practices Act (IPA)—a state law that expands upon the constitutional guarantee of privacy by providing limits on the collection, management, and dissemination of personal information by state agencies.

DPR asked the court to dismiss the claims against it for intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent hiring, retention, and supervision, which the court granted. Seals also asked the court to rule in her favor on the four privacy causes of action, but the court denied Seals's request.

After a four-week trial, the jury returned verdicts in favor of DPR on the FEHA causes of action but against Seals on several claims. The jury awarded Hurley $19,200 for past economic damages and $19,200 for past noneconomic losses and $28,800 in punitive damages. All parties appealed.

DPR and Seals immediately asked the trial court to rule in their favor despite the jury's verdicts, but the trial court declined and cited the substantial evidence that supported the verdicts. DPR and Seals appealed to the Court of Appeal and argued there was insufficient evidence to support the jury's verdicts finding them liable for violation of the IPA

The IPA defines "personal information" as "any information that is maintained by an agency that identifies or describes an individual, including,

but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual." The IPA defines a "record" as "any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual's name, photograph, finger or voice print, or a number or symbol assigned to the individual." The IPA defines "disclose" as "to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity." The IPA limits disclosures of personal information maintained by an agency to certain persons and certain circumstances as described in the California Civil Code.

Specifically, DPR argued there was insufficient evidence that the file delivered to Seals contained any personal information and file was properly disclosed as relevant and necessary in the ordinary course of Seals's supervisory duties. Furthermore, DPR argued Hurley did not show she suffered an adverse effect from the alleged violation, because Hurley testified only that she was "scared" that Seals had possession of the file. Similarly, Seals argued her original disclosure to another employee of information in Hurley's personnel file and Seals's later receipt of the file about Hurley while on leave were proper because Seals acted solely in her official capacity as a supervisor. DPA and Seals additionally tried to argue that the IPA's definition of "record" and "personal information" means only the personal information found in a single, official personnel file.

The Court also declined to adopt the DPA's and Seals's narrow interpretation of "record" and "personal information" based on the lack of Legislative intent to limit the definition. The court recognized that personal information may be maintained at multiple locations dispersed across the agency's locations. The Court of Appeal found not only was there substantial evidence to support the jury's finding that the file in Seals's possession contained Hurley's personal information, but there was also substantial evidence to prove the Seals disclosed Hurley's personal information on at least two occasions. Seals's disclosure to another employee during an informal discussion in her office and DPR's disclosure of the file to Seals that contained personal information such as a copy of Hurley's application to add her domestic partner as a beneficiary of her health insurance, a note from Hurley's psychologist placing her on medical leave, and other information about Hurley, proved an IPA violation. A jury could also reasonably find that Seals's disclosure of information from Hurley's personnel file during a discussion with another employee was not relevant and necessary in the ordinary course of the performance of Seals's official duties and was not related to the purpose for which the information was acquired, which again points to a violation of the IPA. Although DPR and Seals argued Seals merely used the file to help her prepare for her HRO interview regarding Hurley's complaint, the jury could reasonably reject their argument. Additionally, the fact that Seals kept the file long after retiring from DPR could also give the jury reasonable cause to making a finding against Seals. Furthermore, the Court of Appeal noted that the jury could have even reasonably found that the DPR employee who delivered the file to Seals's house improperly disclosed personal information in violation of the IPA.

Contrary to DPR's and Seals's assertion that Hurley did not provide evidence to support a finding that she suffered an adverse effect from their wrongful disclosures of her personal information, the Court noted that Hurley suffered from emotional distress as a result of their actions.

DPR also tried to argue that because Hurley did not initially include in her lawsuit the claims regarding the privacy violations, she was time-barred from receiving any award of noneconomic damages, i.e., money for her pain, suffering, inconvenience, or other problems not readily

quantified or valued in money. Although the original discussion in which Seals disclosed information about Hurley to another employee occurred more than two years before Hurley filed her lawsuit claiming privacy violations, which is maximum amount of time typically allow under this type of lawsuit, the DPR's disclosure of the file to Seals and Hurley's subsequent emotional distress occurred less than two years before the lawsuit was filed. This action made Hurley eligible to collect noneconomic damages. Similarly, Seals argued that Hurley was also time-barred from receiving noneconomic damages from her based on state law found in the California Civil Code. However, the two-year time limit Seals identified in Civil Code section 1798.49 does not apply to Seals as an individual. Rather, Hurley's claims against Seals were required to be filed within three years of the violation, which Hurley satisfied.

However, the Court examined the jury's award of economic damages and determined the jury mistakenly awarded economic damages for a time period that Hurley was actually time-barred from recovering. For the eligible time period, Hurley had not presented substantial evidence of economic damages because she had accepted another job and earned a comparable salary during that time.

Ultimately, the Court of Appeal reversed the award of $19,200 in economic damages against DPR but affirmed all other awards and judgments against the Defendants.

Hurley v. California Department of Parks and Recreation (2018) 20 Cal.App.5th 634.

NOTE:

This case was certified for partial publication pursuant to California Rules of Court, rule 8.1110. The information above is found in the published parts of the opinion and can be relied upon for precedent.

BUSINESS & FACILITIES

Privette *Revisited: Property Owner Not Liable For Wrongful Death Of Contractor's Employee Arising From Propery Owner's Alleged Violation Of Safety Regulations.*

Television Center, Inc. ("TCI") owns a three-story building in Hollywood, California. TCI contracted with Chamberlin Building Services ("CBS"), a licensed contractor, to wash the building's windows. Under the contract, CBS made all decisions regarding the window washing, and CBS owned, inspected, and maintained all the equipment used on the job.

Salvador Franco ("Franco") was a window cleaner for CBS. In the summer of 2011, while Franco was washing the building's windows, his descent apparatus detached and he fell to his death. Franco's survivors sued TCI for negligence alleging Franco died because TCI failed to equip the building with structural roof anchors to which window washers could attach their gear, in violation of Cal-OSHA.

TCI sought to dismiss the lawsuit. TCI argued that under the Supreme Court's decision in *Privette v. Superior Court* (1993) 5 Cal.4th 689, when a property owner hires an independent contractor, the property owner is not liable for injuries sustained by the contractor's employees unless the property owner's affirmative conduct contributed to the injuries. TCI argued that in accordance with *Privette*, TCI had contracted with CBS to wash the building's windows and TCI had not retained control over the manner in which CBS would perform.

Franco's survivors argued that *Privette* did not bar their claims because as a building owner, TCI had a statutory duty pursuant to Cal-OSHA to install roof anchors. According to Franco's survivors, TCI could not delegate this statutory duty to CBS, and its violation gave rise to liability not barred by the *Privette* doctrine.

The trial court agreed with TCI and dismissed the case.

Franco's survivors appealed and the Court of Appeal affirmed the trial court's decision. In doing so, the Court of Appeal rejected the survivor's claim that TCI's duty to install statutorily-required roof anchors was not delegable. The Court held that under *Privette* and its progeny, TCI's properly delegated its legal duty to provide a safe workplace to CBS. "[W]hen TCI hired CBS, an independent contractor, to provide window washing services, it delegated to CBS its duty to provide a safe workplace for CBS's employees. Accordingly, TCI's alleged breach of a statutory duty to provide safety anchors did not give rise to liability to decedent or his survivors."

Delgadillo v. Television Center, Inc. (2018) 20 Cal.App.5th 1078.

ADMINISTRATIVE ISSUES

Service of Legal Documents upon a Recipient by Certified Mail Is Effective Even if the Recipient Did Not Sign a Receipt for the Service.

In 2016, the Medical Board of California filed an accusation against a doctor alleging that he prescribed himself controlled substances, failed to participate in an interview with the board, and failed to provide the board with an accurate address. The accusation was served by certified mail on the doctor's address of record in Emeryville. However, the unopened mail was returned to the board, stamped "Return to Sender, Unable to Forward." The board then sent a notice of default by certified mail to the doctor's address of record, which was also returned, stamped "Return to Sender, Unable to Forward." Next, the board searched for an alternate address and again served by certified mail the accusation to another address in Emeryville. In January 2017, the board issued a default decision pursuant to Government Code section 11520, revoking the doctor's medical license, which was served on the same date by certified mail and first class mail to both addresses.

In April 2017, the doctor filed a lawsuit against the board arguing that the board's service upon was ineffective because there was no evidence the doctor received the documents. The trial court ordered the board to set aside its default decision revoking the doctor's license because the default decision and order were not properly served per Government Code section 8311. Section 8311 was recently amended to require a receipt be provided in order to constitute proper service. Here, evidence showed that the doctor did not sign a receipt for the service of the default decision and order. The Board appealed to the Court of Appeal.

The recent amendment to Government Code section 8311 contributed to the parties' dispute. However, the Court of Appeal examined legislative history and ruled the recent amendment to the code section requires receipt for other means of physical delivery, but does not impose this requirement if service is made by certified mail. Furthermore, the Court concluded that the Government Code authorizes service of a document adversely affecting one's rights to be made by registered mail, and certified mail constituted sufficient compliance with the requirements.

The Court ultimately ordered the trial court to vacate its previous order and reject the doctor's lawsuit, which allowed the board's decision to stand.

Medical Board of California v. Superior Court (Feb. 21, 2018, No. A152607) __ Cal.App.5th __ [2018 WL 1102588], as modified (Mar. 1, 2018).

EMPLOYEE DISCIPLINE

Probationary Release of Police Officer for Off-Duty Extramarital Relationship Which Did Not Impact Job Performance Is Unconstitutional.

Public employers may not take adverse action against an employee due to the employee's constitutionally- protected off duty conduct, unless the conduct negatively impacts job performance or violates a valid, narrowly implemented regulation. The U.S. Court of Appeals for the Ninth Circuit reached this decision after the City of Roseville Police Department ("Department") released a probationary police officer because of her off-duty romantic relationship with another officer. The Ninth Circuit elaborated on its earlier decision in *Thorne v. City of El Segundo*, noting, "the Constitution is violated when a public employee is terminated …at least in part on the basis of …protected conduct, such as her private, off-duty sexual activity."

Internal Affairs (IA) Investigation and Release from Probation

Officer Perez had been a probationary police officer with the Department for several months when she and Officer Begley began a romantic relationship. Both officers were separated, though not divorced from other individuals, and both had small children. Begley's wife alleged in a complaint she filed with the Department that Perez and Begley were having an affair and engaging in sexual conduct while on duty.

The Department's investigation found that while there was no evidence of on-duty sexual contact between Perez and Begley, the officers did call or text each other a number of times when one or both were on duty, and that their communications "potentially" violated Department policy. The officer who reviewed the IA results and recommended discipline indicated in a memorandum that "[b]oth officers are married and have young children." The memorandum also criticized Perez's relationship with Begley as "unprofessional," and noted it "reflect[ed] unfavorably upon the Roseville Police Department and its members." Ultimately, Captain Moore and Lieutenant Walstad found that the officers' conduct violated Department policies prohibiting "Unsatisfactory Work Performance" and "Conduct Unbecoming." Walstad later admitted that he disapproved of the extramarital sexual conduct on moral grounds, and the court found that Moore had made comments that could indicate to a jury that he also disapproved for similar reasons.

The Department issued written reprimands that sustained the charges of unsatisfactory work performance and conduct unbecoming against both Perez and Begley. Perez appealed her reprimand.

After the reprimand and prior to Perez' appeal hearing, the Department identified additional concerns with Perez' work performance. The Department allegedly received complaints that Perez was not getting along with three other female officers, which Perez disputed. A citizen also complained that Perez was rude and insensitive during a domestic violence call; but the citizen did not pursue the complaint. There was also evidence of a disagreement between Perez and a sergeant regarding the interpretation of the Department's shift trade policy. Perez asserted that the policy was being applied to her unfairly, and the sergeant reported to his superiors that Perez seemed angry and agitated. The Department asked the sergeant with to memorialize his conversation with Perez.

At the conclusion of her appeal of Perez' reprimand, the Police Chief informed Perez that she was being released from probation. The Chief also provided Perez a written notice, which had been prepared prior to the appeal hearing, stating she was being released from probation. When Perez requested the reason for her release, the Chief declined to elaborate.

Soon after her release from probation, the Department issued Perez a second written reprimand. The second written reprimand reversed the Department's findings of

unsatisfactory work performance and conduct unbecoming as stated on the first reprimand and instead charged Perez with violation of the Department's "Use of Personal Communication Devices" policy. Perez did not appeal because she had been informed she had no appeal right.

Constitutional Rights to Privacy and Intimate Association

Perez then sued the Department and some of her superiors, alleging that her release from probation violated her constitutionally protected rights to privacy and intimate association, among other claims. The trial court granted summary judgment for the Department and Perez appealed. On appeal, the Ninth Circuit agreed with Perez that the case should proceed to a jury, and reversed the trial court's summary judgment for the Department.

In reaching its decision, the Ninth Circuit reiterated its 1983 decision in *Thorne v. City of El Segundo* in which found that public employees enjoy a constitutionally protected right to privacy and intimate association:

"…a department can violate its employee's rights to privacy and intimate association either by impermissibly investigating their private sexual conduct or by taking adverse employment action on the basis of such private conduct."

On the question whether the Department impermissibly released Perez from probation based upon her constitutionally protected off-duty conduct, the court found there was a factual question for the jury to decide as to whether the Department released Perez "in part" because of her privacy and intimate association rights to have an off-duty sexual relationship. Specifically, three Department representatives gave inconsistent statements about the role Perez' relationship played in the decision to release her. All three indicated at one point in the case that the off-duty relationship was "part of" the Department's decision.

The court also found that there were factual disputes on whether the Department's three post-release reasons for releasing Perez were pretextual:

1. her conduct during her response to a domestic violence call;
2. her work relationships with female officers; and
3. her belief that the shift trade policy was unfairly applied.

The court found that the Department only identified these reasons after the on-duty sexual conduct allegations were unsubstantiated. The court found the fact that the Department never investigated any of those three reasons also indicated an intent to mask the Department's unlawful motives. Moreover, the circumstantial evidence indicated that the three reasons were not true, and were identified very soon after the IA allegations were determined to be unsubstantiated. Adding to the court's concern about possible pretext was that Perez had received positive performance evaluations during the six months prior to the unsubstantiated allegations about on-duty sexual conduct.

The Department's shifting charges for the reprimand further supported the court's concern about pretext: the Department initially asserted conduct unbecoming and unsatisfactory work performance, but rescinded those charges after Perez' release from probation and based the reprimand on Perez' allegedly improper use of her personal communication device.

Finally, the Ninth Circuit noted that while it was appropriate for the Department to investigate allegations whether Perez had engaged in on-duty sexual relations with Begley, the Department's decision to release her based on her off-duty relationship with Begley that had no impact on her work and was clearly unlawful. The court found that Perez' constitutionally protected rights were "clearly established" in the Thorne case, which meant that the individual defendants were not entitled to qualified immunity.

Perez v. City of Roseville, et al. (9th Cir. 2018) 882 F.3d 843.

NOTE:

Public employers must consider whether off-duty conduct has any negative impact on the public employee's on-duty performance prior to taking any adverse action against the employee. An employee's off-duty sexual conduct that has no impact on the job is a constitutionally-protected liberty interest regardless of whether that conduct is extramarital or between persons of the same sex. LCW's attorneys are well versed in the legal standards that apply to disciplinary measures taken against police officers and other public employees. Employers are encouraged to consult with counsel early in the process of investigating potential misconduct by employees in order to avoid violating employee rights.

CONSORTIUM CALL OF THE MONTH

Members of Liebert Cassidy Whitmore's employment relations consortiums are able to 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 full gamut of topics, from leaves of absence to employment applications, disciplinary concerns to disability accommodations, labor relations issues and more. This feature describes an interesting consortium call and how the question was answered. We will protect the confidentiality of client communications with LCW attorneys by changing or omitting identifying details.

ISSUE:

An HR Director called seeking guidance regarding interviews of applicants for a vacant position. The Director wished to know whether the employer could ask for the applicant's prior salary and consider this information in the hiring process.

RESPONSE:

The LCW attorney informed the Director that state law generally prohibits employers from inquiring into an applicant's prior salary history through: a job application; an interview; an online search; or from references. There are two exceptions to this state law. First, the Director may seek and use salary history that is disclosable under the Public Records Act, which allows the Director to ask about the applicant's salary with a prior public employer. Second, if the applicant voluntarily gives the information, the Director can use that information only to decide what salary to offer, and cannot use that information to decide whether to hire the candidate.

BENEFITS CORNER

Hybrids, plug-in hybrids and electric vehicles have become more prevalent in the last decade. Pay close enough attention, and you will notice a number of electric vehicle charging stations have popped up in your community. We recently addressed a question regarding whether complimentary or discounted workplace electric vehicle ("WEV") charging is a taxable fringe benefit. Short answer: Probably yes, but it is unclear without further guidance by the IRS. Employers should, therefore, consider the factors noted here and determine what, if any, benefits are reportable for tax purposes.

A fringe benefit (any form of pay for services) provided to employees generally must be reported as taxable income. Certain fringe benefits, however, are excluded from gross income under the Internal Revenue Code, including "*de minimis*" fringe benefits. To date, there is no definitive or direct guidance, ruling, regulation or law addressing whether providing WEV charging qualifies for the *de minimis* fringe benefit exemption. Qualified *de minimis* fringe benefits are those whose value and frequency with which they are provided are so small that accounting for them would be unreasonable or administratively impracticable. This IRS

standard is applied on a case-by-case basis. On the one hand, an employee may hardly use the WEV charging station, so the value to him/her is small. The value and frequency of using WEV charging, however, varies significantly based on the vehicle, the charger, electricity rates, charging habits and availability. There is also an argument that there is no practical way to account for this type of benefit. The development and availability of sophisticated software to track such use, however, may say otherwise.

Without sufficient guidance, any argument that WEV charging is excluded from taxable income is conjecture. The IRS may be wary to provide further guidance given the individualized considerations noted above. But, this may change with the continuous growth of clean energy vehicles. Employers can also charge employees the fair market value ("FMV") of using WEV charging to avoid the uncertainties noted above and to avoid taxing employees on such use. Determining FMV involves assessing the charging station's output of electricity (considering the speed, amount and efficiency), the hours of operation and cost of electricity. Employers can also consider including administrative costs in operating and regulating the charger as part of the FMV.

For IRS guidance on fringe benefits, see IRS Publication 15-B.

(This article highlights a topic of interest and does not offer legal advice. Employers encountering this issue should consult a tax professional to address specific questions.)

FIRST AMENDMENT

Protestors Free to Proceed with Lawsuit Challenging their Exclusion from "Public Forum" at Border Patrol Checkpoint.

Protestors alleged that the U.S. Department of Homeland Security ("DHS") restricted their First Amendment rights to protest and monitor an "enforcement zone" located around a U.S. Border Patrol ("BP") checkpoint along a roadway.

The dispute involved a BP checkpoint located on a two-lane road in southern Arizona; that checkpoint included primary and secondary inspection areas. At the first inspection area, some motorists were directed to the secondary inspection area for further inspection and questioning. Nearby residents formed a volunteer organization called People Helping People (PHP) to monitor and protest BP agents' alleged violations of motorists' civil rights to be free from the agents': use of excessive force; racial profiling; and unlawful searches.

On one occasion, PHP members held a protest near the secondary checkpoint to oppose BP agents' alleged civil rights violations. The BP then closed the checkpoint. On another occasion, PHP members attempted to monitor checkpoint activities by observing and video recording interactions between BP agents and motorists. BP agents moved protesters to an area where they could not observe these interactions and created a yellow tape barrier on the north and south sides of the road, to establish a so-called "enforcement zone." The enforcement zone later utilized rope barriers and had signs forbidding unauthorized entry to an area of approximately 391 feet of land along the shoulder of the road. BP agents allegedly required PHP protestors to locate themselves beyond the enforcement zone, while other citizens were selectively allowed entry to the area. A local resident known to be a supporter of the BP and an opponent of the PHP was allowed into the area, and allowed to harass PHP members. BP agents also allowed reporters, pedestrians, and a surveyor into the area. BP agents allegedly made comments that the enforcement zone was intended to exclude protestors who might interfere with BP activities.

The key issue before the trial court was whether the enforcement zone was a public forum, or a non-public forum. The protesters asserted that the checkpoint was a public forum, while DHS asserted it was a non-public forum.

Under the First Amendment of the U.S. Constitution and related court precedents, the government may exclude individuals from a public forum in only very limited circumstances when exclusion is necessary to achieve a "compelling state interest and the exclusion is narrowly drawn to achieve that interest." The government may restrict the time, place, and manner of First Amendment protected protest and speech in a public forum, so long as the restriction does not discriminate based upon the content of the speech, and the restrictions leave open ample, alternative channels of communication. By contrast, the government may restrict access to a non-public forum as long as the restrictions are reasonable and not used in a manner that suppresses a certain viewpoint simply because the government opposes that viewpoint.

The district court assumed that the checkpoint was a public forum but rejected PHP's claims that BP's restrictions on protestor access were viewpoint discrimination. The district court found that DHS had a substantial interest in conducting routine stops at the checkpoint, and that requiring PHP protestors to locate themselves within the enforcement zone was a valid restriction because conducting traffic stops would otherwise be less effective. Finally, the district court found that PHP members were still able to observe BP agent interactions with motorists during traffic stops, which meant that there were alternative methods of communication left open to them. The district court therefore denied both the protestors' request for a preliminary injunction, and granted DHS' motion for summary judgement without giving the protesters the opportunity to conduct discovery to try to reveal additional facts to support their position.

On appeal, the PHP protestors claimed that the district court abused its discretion in granting summary judgment without allowing discovery because the district court did not have enough information to decide whether either the enforcement zone or the checkpoint was a public or non-public forum.

The Ninth Circuit agreed with the PHP. The appellate court found that the issues in the case required a fact-specific analysis of the BP's actions, and whether either the BP checkpoint and/or enforcement zone was a public forum or non-public forum. The court found that it was also possible that the BP's actions had changed the enforcement zone -- the roped off area beyond the immediate checkpoint area -- from a public forum to a non-public forum. The Ninth Circuit noted that the destruction of a public forum is presumptively impermissible, and that it is the government's burden to show that a public forum has been properly withdrawn from public use.

The Ninth Circuit also agreed with the protesters that without discovery, there were not enough facts to support the district court's findings in favor of BP. Facts relevant to the inquiry include: information regarding the layout of the checkpoint area and the way in which BP used it; who was allowed into the enforcement zone; why some non-protesting members of the public were allowed access; and information about traffic stops made at the checkpoint. Thus, the Ninth Circuit remanded the case to the district court with instructions to determine, after discovery, whether there were genuine issues of material fact "as to whether, and what part of, the enforcement zone is a public forum, and whether the government's exclusion policy is permissible …."

Jacobson et al. v. U.S. Department of Homeland Security, et al. (9th Cir. 2018) 882 F.3d 878.

NOTE:

This decision illustrates that an employer's ability to restrict speech or assembly that is protected by the First Amendment turns on fact-specific questions regarding the nature of the location or "forum" at issue. Traditional public forums include public squares, meeting rooms for legislative bodies, and roadways. But a public employer can create a public forum – and thereby be prevented from excluding the public or dissenting viewpoints –on a social media site, or a meeting room by allowing the public to assemble or comment.

LCW LIEBERT CASSIDY WHITMORE

REGULAR RATE OF PAY - MAKING IT SIMPLE

REGISTRATION IS NOW OPEN!

LCW is pleased to announce a comprehensive seminar for Public Sector personnel:

Thursday, April 5, 2018 in Palo Alto
Lucie Stern Community Center
1305 Middlefield Road
Palo Alto, CA 94301

Is your agency agonizing and struggling to ensure that overtime is paid at one and one-half times the employee's regular rate of pay in compliance with the Fair Labor Standards Act? FLSA compliance is an onerous task, and agencies often make mistakes resulting in significant backpay awards, liquidated damages, and attorneys' fees. This workshop will assist agencies to identify the types of pays that must be included and what may be excluded from the regular rate. This workshop will also show you how to calculate the regular rate of pay for all types of employees, including public safety (both police officers and firefighters) as well as all other employees who work a 40 hour workweek. Using examples, this session will make regular rate calculations simple and more straightforward. Examples will include many different types of additional pay provided to public employees, including cash in lieu of health benefits as addressed by the recent decision in *Flores v. City of San Gabriel.* This workshop will provide basic tools for proper regular rate calculations, and enable your agency to fix common mistakes in a timely fashion.

Intended Audience:

This seminar is fitting for public agencies: general administration, finance, payroll, and human resources.

Time:

9:00 a.m. to 12:00 p.m

Pricing:

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

For more information regarding this seminar, contact Alea Holmes at aholmes@lcwlegal.com or 415.512.3009 or visit
http://www.lcwlegal.com/events-and-training

LCW Victory Named "2017 Top Verdict"

Jesse Maddox

Kimberly Horiuchi

We are excited to announce that LCW's litigation victory on behalf of the City of Stockton has been named a "Top Verdict" of 2017 by the Daily Journal. The matter was recognized as one of the most impactful defense verdicts of the year.

LCW Partner **Jesse Maddox** and Associate Attorney **Kimberly Horiuchi** won a complete defense verdict on behalf of the City of Stockton in a pregnancy discrimination and whistleblower retaliation lawsuit filed by the City's former Manager of Violence Prevention. The City of Stockton hired Jessica Glynn to serve in a new and prominent position created to oversee a new, community-based program aimed at reducing the City's violent crime. Prior to hiring Glynn, the City had been hard hit by the recession and the economic fallout of high foreclosures, and ultimately filed for bankruptcy. Given an increase in violent crime and a decrease in resources to combat such crime, the City was forced to innovate a new violence prevention strategy. The City's new strategy required going to the taxpayers and asking them to pass a sales tax increase just after declaring bankruptcy. The citizens approved the tax increase, and the City proceeded to hire Glynn. Approximately four months later, the City determined Glynn was not effectively overseeing the program, which led to a loss in funding and dysfunction within the violence prevention program. Although Glynn was eight months pregnant, the City could not risk further deterioration of the nascent violence prevention program given its importance to the community and limited resources. As a result, the City terminated Glynn's employment. Within weeks of her termination, Glynn sued the City in federal court for pregnancy discrimination and whistleblower retaliation, among other claims.

The City again faced a difficult decision. Given its limited resources, it could have chosen to settle the case, rather than let a jury determine whether the City appropriately terminated the employment if an eight-months pregnant employee. The City chose to dedicate its resources to defending its employment decision at trial, where Glynn sought approximately $1.4 million in damages. Ultimately, the Jury unanimously decided that the City had not terminated Glynn's employment because she was pregnant or had allegedly reported unlawful conduct. This case demonstrates the difficult balance many public entities face between conservative and prudent employment practices, and serving the best interests of policy and the community.

The Daily Journal highlighted the defense's strategy of inverting the Glynn's claims of discrimination by arguing to the jury that she was implicitly biased when she made stereotypical assumptions about her supervisor based on his religion. The Daily Journal also noted that the defense team convinced the jury that since Glynn was not effective as the Violence Prevention Manager, it had to terminate her to insure that it could achieve the goal of reducing its crime rate.

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Training

Apr. 4 **"Difficult Conversations"** and **"Maximizing Performance Through Evaluation, Documentation and Discipline"**
Gold Country ERC | Roseville | Jack Hughes

Apr. 4 **"Inclusive Leadership"** and **"Difficult Conversations"**
Ventura/Santa Barbara ERC | Ventura | Kristi Recchia

Apr. 5 **"Disaster Service Workers – If You Call Them, Will They Come?"** and **"Employees and Driving"**
Mendocino County ERC | Ukiah & Webinar | Gage C. Dungy

Apr. 5 **"Maximizing Performance Through Evaluation, Documentation and Discipline"**
South Bay ERC | Inglewood | Danny Y. Yoo

Apr. 10 **"Supervisor's Guide to Public Sector Employment Law"**
San Mateo County ERC | Webinar | Lisa S. Charbonneau

Apr. 11 **"An Agency's Guide to Employee Retirement"** and **"Navigating the Crossroads of Discipline and Disability Accommodation"**
Central Coast ERC | San Luis Obispo | Michael Youril

Apr. 11 **"Terminating the Employment Relationship"**
Gateway Public ERC | Norwalk | Christopher S. Frederick

Apr. 11 **"A Supervisor's Guide to Labor Relations"** and **"Moving Into The Future"**
San Gabriel Valley ERC | Alhambra | T. Oliver Yee

Apr. 12 **"Advanced Investigations of Workplace Complaints"** and **"Navigating the Crossroads of Discipline and Disability Accommodation"**
Bay Area ERC | Santa Clara | Suzanne Solomon

Apr. 12 **"Moving Into The Future"** and **"Workplace Bullying: A Growing Concern"**
Imperial Valley ERC | El Centro | Judith S. Islas

Apr. 12 **"Maximizing Performance Through Evaluation, Documentation and Discipline"** and **"Prevention and Control of Absenteeism and Abuse of Leave"**
North State ERC | Redding | Erik M. Cuadros

Apr. 12 **"Disciplinary and Harassment Investigations: Who, What, When and How"**
Northern CA CCD ERC | Oroville | Kristin D. Lindgren

Apr. 12 **"Maximizing Performance Through Evaluation, Documentation and Discipline"** and **"Legal Issues Regarding Hiring"**
San Diego ERC | Coronado | Danny Y. Yoo

Apr. 13 **"Managing the Marginal Employee"**
Central CA CCD ERC | Webinar | Sue Cercone

Apr. 18 **"The Future is Now - Embracing Generational Diversity and Succession Planning"** and **"Disciplinary and Harassment Investigations: Who, What, When and How"**
Central Valley ERC | Clovis | Shelline Bennett

Apr. 19 **"Public Service: Understanding the Roles and Responsibilities of Public Employees"** and **"Maximizing Performance Through Evaluation, Documentation and Discipline"**
Napa/Solano/Yolo ERC | Fairfield | Kristin D. Lindgren

Apr. 19 **"Supervisor's Guide to Public Sector Employment Law"** and **"Navigating the Crossroads of Discipline and Disability Accommodation"**
Orange County Consortium | San Juan Capistrano | Laura Kalty

Apr. 19 **"Moving Into the Future"** and **"Navigating the Crossroads of Discipline and Disability Accommodation"**
San Joaquin Valley ERC | Tracy | TBD

Apr. 20 **"Managing the Marginal Employee"**
SCCCD ERC | Anaheim | Alysha Stein-Manes

Apr. 25 **"Issues and Challenges Regarding Drugs and Alcohol in the Workplace"**
Humboldt County ERC | Eureka | Gage C. Dungy

Apr. 25 **"Iron Fists or Kid Gloves: Retaliation in the Workplace"**
Los Angeles County Human Resources | Los Angeles | Geoffrey S. Sheldon

Apr. 25 **"Maximizing Supervisory Skills for the First Line Supervisor"**
NorCal ERC | Dublin | Kelly Tuffo

Apr. 26 **"Navigating the Crossroads of Discipline and Disability Accommodation"**
Humboldt County ERC | Eureka | Gage C. Dungy

Customized Training

Mar. 29 **"Handling Labor Relations Without Violating Statute"**
Butte County | Oroville | Jack Hughes

Mar. 29 **"A Blunt Reality? Drugs & Alcohol in the Workplace"**
CSAC Excess Insurance Authority | Sacramento | Gage C. Dungy

Mar. 29 **"Performance Management: Evaluation, Documentation and Discipline"**
ERMA | West Hollywood | Jennifer Rosner

Mar. 30 **"Management Professional Development"**
Barstow Community College District | Eileen O'Hare-Anderson

Mar. 30 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
ERMA | Farmersville | Kimberly A. Horiuchi

Mar. 30 **"Train the Trainer Refresher: Harassment Prevention"**
Liebert Cassidy Whitmore | San Diego | Judith S. Islas

Mar. 30	**"Train the Trainer Refresher: Harassment Prevention"** Liebert Cassidy Whitmore | Los Angeles | Christopher S. Frederick
Apr. 3	**"Motivation, Influence & Accountability in the Public Sector"** City of Beverly Hills | Kristi Recchia
Apr. 3,19	**"Preventing Workplace Harassment, Discrimination and Retaliation"** East Bay Regional Park District | Oakland | Erin Kunze
Apr. 3	**"Hiring the Best While Developing Diversity in the Workforce: Legal Requirements and Best Practices for Screening Committees"** San Bernardino Community College District | Laura Schulkind
Apr. 5	**"FLSA"** Los Angeles World Airports (LAWA) | Elizabeth Tom Arce
Apr. 6	**"Bullying at Work: Legal Obligations and Interdisciplinary Prevention"** College of the Desert | Palm Desert | Lee T. Patajo
Apr. 6	**"Sick and Disabled Employees and The Disability Interactive Process"** West Valley-Mission Community College District | Saratoga | Laura Schulkind
Apr. 7,12,14	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Irvine | Christopher S. Frederick
Apr. 10,19	**"Legal Aspects of Violence in the Workplace"** Midpeninsula Regional Open Space District | Los Altos | Joy J. Chen
Apr. 11	**"Harassment Prevention: Train the Trainer"** Liebert Cassidy Whitmore | San Francisco | Erin Kunze
Apr. 12	**"FLSA"** City of Citrus Heights | Lisa S. Charbonneau
Apr. 12	**"Performance Management: Evaluation, Documentation and Discipline"** East Bay Regional Park District | Oakland | Erin Kunze
Apr. 17	**"Supervisory Skills for the First Line Supervisor"** City of Stockton | Kristin D. Lindgren
Apr. 17	**"Performance Evaluations and Disciplinary Investigations"** San Diego County Water Authority | San Diego | Frances Rogers
Apr. 18	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Stockton | Gage C. Dungy
Apr. 19	**"Train the Trainer Refresher: Harassment Prevention"** Liebert Cassidy Whitmore | San Francisco | Suzanne Solomon
Apr. 20	**"Harassment Prevention: Train the Trainer"** Liebert Cassidy Whitmore | San Diego | Judith S. Islas

Apr. 20 **"Harassment Prevention: Train the Trainer"**
Liebert Cassidy Whitmore | Los Angeles | Christopher S. Frederick

Apr. 24 **"Labor Relations 101"**
City of Beverly Hills | Kristi Recchia

Apr. 24 **"Social Media and School Staff"**
Ventura County Schools Self-Funding Authority ERC | Camarillo | Lee T. Patajo

Apr. 25 **"Introduction to the FLSA and Prevention and Control of Absenteeism and Abuse of Leave"**
City of Riverside | Jennifer Rosner

Apr. 25 **"Retaliation in the Workplace"**
ERMA | San Ramon | Erin Kunze

Apr. 26 **"The Brown Act and Grievance Procedure"**
County of Imperial | El Centro | Stefanie K. Vaudreuil

Apr. 27 **"Management Professional Development"**
Barstow Community College District | Eileen O'Hare-Anderson

Apr. 27 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
County of San Luis Obispo | San Luis Obispo | Christopher S. Frederick

Apr. 27 **"Harassment Prevention: Train the Trainer"**
Liebert Cassidy Whitmore | Fresno | Shelline Bennett

Apr. 28 **"Preventing Workplace Harassment, Discrimination and Retaliation in the Workplace"**
City of Newport Beach | Christopher S. Frederick

Speaking Engagements

Apr. 6 **"FLSA Basics - Updates and Trends for Schools"**
California Association of School Business Officials (CASBO) 2018 Annual Conference | Sacramento | Kristin D. Lindgren

Apr. 7 **"Things Every School Should Know About Contracts"**
CASBO 2018 Annual Conference | Sacramento | Hengameh S. Safaei

Apr. 10 **"Sexual Harassment in the Fire Service: Cautionary Tales"**
Fire Districts Association of California (FDAC) Annual Conference | Monterey | Morin I. Jacob

Apr. 12 **"Accommodating Employee Disabilities - Physical and Psychological"**
FDAC Annual Conference | Monterey | Shelline Bennett

Apr. 17 **"Role of the Chief Class"**
California Police Chiefs Association (CPCA) | Folsom | Morin I. Jacob

Apr. 17 **"Defining Staff Board & Staff Roles and Relationships"**
California Special Districts Association (CSDA) Special District Leadership Academy | Seaside | Che I. Johnson

Apr. 18 **"FBOR, FLSA, and Effective Supervision in the Fire Service"**
San Diego County Fire Chief Association Administrative Section | | Stefanie K. Vaudreuil

Apr. 18 **"Legal Updates Fit for a Ringmaster"**
Southern California Personnel Management Association - Human Resources (SCPMA-HR) Annual Training Conference | | J. Scott Tiedemann

Apr. 19 **"Preventing Workplace Harassment, Discrimination and Retaliation (AB 1661/ AB 1825)"**
League of California Cities Los Angeles Division | Cerritos | Jennifer Rosner

Apr. 25 **"An Ounce of Prevention is Worth its Weight in Gold: Workplace Bullying"**
Western Region IPMA-HR Annual Training Conference | Sacramento | TBD

Apr. 25 **"The New Frontier of Meet and Confer Strategies for Success at the Table"**
Western Region IPMA-HR Annual Training Conference | Sacramento | Jack Hughes

Apr. 26 **"Labor Relations and the Pending Pension Challenges"**
California Society of Municipal Finance Officers (CSMFO) Luncheon | Paramount | Steven M. Berliner

Seminars/Webinars

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

Mar. 30 **"Train the Trainer Refresher: Harassment Prevention"**
Liebert Cassidy Whitmore | San Diego | Judith S. Islas

Mar. 30 **"Train the Trainer Refresher: Harassment Prevention"**
Liebert Cassidy Whitmore | Los Angeles | Christopher S. Frederick

Apr. 5 **"Regular Rate of Pay Workshop"**
Liebert Cassidy Whitmore | Palo Alto | Richard Bolanos & Lisa S. Charbonneau

Apr. 6 **"Pensionable Compensation and Cost Sharing for `37 Act"**
Liebert Cassidy Whitmore | Webinar | Frances Rogers

Apr. 10 **"How to Avoid Claims of Disability Discrimination: The Road to Reasonable Accommodation"**
Liebert Cassidy Whitmore | South San Francisco | Jennifer Rosner

Apr. 11 **"Critical Update: Mandated Disclosures in Public Safety Investigations"**
Liebert Cassidy Whitmore | Webinar | J. Scott Tiedemann

Apr. 11 **"Harassment Prevention: Train the Trainer"**
Liebert Cassidy Whitmore | San Francisco | Erin Kunze

Apr. 12 **"The Public Employment Relations Board (PERB)"**
Liebert Cassidy Whitmore | Fullerton | Adrianna E. Guzman & Kristi Recchia

Apr. 19 **"Train the Trainer Refresher: Harassment Prevention"**
Liebert Cassidy Whitmore | San Francisco | Suzanne Solomon

Apr. 20	**"Harassment Prevention: Train the Trainer"** Liebert Cassidy Whitmore | San Diego | Judith S. Islas
Apr. 20	**"Harassment Prevention: Train the Trainer"** Liebert Cassidy Whitmore | Los Angeles | Christopher S. Frederick
Apr. 27	**"Harassment Prevention: Train the Trainer"** Liebert Cassidy Whitmore | Fresno | Shelline Bennett

Train the Trainer Refresher Sessions

San Diego and Los Angeles - March 30, 2018

San Francisco - April 19, 2018

Time: **9:00 a.m. - 12:00 p.m.**

Location: **Liebert Cassidy Whitmore Offices**

Cost: **$1,000 each or $900 each if ERC Member**

Liebert Cassidy Whitmore is offering "Train the Trainer" refresher sessions to provide you with the necessary tools to continue conducting mandatory AB 1825 (Govt. Code Section 12950.1) training for your agency.

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

Registration:

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

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.

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