EDUCATION MATTERS

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

JUNE 2018

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WHISTLE BLOWING

Employee's Lawsuit Survived Summary Judgment Because Non-Renewal of Employee's Contract Occurred Very Soon After Whistleblowing.

Carl Taswell was a licensed doctor certified in nuclear medicine. In December 2011, Dr. Scott Goodwin, chair of the UC Irvine radiology department, offered Taswell a position as nuclear medicine physician, and hired him as an Academic Appointee Specialist with a commitment that the UC would eventually grant him a clinical professorship. In this role, Taswell was responsible for controlling the safety, technical, and medical aspects of brain imaging procedures at the UC brain imaging center. He was responsible for ensuring that the brain imaging center operated safely, that appropriate documentation was gathered, and that the center complied with applicable government standards.

On February 17, 2012, a colleague informed Taswell of potential safety and compliance problems at the center. That same day, Taswell informed Goodwin of the information and also reported the issues to UC officials using the UC's designated whistleblower hotline. In mid-March, Taswell raised his concerns with the UC radiation safety committee, the state Department of Public Health, the federal Food and Drug Administration, and informed Goodwin that he had done so. Later in March, Taswell and other UC employees with radiation safety responsibilities visited a radiochemistry lab near the brain imaging center. Believing he was authorized to do so, Taswell took photos of what he believed were safety violations.

On April 2, Goodwin informed Taswell that Taswell was being placed on administrative leave pending further investigation of his alleged unauthorized entry into the lab. On the same day, the UC informed Taswell that his contract would not be renewed. (Ultimately, in May, an investigation concluded that Taswell's entry into the lab was authorized.) Goodwin testified that while he was initially in favor of renewing Taswell's contract, he changed his mind in mid-March because of Taswell's alleged refusal to perform his job duties, interpersonal issues, and Taswell' s poor behavior at the radiation safety committee meeting.

Thereafter, Taswell filed an internal complaint against the UC alleging whistleblower retaliation. He also brought a grievance that culminated in a hearing during which Taswell had the opportunity to be represented by counsel and present evidence. The grievance hearing officer ultimately concluded that the UC did not retaliate against Taswell and that his contract

was not renewed due to reasons unrelated to Taswell's whistleblowing activities. Taswell did not appeal his grievance but instead sued UC for violating Labor Code section 1102.5, which prohibits retaliation against employees because of whistleblowing.

The trial court granted the UC's motion for summary judgment because Taswell failed to exhaust his remedies by appealing the UC's denial of his grievance, and there were no disputed factual questions for the jury to decide. The Court of Appeal reversed.

On the issue of exhaustion of remedies, the Court of Appeal cited its earlier decision in *Campbell v. Regents of University of California*. The Campbell decision held that Labor Code section 1102.5 clearly permits an employee to bring a "civil action" and that the employee is not required to exhaust judicial remedies by filing a writ for review of a public agency's internal remedies. Thus, it was not necessary for Taswell to appeal the UC's denial of his grievance to a court before he could initiate a lawsuit for whistleblower retaliation.

The Court of Appeal also reversed the trial court's finding on the question whether there were factual disputes that should be presented to a jury. First, the UC did not dispute evidence that on the same day it placed Taswell on paid leave pending investigation of his entrance into the lab, it informed him that his contract would not be renewed. This showed an adverse employment action; a key element of a retaliation claim which Taswell would be able to prove at trial. Second, a jury could decide that the proximity in time between Taswell's whistleblower activity and the UC's decision to place him on leave and not renew his contract was evidence of a causal connection. Finally, there were factual disputes for the jury to decide on the issue whether the UC had a legitimate business reason for not renewing Taswell's contract.

The UC asserted that it did not renew Taswell's contract because he disregarded instructions not to investigate his suspected safety violations; he was difficult to work with; and he entered the lab without authority. Taswell disputed these reasons and presented evidence showing they were pretext. He produced evidence that the UC prevented him from performing his job; that he continued investigating the brain imaging safety concerns because Goodwin directed him to do so; that other employees of the UC were known to be difficult to work with but remained employed; and that Goodwin decided not to renew Taswell's contract within a day of finding out that that Taswell reported safety violations.

Thus, the Court of Appeal reversed summary judgment for the UC and permitted Taswell's claims to proceed to a jury.

Taswell v. The Regents of the University of California (2018) 23 Cal.App.5th 343.

NOTE:

The closer in time an employee's whistleblowing and the employer's adverse employment action against that employee are, the more likely it will be for a court to find unlawful retaliation. An employer can avoid retaliation claims and provide better personnel management by promptly addressing any employee performance and conduct issues.

CIVIL RIGHTS

Public Universities Have A Legitimate Interest In Maintaining Order And Enforcing University Policy; University Police Officers May Use Minimal Force To Do So.

In 2011, thousands of protestors with the Occupy Wall Street movement held a rally at the University of California, Berkeley and planned to construct an encampment on campus. University administrators preemptively developed an operational plan to deal with the protests and

asked campus police to enforce the university's existing no-camping policy. Additionally, the administrators sent a campus-wide email warning students that the university would enforce its no-camping policy.

During the rally, police issued several warnings to protestors to take down their tents and disperse. At times, the officers used their hands and batons to move the crowd, gain access to the tents, and maintain a perimeter while dismantling the encampment.

After the protests, 21 protestors filed a lawsuit against university administrators and police officers alleging the officers used excessive force against them while removing the tents. The administrators and officers asked the court to dismiss the lawsuit because they were immune from judgement as government officers acting within their official capacity. However, the trial court denied this request and found that the case should proceed to trial to determine the reasonableness of the administrators' and officers' actions. The administrators and officers appealed.

Under the United States Constitution, government officials like the administrators and officers are immune from judgment unless their conduct violated a constitutional right that was clearly established at the time of the violation. To succeed in a lawsuit, the protestors had to prove that the police use of force was objectively unreasonable under the circumstances and that every reasonable official would know he or she was violating the protestor's rights. In this case, very few protestors in the lawsuit sought medical treatment, which led the court to believe that the officers' use of force was minimal. Additionally, the university had a legitimate interest in applying minimal force to maintain order and enforce university policy. Accordingly, the officers did not use excessive force against four protestors. The court reversed the trial court's ruling and ordered the trial court to dismiss the lawsuit against the police officers.

Next, the court considered whether the university administrators could be liable to the plaintiffs because they planned the police response to the protest and failed to stop assaults by the police. An administrator may be liable as a supervisor only if either (1) he or she was personally involved in the violation of the protestor's rights or (2) there is a sufficient causal connection between the supervisor's wrongful conduct and the violation.

Here, the administrator's response plan did not specify any particular use of force that would be permitted in enforcing the removal of protestor's tents erected on campus, nor did the administrators have supervisory authority over the police who allegedly committed the violations against the protestors. Therefore, the court held the administrators did not participate in or cause such violations and the trial court should have dismissed the lawsuit against them.

The court then examined the role of the administrators who supervised the police officers involved in the protest response. However, these administrators were not personally involved in using force against the protestors, and the protestors failed to show the administrators set in motion a series of acts that they "knew or reasonably should have known" would cause the officers to violate the protestor's rights. The protestors cannot simply hold the administrators liable by virtue of their job title. The trial court should have also dismissed the lawsuit against these administrators.

The court also examined claims against two officers individually. The court held that the protestors did not show that the officers were the ones who used excessive force against them nor did these officers fail to stop other officers from using excessive force. Accordingly, the trial court should have dismissed these claims.

Finally, the court examined the claims of five protestors against police officers. Here, the court held that the officers potentially used excessive force against the protestors and cited the fact that

four of these protestors sought medical treatment for their injuries. However, the protestors did not meet their burden of proving the law was clearly established that at the time the officers' baton strikes violated their constitutional rights. To succeed, the protestors needed to identify an example of a court finding an officer responsible for a civil rights violation in a scenario that mirrored the facts of this case. The protestors did not identify such a case, so the trial court should have also dismissed the claims against these officers.

Felarca v. Birgeneau (9th Cir., May 31, 2018, No. 16-15293) __ F.3d __ [2018 WL 2438300].

Student Harassment Does Not Create Hostile Environment Unless Agency Failed Reasonably To Respond To The Conduct .

Patricia Campbell was a high school music teacher employed by the Hawaii Department of Education on Maui. During her 9-year employment with the Department, Campbell alleged her students verbally harassed her. Campbell routinely reported the students' misconduct to Department administrators who investigated the complaints and imposed a variety of discipline on the students who misbehaved.

Contemporaneously, parents, students, and teachers complained that Campbell physically and verbally abused students, discriminated against students, and failed to maintain a safe classroom. The Department investigated, allowed Campbell to continue working through the investigation, and although it found that Campbell violated Department policy, took no action against her.

On another occasion, the Vice Principal of her school held a counseling meeting with Campbell after she reportedly stormed into the Vice Principals office, yelled, and refused to leave. The Vice Principal wrote Campbell a memo documenting the meeting and instructed Campbell not to "address adults or students on campus in a yelling or ragging manner." Campbell took offense to the Vice Principal's use of the words "ragged" and "ragging" in the memo, which she believed to be a reference to her menstrual cycle, and filed a complaint with the Department. After another investigation, the Department determined the Vice Principal's use of the words was not derogatory.

Before the start of the 2007-2008 school year, Campbell requested a transfer to teach elsewhere on Maui. However, the Department denied Campbell's request. The positions Campbell specifically requested were not open during the school's annual transfer period window in the spring, nor did Campbell qualify for an emergency transfer outside the normal transfer period window.

Unable to transfer, Campbell requested and the Department granted a 12-month leave of absence without pay due to work-related stress. Campbell requested and the Department granted a second year of unpaid leave.

When Campbell prepared to return for the 2009-2010 school year, she learned that because there were not enough students to support a full teaching load of music classes, the Department assigned her to teach three remedial math classes and two music classes. Campbell objected and never reported to work after her leave expired. She subsequently resigned.

In February 2013, Campbell filed a lawsuit against the Department and various administrators. Campbell alleged that she had been subjected to several acts of discriminatory treatment and a hostile work environment because of her race and her sex and that she had been retaliated against for complaining of harassment at the school. The trial court dismissed Campbell's claims, but she appealed her claims of disparate treatment, hostile work environment, and retaliation under Title VII of the Civil Rights Act of 1964 and sex discrimination under Title IX of the Education Amendments of 1972.

The Court of Appeals first considered Campbell's Title VII claim alleging that the Department discriminated against Campbell based on her sex and race by subjecting her to adverse employment actions. Campbell alleged that this violation occurred when the Department: (1) lost one of her employment evaluations, (2) investigated allegations against her raised by parents, students, and teachers, (3) denied her transfer request to another school, (4) did not provide her leave with pay (either during the Department's investigation into the allegations against her or during her requested and approved voluntary leave), (5) assigned her to teach remedial math classes upon her anticipated return in 2009, and (6) failed to respond adequately to her complaints of offensive student conduct. Despite these claims, the court found that facts contradicted her claims and Campbell did not provide evidence that any of these actions materially affected the "compensation, terms, conditions, or privileges" of her employment. Moreover, even if the various alleged actions could be adverse employment actions, Campbell did not provide evidence that the Department treated any similarly situated employees of a different race or sex more favorably than it treated Campbell. Accordingly, Campbell did not establish a case for disparate treatment.

Campbell also argued that the Department violated Title VII by creating a hostile work environment that adversely affected the terms or conditions of her employment. Campbell primarily argued that her work environment was hostile because of the derogatory comments she received from students. The Department could be liable for the students' harassing conduct only to the extent that it failed reasonably to respond to the conduct or to the extent that it ratified or acquiesced in it. However, the Department did respond her to complaints of the students' conduct, and that response was reasonably calculated to end the harassment.

In addition to the students' behavior, Campbell argued that the Vice Principal created a hostile work environment when he chided Campbell for "ragging" at students and staff or made potentially offensive comments about female students' clothing over the school's loudspeaker. The court disagreed that the language created a sexually hostile work environment. The court held that the few isolated and relatively mild comments that Campbell alleges the Vice Principal made in reference to her or to female students were not sufficient to show a severe and pervasive environment that altered the terms or conditions of Campbell's employment.

Campbell also argued that the Department violated Title VII's anti-retaliation provisions by taking action against her because she voiced complaints of harassment at the school. The court examined the Department's investigation into Campbell's alleged misconduct and Campbell's assignment to teach remedial math in the 2009-2010 school year. However, the Department provided clear evidence of a neutral, non-retaliatory reason for its actions in both of these issues. Therefore, Campbell could not prevail on this claim.

Finally, Campbell claimed that the Department violated Title IX by both directly and intentionally discriminating against her and by acting with deliberate indifference to the sexual harassment she endured from students and the Vice Principal. However, the Department immediately conducted an investigation into her allegations against the students and the Vice Principal. The Department disciplined students when it found they engaged in misconduct. The investigation into the Vice Principal ultimately determined that he had not engaged in misconduct. Therefore, the Department did not act with deliberate indifference to Campbell's complaints.

Ultimately, the Court of Appeals agreed with the trial court on all the issues Campbell appealed.

Campbell v. State of Hawaii Department of Education (9th Cir., June 11, 2018, No. 15-15939) __ F.3d __ [2018 WL 2770989].

DUE PROCESS

Student Must Exhaust Administrative Remedies Under California Law Before Filing Lawsuit Alleging The University Violated The Student's Due Process Rights And Title IX When It Suspended Him On Sexual Assault Charges.

In 2014, the University of California, Santa Barbara notified John Doe that it received a complaint against him by a female student alleging that he sexually assaulted her in violation of the University's code of conduct. An adjudicatory committee at the University held two hearings on the allegations and ultimately found Doe responsible for the sexual assault. The University suspended Doe for two quarters. Doe appealed the decision, but the University's Chancellor denied the appeal.

Doe then filed a lawsuit against the Regents of the University of California and the Dean of Students in April 2015 alleging that the committee had no basis for its decision against him. He also brought a Title IX claim, a claim under 42 U.S.C. Section 1983 for a violation of his rights, and numerous state law claims. Doe alleged that the University discriminated against him because of his male sex via a "non-exhaustive list" of wrongful actions, including preventing him from presenting character evidence and disciplining him based on investigative reports that "presented a skewed rendition of the facts." The Regents asked the trial court to dismiss the lawsuit because Doe had not exhausted his judicial remedies before filing the lawsuit, and the court dismissed the claims.

Doe amended his lawsuit to ask the court to also review the University's administrative determination that found him responsible for the sexual assault, because he alleged the University's hearing and disciplinary decision was not supported by the evidence. The Regents again asked the court to dismiss the lawsuit. The court dismissed the lawsuit and declined to entertain Doe's request to review the University's determination.

Doe again amended his lawsuit to clarify his claims. This time, the trial court determined that Doe's lawsuit against the Dean of Students did not violate the Eleventh Amendment immunity that protects states and state instrumentalities from suit in federal court, his request for review of the University's hearing and decision was not prohibited even though he had not filed it previously, and it was appropriate for the federal court to consider the lawsuit because there were no pending lawsuits in state court. The Regents immediately appealed.

On appeal, the Regents argued that the trial court should have dismissed Doe's entire complaint because the Eleventh Amendment bars Doe's request for review of the University's hearing and decision, Doe did not file a valid request for review in state court, and his failure to exhaust judicial remedies barred his claims based in federal law. Alternatively, the Regents argued that the trial court should at least have abstained from deciding anything in the case because federal courts, except in special, limited circumstances, should not interfere in state court proceedings. The Court of Appeal found that Doe should have filed his request for review of the University's hearing and decision in state court.

The Court of Appeal found that the trial court should have dismissed Doe's request for review of the University's actions and decisions because it violated the Eleventh Amendment. Specifically, if Doe prevailed on his review request, the court could have to grant injunctive relief against a state instrumentality (the University) based on state law, which violated the Eleventh Amendment. Furthermore, the Regents did not waive the Eleventh Amendment providing immunity from suit in federal court. Therefore, Doe could not bring this request to the trial court.

The Regents also argued that because Doe's petition for review of the University's actions and decisions was barred from federal court, the trial court also should have dismissed Doe's claims based in federal law because he failed to exhaust judicial remedies. A court may review

an otherwise non-appealable ruling when the ruling is "inextricably intertwined" with or "necessary to ensure meaningful review of" the other appeals. Here, the court's conclusion that Doe's request for review of the University's actions and decisions was prohibited based on the Eleventh Amendment—the issue properly raised on appeal—also resolved whether Doe had exhausted his judicial remedies, and he did not. Therefore, the court agreed that Doe failed to exhaust judicial remedies because he did not originally file a request for review of the University's actions and decisions in state court. Thus these claims based on federal law were barred.

Although a plaintiff is not required to file this type of review request in state court, in this case Doe was required to file this request in state court because the Eleventh Amendment barred Doe from filing in federal court. Therefore, Doe did not correctly file his review request and did not exhaust his judicial remedies. Accordingly, the trial court should have dismissed Doe's entire lawsuit.

Doe v. Regents of the University (C.D. Cal., June 6, 2018, No. 17-56110) __ F.3d __ [2018 WL 2709728].

Probationary Employee Did Not Hold Property Interest in Employment.

The U.S. Court of Appeals for the Ninth Circuit found that when the applicable civil service rules and charter plainly state that a public employee does not have a property interest in a probationary position, termination of the employee does not violate his due process rights.

Richard Palm worked for the Los Angeles Department of Water and Power ("LADWP") as a Steam Plant Assistant for 25 years. He was promoted to a Steam Plant Maintenance Supervisor position and began a six-month probation. Palm claimed that he was forced to resign prior to completing his probation, because he had objected to his supervisor's allegedly unlawful changes to Palm's time records. Palm brought several legal claims against LADWP (most of which were dismissed), including that LADWP violated his federal 14th Amendment Due Process rights. On the Due Process claim, it was Palm's burden to prove that applicable state law – the City of Los Angeles Charter and personnel rules – created a property interest in his probationary position.

Both the federal trial court and the Ninth Circuit agreed that Palm failed to prove that he had a property interest in his Supervisor position. The Ninth Circuit noted that: (1) property interests are created when state law "restricts the grounds on which an employee may be discharged," and (2) the procedures established for terminating an employee inform the question of whether a property interest is created. The issue does not turn solely on whether the position is designated as permanent or probationary. The Ninth Circuit applied California rules of statutory construction and ultimately concluded that the Charter and personnel rules did not create such a property interest.

First, the plain language of the Charter indicated that no property interest existed. Section 1011(b) of the Charter, titled "Termination During Probation," provided, "[a]t or before the expiration of the probationary period, the appointing authority may terminate the probationary employee by delivering written notice of termination to the employee…" Another section of the Charter provided that those in the classified service could only be discharged for cause, but this requirement did not apply to section 1011(b), which allowed LADWP to terminate probation based upon a subjective determination that the employee's performance was unsatisfactory. Ninth Circuit precedents hold that an appointing authority's purely subjective determination of satisfactory performance "undercuts any expectation of continued employment."

Second, the Civil Service rules defined the probationary period as the "working test period during which an employee … may be terminated

without right of appeal." Citing its earlier decision in *Fleisher v. City of Signal Hill*, the Ninth Circuit confirmed that the absence of appeal rights in termination procedures indicates that no property right exists.

Third, the Civil Service rules treated Palm as a probationary employee. They specified, employees on probation "are considered automatically on leave of absence from his/her former position while serving the probationary period," and that employees who fail probation "shall…be returned to the [permanent] position from which he/she is on leave."

Thus, the Ninth Circuit confirmed that Palm lacked a protected property interest in his probationary employment as a Supervisor and upheld the trial court's dismissal of his due process claim.

Palm v. Los Angeles Department of Water and Power (9th Cir. 2018) 889 F.3d 1081.

NOTE:

A public employer's own rules, ordinances, and/or charter provisions create or withhold property rights to continued public employment. In order to ensure that your probationary employees can be released without cause, audit your agency's rules and laws annually. LCW attorneys are experienced in conducting employment rules audits.

LCW IN THE NEWS

LCW Ranked A Best Law Firm for Women Attorneys.

In a national survey of law firms of comparable size, Liebert Cassidy Whitmore ranked as the third-best law firm for women. The survey, conducted by *Law360*, indicates that LCW is one of few law firms nationwide with an above average representation of women attorneys, including at its top management tiers. LCW is proud to be recognized as an industry "ceiling smasher" and sincerely thanks its women attorneys for the excellent contributions they make every day to both LCW and the legal profession.

More information is available at www.lcwlegal.com/news.

WAGE AND HOUR

California Supreme Court Adopts "ABC Test" for Independent Contractor Status.

The California Supreme Court established a new, worker friendly test to determine whether a person should be classified as an independent contractor or employee. This test applies to California's Industrial Welfare Commission (IWC) Wage Orders which regulate wages, hours, and working conditions.

Under the new "ABC Test," a person qualifies as an independent contractor to whom the wage orders do not apply, only if the employer proves all three of the following:

A) that the person is free from the control and direction of the hirer/contracting agency in connection with the performance of the work, both under the contract terms and in fact;

B) that the person performs work that is outside the usual course of the hiring entity's business; and

C) that the person is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

An employer who cannot establish all three factors must treat that person as an employee and not an independent contractor for purposes of the IWC Wage Orders.

Although public sector employers are not governed by most parts of IWC Wage Order number 4 (Professional, Technical, Clerical or Mechanical Occupations), public sector employees are entitled to the following benefits under the Wage Orders: to be paid minimum wage; receive split shift pay; and receive the benefits of the meals and lodging limitations. For public sector employers who provide public transportation services under IWC Wage Order number 9 (Transportation Industry), public sector employees are entitled to be paid minimum wage, split shift pay, receive the benefits of the meals and lodging limitations, and receive rest and meal breaks (in most instances).

LCW is offering seminars on this topic as well in August. More information is available at www.lcwlegal.com/events-and-training.

Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903.

NOTE:

Although this decision applies only to the IWC Wage Orders, there will undoubtedly be efforts to extend the ABC Test to other areas of California law, such as California's anti-discrimination and leave laws. As a result, now is a good time to review whether the persons your agency contracts with qualify as independent contractors under the ABC Test. LCW is available to assist agencies in that effort. A more in-depth discussion of the Dynamex decision is available here: https://www.calpublicagencylaboremploymentblog.com/wage-and-hour-2/california-supreme-court-adopts-new-abc-test-for-classification-of-independent-contractors-potential-risk-and-impact-on-public-agencies/

LABOR RELATIONS

Mandatory Agency Shop Fees Ruled Unconstitutional in Janus v. AFSCME.

On Wednesday June 27, 2018, the United States Supreme Court reversed the Seventh Circuit Court of Appeals in Janus v. AFSCME, and held that mandatory agency shop service fees are unconstitutional under the First Amendment of the U.S. Constitution.

Under an agency shop arrangement, employees within a designated bargaining unit who decline membership in a labor organization (i.e., a union or local labor association) must pay a proportionate "fair share" agency shop fee to the labor organization. These agency shop fees are different from dues, which are voluntarily deducted typically through an employee authorization form. In theory, the agency shop fees are meant to cover the labor organization's representation costs for collective bargaining activities conducted on unit members' behalf.

Mark Janus challenged this theory, claiming he was being compelled to pay agency shop fees, which labor organizations could use to advance political speech to which he disagreed. The U.S. Supreme Court ruled against AFSCME five to four and specifically held that public employers and "public-sector unions may no longer extract agency fees from nonconsenting employees." The Court also held that compelling employees to pay agency fees "violates the First Amendment and cannot continue. Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by 'clear and compelling' evidence."

How does Janus affect your agency and how to address its impacts?

Public employers should first understand that Janus is now the prevailing law in the country. The U.S. Supreme Court made clear that public employers are immediately prohibited from mandating and collecting agency shop fees from employees. Given the Court's holding, public employers will likely need to account for various competing obligations when implementing Janus.

Additionally, the following are some key steps public employers should consider and plan to implement to address the Janus decision.

1. The first step to address the immediate impacts of *Janus* is to determine if your public agency has an agency shop arrangement with a local labor organization.

For public school and community college district governed by the Educational Employment Relations Act (EERA), agency shop arrangements are set up after the labor organization provides notice to the employer to deduct the agency shop fees. (Government Code section 3546.)

Therefore, your agency should review your payroll systems and each collective bargaining agreement, paying particular attention to provisions related to processing service fee (i.e., agency shop fees) wage deductions.

If your collective bargaining agreement has a severability or savings provision which identifies what happens if a provision of the agreement is determined to be unlawful, you need to follow that provision. Many agency shop arrangements are contained in collective bargaining agreements. As of today, since agency shop has been declared unconstitutional, agency shop provisions will likely trigger your severability or savings provisions.

2. Public employers should then identify employees who are dues payers, service fee payers, and religious or conscientious objector payers, and discontinue service fee and religious objector deductions. *Janus* does not directly impact labor organization member employees because they are voluntarily paying dues to be a member of the labor organization. The U.S. Supreme Court ruled, however, that mandatory agency shop fees are unconstitutional. Therefore, Janus directly impacts the employer's service fee payers and any bargaining unit members who have a religious objection, but are required to donate their wage deductions to a charitable organization.

To determine which category each bargaining unit member falls within, public employers should review the election forms on file for each employee. In conjunction with this, employers can also review payroll records that use separate deduction codes to help identify who, historically, has been a dues, service fee and religious/conscientious objector payer.

As described further below, S.B. 866 (signed by Governor Brown as urgency legislation, meaning it went into effect immediately) may impact this process if, for example, an agency cannot determine the categories of unit employees, and will need to rely on certifications from labor organizations regarding which employees have authorized dues deductions.

While *Janus* may impact labor organizations on a greater scale, employers with an agency shop may be required to make administrative changes to their payroll practices as soon as possible. Once you identify your employee categories, agencies should develop an action plan with the appropriate departments to identify payroll cutoff deadlines for cessation of specific deductions. Your agency should take steps to both immediately implement changes mandated by Janus, and to notify and meet and confer with any labor organizations regarding negotiable effects of the changes as soon as possible. **Regardless of the meet and confer obligations, effective June 27, 2018, your agency is precluded from making a deduction from the wages of any employee who has been a service fee payer or religious objector.**

3. Public employers should then notify the impacted labor organizations regarding the planned changes to the deduction of service fees, and then plan to meet and confer over the negotiable impacts of those changes. Public employers may receive push-back in implementing Janus, but they should understand complying with the requirements of the law is their legal obligation. Regardless, public employers need to meet and confer over the negotiable effects of the decision.

After notifying the labor organization or during negotiations, the labor organizations may identify various effects in discontinuing service fee deductions. The obligation to negotiate over effects includes the obligation to consider the proposals in good faith within the parameters of the law.

4. In a post-Janus world, public employers will need to be ready to address inquiries from employees and labor organizations regarding issues, such as how to withdraw from the labor organization or how to revoke dues authorizations. As discussed above, Janus does not prohibit voluntary dues deductions, so this practice should continue consistent with applicable law, the agency's collective bargaining agreements. You should review this information right away so that you know the answers. In responding to employee inquiries, employers may provide factual information to employees, but they cannot do so in a manner that would discourage employees from joining or remaining labor organization members. (Government Code section 3550.) Additionally, S.B. 866 provides for additional substantial restrictions on issuing "mass communications" to multiple employees and requirements to direct labor organization membership inquiries to the labor organization. Public employers should no longer send employees any mass communication about the Janus decision without meeting and conferring with exclusively recognized representatives about the content of such communications. Public agencies should also defer membership inquiries to labor organizations.

Janus is a landmark decision, with far-reaching impacts. So is S.B. 866. Based on the current state of the law and the considerations above, public employers should coordinate internally to develop action/contingency plans to address any and all legal obligations. LCW is available to assist and has been following Janus and actively advising public agencies on how to best prepare and handle the decision the day it comes out. As part of LCW's coverage of the Janus decision and related state legislation, LCW will be providing the following services to our clients:

- A webinar entitled **"The Significant Impact of Janus v. AFSCME and S.B. 866 on Public Sector Labor Relations"** is scheduled for July 3, 2018, presented by Che Johnson.
- Consortium services and legal services from our firm experts to guide agencies to navigate a post-Janus world, to conduct wage deduction audits and negotiate with labor representatives. We can be reached via email at info@lcwlegal.com or via phone at 800.645.2696.

Top 10 Questions about Senate Bill 866 – New State Legislation Impacting How Public Employers Communicate with Employees and Manage Employee Organization/Union Membership Dues.

On June 27, 2018, Governor Brown signed into law the Final State Budget, along with budget trailer bill, Senate Bill 866. In brief, though there is little comment in the Bill's legislative analysis, it is clear that Senate Bill 866 is a direct response to the Supreme Court's anticipated, and now adopted, holding in *Janus v. AFSCME.* While public employers and public employee organizations (i.e. unions or local labor associations) can no longer mandate agency shop fees as a condition of continued employment, Senate Bill 866 amends and creates new state law regulating: (1) how public employers and employee organizations manage organization membership dues and membership-related fees; and (2) how public employers communicate with employees about their rights to join or support, or refrain from joining or supporting employee organizations. It also prohibits public employers

from deterring or discouraging public employees and applicants for public employment from becoming or remaining members of employee organizations (a declaration of existing law). Finally, Senate Bill 866 expands employee organization access to employee orientations by making such orientations confidential.

Below, we outline the top 10 questions arising from Senate Bill 866:

1. **Does Senate Bill 866 Apply to My Public Agency?**

Yes. Senate Bill 866 applies to all public employers, though it does not apply to all public agencies in the same manner. For example, for the purposes of salary and wage deductions in relation to employee organization membership dues and related fees, the Bill defines a "public employer" as the state, Regents of the University of California, the Trustees of the California State University, as well as the California State University itself, the Judicial Council, a trial court, a county, city, district, public authority, including transit district, public agency, or any other political subdivision or public corporation of the state, but not a "public school employer or community college district."

But while public schools and community college districts are not included in the definition of "public employer" for the purposes of salary and wage deductions, they are not exempt from Senate Bill 866. Instead, separate provisions apply to those agencies. The provisions that apply to public school and community college district employers largely reflect those that apply to other public employers regarding the management of employee organization membership dues and related fees, though there are some distinctions.

Provisions governing wage and salary deductions for public employers, other than public schools and community college districts, are now codified at Government Code sections 1152, 1153, 1157.3, 1157.10, and 1157.12. (Section 1153 applies to state employers only, and section 1157.10 applies only to state employees of public agencies.)

Provisions governing wage and salary deductions applicable to public schools and community college districts are codified at Education Code sections 45060, 45168, 87833, and 88167 (reflecting deductions for public school certificated and classified employees and community college district academic and classified employees).

2. **What Should I do if an Employee Asks My Agency to Discontinue the Employee's Union/Employee Organization Membership Dues Deduction? Can I Respond?**

You can respond, but your response is limited to referring the employee back to the employee organization. With the passage of Senate Bill 866, public employers as well as public school and community college district employers are required to direct employee requests to cancel or change authorizations for payroll dues deductions or other membership-related fees to the employee organization. Employee organizations are responsible for processing these requests.
Distinct from employee organization/union membership dues and membership-related fees, the Supreme Court's holding in Janus v. AFSCME, requires employers to immediately stop withholding involuntary service fees; but employers should also notify and meet and confer with any employee organizations regarding the negotiable effects of that change as soon as possible. Though Senate Bill 866 does not specify how agencies respond to employer inquiries about service-fees, it may also be appropriate to direct the question to the employee organization (e.g. if an employee asks whether he/she can voluntarily pay the union something other than membership dues). This assessment should be made on a case-by-case basis.

3. **Must My Agency Rely on an Employee Organization's Statement Regarding an Employee's Organization Membership?**

Yes. Public employers are required to honor employee organization requests to deduct membership dues and initiation fees from their members' wages. Public employers are also required to honor an employee organization's

request to deduct their members' general assessments, as well as payment of any other membership benefit program sponsored by the organization. Public employers must additionally rely on information provided by the employee organization regarding whether deductions for an employee organization have been properly canceled or changed. Consequently, because public employers will be making these deductions in reliance on the information received from employee organizations, employee organizations must indemnify public employers for any claims made by an employee challenging deductions.

Public school and community college district employers are similarly required to rely on information provided by employee organizations regarding whether deductions for the organization have been properly canceled or changed. However, as with public employers, the employee organization must indemnity the public school or community college district employer for any claims made by an employee challenging deductions.

4. **Can My Agency Demand that the Union/ Employee Organization Provide the Agency with a Copy of an Employee's Written Authorization for Payroll Deductions?**

No, except in very limited circumstances. As an initial matter, public employers must honor employee authorizations for deductions from their salaries, wages or retirement allowances for the payment of dues, or for any other membership-related services. Deductions may be revoked only pursuant to the terms of the employee's written authorization. Similarly, public school and community college district employers must honor the terms of an employee's written authorization for payroll deductions. However, public employers that provide for the administration of payroll deductions (as required above, or as required by other public employee labor relations statutes), must also rely on the employee organizations' certification that they have the employee's authorization for the deduction. A public employer is prohibited from requiring an employee organization to provide it with a copy of an individual's authorization, as long as the organization certifies that it has and will maintain individual employee authorizations. The only exception is where a dispute arises about the existence or terms of the authorization.

Similarly, public school and community college district employers must rely on an employee organization's certification that it has an employee's authorization for payroll deductions. Upon certification, public school and community college district employers are prohibited from requiring the employee organization to provide it with a copy of the employee's written authorization. As with public employers, a public school or community college district employer can only request a copy of the employee's written authorization if a dispute arises about the existence or terms of the authorization. Again, because employers will be making deductions in reliance on the information received from employee organizations, employee organizations must indemnify employers for any claims challenging these deductions.

5. **Can I Discourage or Deter Employees from Becoming or Continuing in Union/ Employee Organization Membership? Can I Discourage or Deter them from Enrolling in Automatic Membership Dues Deductions?**

No to both questions. Public employers remain prohibited from deterring or discouraging public employees, or applicants, from becoming or remaining members of employee organizations. They are similarly prohibited from deterring or discouraging public employees or applicants from authorizing representation by an employee organization, or from authorizing dues or fee deductions to such organizations. The statute provides that this is a declaration of existing law.

Notably, for the purposes of this provision, a public employer is any employer subject to the Meyers-Milias Brown Act (MMBA), the Ralph C. Dills Act, the Judicial Council Employer-Employee Relations Act (JEERA), the Educational Employment Relations Act (EERA), the Higher Education Employer-Employees Relations Act (HEERA), the Trial Court Employment Protection and Governance Act, the Trial Court Interpreter

Employment and Labor Relations Act, the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act, and Employers for in-home supportive services (IHSS) providers (pursuant to Welfare and Institutions Code section 12302.25).

6. **Does Senate Bill 866 Prohibit My Agency from Informing Employees about the Cost of Being a Union/Employee Organization Member?**

Yes. This could be seen as deterring or discouraging an employee from becoming an employee organization member or authorizing dues or fee deductions to an employee organization. As noted in response to question 5, this conduct is prohibited. In addition, as discussed in question 7 below, employers are prohibited from sending mass communications to employees about employee organization membership without first meeting and conferring with the organization about the content of the communication.

7. **Can My Agency Still Send Mass Communications to Employees about Union/Employee Organization Membership?**

Yes, but only if the agency first meets and confers about the content of the communication with the recognized employee organization.

A public employer that chooses to send mass communications to their employees or applicants concerning the right to "join or support an employee organization, or to refrain from joining or supporting an employee organization" must first meet and confer with the exclusive representative about the content of the mass communication. If the employer and exclusive representative do not come to an agreement about the content of the communication, the employer may still choose to send it. If it does, however, it must also include with its own communication, a communication of reasonable length provided by the exclusive representative. Notably, this requirement does not apply to a public employer's distribution of a communication from PERB concerning employee rights that has been adopted for the purposes of this law.

For the purposes of mass communication provisions, a public employer means any employer subject to the Meyers-Milias Brown Act (MMBA), the Ralph C. Dills Act, the Judicial Council Employer-Employee Relations Act (JEERA), the Educational Employment Relations Act (EERA), the Higher Education Employer-Employees Relations Act (HEERA), the Trial Court Employment Protection and Governance Act, the Trial Court Interpreter Employment and Labor Relations Act, the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act, and Employers for in-home supportive services (IHSS) providers (pursuant to Welfare and Institutions Code section 12302.25).

8. **Just What is a "Mass Communication" for the Purposes of Senate Bill 866?**

For the purposes of Senate Bill 866, a "mass communication," means a written document, or script for an oral or recorded presentation or message, that is intended for delivery to multiple public employees regarding an employee's right to join or support or not to join or not to support an employee organization. This includes email communications.

9. **With Whom Can I Share Information about Employee Orientations?**

Senate Bill 866 requires that new employee orientations be confidential. In addition to existing law that provides exclusive representatives with mandatory access to new employee orientations following the passage of AB 119 last year, the "date, time, and place of the orientation shall not be disclosed to anyone other than the employees, the exclusive representative, or a vendor that is contracted to provide services for the purposes of the orientation."

10. **When Does Senate Bill 866 Take Effect?**

As a budget trailer bill, Senate Bill 866 is considered "urgency legislation." This means it goes into effect immediately upon the Governor's

signature. As noted above, Governor Brown signed Senate Bill 866 into law on June 27, 2018. Accordingly, the time to comply with the new law is now!

PUBLIC SAFETY

Agency's Interviews of Police Officers Were Protected Activities and Did Not Violate POBRA.

The California Court of Appeal found that a government entity's interviews of police officers and denial of their requests for representation, were legally protected activities and did not violate the Public Safety Officer's Procedural Bill of Rights Act (POBRA) because: (1) the interviews were held pursuant to a statutory directive; and (2) the officers themselves were not the targets of the investigation nor subject to discipline.

The case involved an investigation of California's High Desert State Prison. The Office of the Inspector General (OIG) is the agency responsible for overseeing the California Department of Corrections and Rehabilitation (CDCR). The OIG has statutory authority to review CDCR policies and practices, and must issue a written report describing the findings of any review performed. Except in limited circumstances, the OIG does not have authority to investigate CDCR employee misconduct. The California Senate Rules Committee authorized the OIG to investigate several issues: the prison's policies and practices involving excessive force against inmates; the prison's internal review of these incidents; and the prison's protection of inmates from assault. The Rules Committee requested that the OIG publish a written report describing the results of the review, and recommendations for actions.

The OIG interviewed several correctional officers who were former employees of High Desert State Prison, and who were not the subject of allegations of misconduct, nor potential witnesses to the alleged misconduct. Although each of the five correctional officers requested representation for the interviews, the Deputy Inspector General (DIG) who conducted the interviews informed the officers that they were not the subject of the investigation and denied their requests. The DIG noted that the officers' statements would not be used to pursue an investigation or to recommend that an investigation be opened.

The officers and the California Correctional Peace Officers Association (CCPOA) sued the OIG, alleging the OIG violated the officers' POBRA right to have a representative present during the interviews. In its defense, the OIG filed an anti-SLAPP motion – a motion that asserts that a lawsuit is a "Strategic Lawsuit Against Public Participation," and an impermissible attempt to stifle the OIG's protected right to investigate prison practices and policies.

The OIG's anti-SLAPP motion to dismiss the officers' claims required the courts to answer two questions: (1) whether the OIG interviewed the officers in furtherance of a legally authorized official proceeding; and (2) whether the officers showed a probability of winning their POBRA claims. The trial court had concluded that while the officers' lawsuit would prohibit OIG from pursuing its legally protected actions (investigating prison practices), the officers had shown a likelihood of success on their claims. The Court of Appeal reversed the trial court and found in favor of the OIG.

First, the Court of Appeal affirmed that the OIG interviewed the officers in furtherance of the OIG's legally protected right to engage in free speech by investigating prison practices and policies. California courts have found that gathering information in preparation for publishing a news or investigation report or scholarly article is conduct in furtherance of the right to free speech. Here, pursuant to the California Penal Code, the Senate Rules Committee asked the OIG to review practices related to prison staff's use of excessive force and

requested that the OIG to issue "a written report detailing the results of [the] review." The Penal Code also required the OIG to prepare a public report of its findings to be distributed to the general public. The Court of Appeal found that the OIG interviewed the officers in preparation for issuing its report, and that findings related to allegations of mistreatment of prisoners at a state correctional facility qualified as an issue of public interest. Because the OIG's interview of the officers arose out of the OIG's legally protected speech, the officers' claim that the interviews violated their POBRA rights also arose from the OIG's protected speech.

Second, the Court of Appeal found that the officers did not show a likelihood of winning their claim that the denial of a representative violated their rights under POBRA. The Court of Appeal found that the POBRA provides peace officers with a right of representation when the officer "is under investigation and subjected to interrogation…that could lead to punitive action." But the POBRA states that the right to representation is not triggered by "any interrogation of a public safety officer in the normal course of duty, counseling, instruction…" Here, the Court of Appeal concluded, individual correctional officers were not under investigation, and were not subjected to an interrogation that could lead to punitive action. The officers were only being interviewed because they were former employees of the prison. The OIG did not intend to and did not have authority to investigate specific officers. Thus, the officers' POBRA rights were not triggered.

The Court of Appeal granted the OIG's anti-SLAPP motion, and dismissed the officers' complaint.

Blue v. California Office of the Inspector General (2018) 23 Cal. App.5th 138..

NOTE:

LCW has been very successful in crafting Anti-SLAPP motions to protect public entities. The Anti-SLAPP motion is also very cost-effective because it generally delays expensive discovery until after the motion is decided.

DISCRIMINATION

Employer Violated the FEHA by Falsely Informing a Pregnant Job Candidate That No Positions Were Available.

The Fair Employment and Housing Act ("FEHA") prohibits an employer from discouraging a pregnant candidate from applying for a job by falsely informing her that no employment opportunities are available. Doing so is unlawful pregnancy discrimination, even if the employee does not actually apply for the position or seek similar employment elsewhere.

Ada Abed was an extern at a Western Dental office in Napa, California. It was company practice to accept students from dental assistant programs and consider them for full-time employment upon successful completion of the externship and the job application process. In March 2015, Western Dental posted a pre-approved solicitation for dental assistant candidates. In May 2015, Abed applied for, and was accepted for an extern position. She was pregnant at the time but did not share that information with Western Dental staff or managers. Abed was supervised by Sabrina Strickling, a registered dental assistant who was also involved in the hiring process in that Strickling answered questions and supervised and evaluated externs. Strickling consistently gave Abed positive reviews and marked Abed as above average in her final evaluation.

At the end of May, while Abed's externship was still in progress, Strickling found out about Abed's pregnancy when she saw prenatal pills in Abed's partially opened purse. Strickling

attempted to confirm that Abed was pregnant by asking other Western Dental staff. The parties disputed the nature of Strickling's comments about Abed's pregnancy. Abed's coworker stated that she heard Strickling say that hiring a pregnant employee would be inconvenient for the office while Abed asserted that Strickling stated, "Well, if she's pregnant, I don't want to hire her." Abed presented as evidence -- a screen shot of a text message exchange between her and a coworker in which the coworker confirmed that Strickling did not want to hire Abed if Abed was pregnant.

Abed testified that about two weeks after hearing these comments from Strickling, she asked Strickling whether Western Dental's Napa office had an opening for a dental assistant. Strickling told Abed that there were no openings in the Napa office, so Abed did not apply. Abed also presented evidence that on the last day of her externship, Strickling stated that Abed should contact the Napa office after she gave birth to see if she could get a job there.

Less than a week after informing Abed that there were no available dental assistant positions, Western Dental management began working with a recruiter who presented two candidates for dental assistant positions. Less than a week after Abed completed her externship, the recruiter then presented Western Dental with an externship candidate. Western Dental on-boarded the extern and, in late July, extended her an offer for full time employment as a dental assistant. That extern was hired into the dental assistant position created by the requisition approved in March 2015, a date prior to the start of Abed's externship.

Abed filed a pregnancy discrimination claim with the Department of Fair Employment and Housing, received a right to sue letter, and then sued Western Dental for pregnancy discrimination and other claims. The trial court granted summary judgment for Western Dental but the Court of Appeal reversed and found that Abed's claims should proceed to trial.

The Court of Appeal rejected Western Dental's argument that it could not be liable because Abed did not apply for a dental assistant position. The court said it was not necessary for Abed to apply because Western Dental's statement that no positions were available gave Abed no reason to apply. Additionally, the court noted that under Title VII, if a job applicant conveys interest in a position, it is not necessary for the applicant to formally apply in order to have a claim against the employer for discriminatory hiring practices.

The court also found that a jury needed to resolve the following factual disputes: Strickling falsely told Abed there were no positions in the Napa office; Western Dental continued to consider other applicants after Abed expressed interest; Strickling's involvement in the hiring process and her specific actions to discourage Abed from applying for a position; and Strickling's discriminatory comments about not hiring pregnant employees.

Thus, the Court of Appeal reversed the trial court's grant of summary judgment in favor of Western Dental, allowed Abed's claims to proceed to a jury trial, and awarded Abed the costs of bringing the appeal.

Abed v. Western Dental Services, Inc. (2018) __ Cal.App.5th __ [2018 WL 2328418].

NOTE:

Discouraging a pregnant applicant from applying for a job because of her pregnancy is discrimination. The fact that an applicant for initial hire or promotion is pregnant cannot play any role in a hiring decision.

BENEFITS CORNER

ACA Back to Basics: The Employer Mandate

*This article is the first installment in LCW's **ACA Back to Basics series**. The series will allow employers to brush up on the Patient Protection and Affordable Care Act's (also known as "the ACA") Employer Shared Responsibility Provisions.*

The Employer Mandate – What is it?

The ACA's Employer Shared Responsibility Provisions, commonly known as the "Employer Mandate," require certain employers to offer qualifying medical coverage to substantially all of their ACA full-time employees and their dependents or, alternatively, to make an employer shared responsibility payment to the IRS. The Employer Mandate applies only to Applicable Large Employers ("ALEs"), i.e. employers that had an average of at least 50 full-time employees – including full-time-equivalents – during the preceding calendar year.

Applicable Large Employer ("ALE")

An employer is an ALE for the current calendar year if it has at least 50 full-time employees, including full-time equivalent employees, on average, during the prior year.

ALE Calculation: Add the total number of **full-time employees** for each month of the prior calendar year to the total number of **full-time equivalent employees** for each calendar month of the prior calendar year and divide that total number by 12.

For purposes of this calculation: An employee is a **full-time employee** if he/she has on average at least 30 hours of service per week during the calendar month, or at least 130 hours of service during the calendar month. An employer determines the number of **full-time equivalent employees** for a month in two steps:

1. Combine the number of hours of service of all non-full-time employees for the month but do not include more than 120 hours of service per employee, and

2. Divide the total by 120.

The Employer Mandate Penalties

An employer that meets the requirements of an ALE must offer minimum essential coverage to substantially all of its ACA full-time employees and their dependents, and such coverage must provide minimum value and be affordable, otherwise, the IRS may assess one of two employer shared responsibility payments (aka "Penalty A" and "Penalty B"). These penalties are triggered if an ACA full-time employee purchases coverage through Covered California and obtains a premium tax credit.

Penalty A: The IRS may assess Penalty A where an ALE fails to offer **minimum essential coverage** to at least 95 percent of its full-time employees (and their dependents). The IRS will calculate Penalty A as follows: $2,320 annually ($193.33 per month) multiplied by the total number of full-time employees less 30. For example, Penalty A for an ALE with 40 employees could result in up to $23,200 of liability in 2018 (40 less 30 is 10, multiplied by $2,320).

Penalty B: The IRS may assess Penalty B where an ALE offers minimum essential coverage to at least 95 percent of its full-time employees and their dependents, but the coverage offered to a full-time employee is either **not "affordable" or does not provide "minimum value."** Penalty B is $3,480 annually ($290 per month) multiplied by the number of full-time employees who actually purchase coverage through Covered California and receive a premium tax credit.

Both Penalties are indexed. The numbers above are for 2018.

Key Compliance Points

- The IRS will look at the lowest cost plan offered each month.
- Employers must report this data through ACA Reporting. (e.g. Forms 1094C/1095C).
- To avoid Penalty A, an employer must offer minimum essential coverage to at least 95 percent of its ACA full-time employees and their dependents.
- To avoid Penalty B, an employer must offer coverage that is affordable and provides minimum value.

According to CalPERS, all health plans it offers meet the minimum essential coverage requirement and provide minimum value.

All employers that qualify as an ALE should determine whether they offer "affordable" coverage to their ACA "full-time employees," as those terms are defined by the ACA.

Later installments in our ACA Back to Basics series will provide additional details on how to identify ACA full-time employees and determining whether an employer is offering affordable coverage.

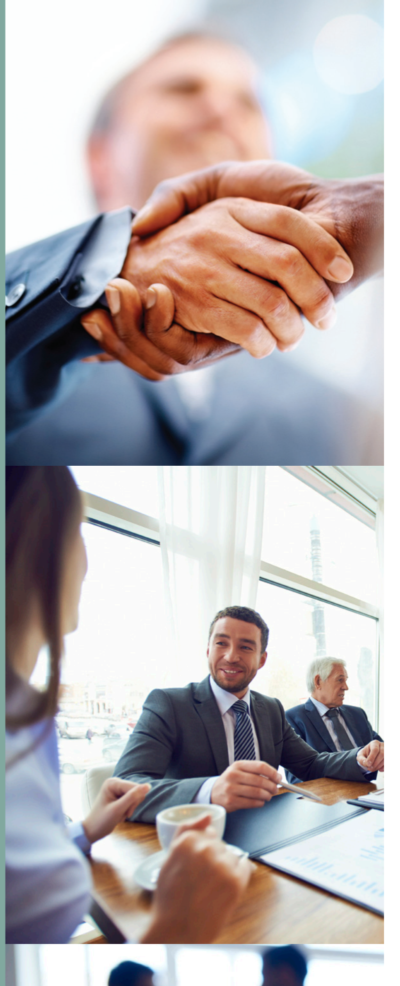
Please Note: ***To celebrate the upcoming summer break, we will combine the July and August 2018 issues of this newsletter.***

Check your inbox in August for information on the latest legal developments.

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.



Developing Positive Partnerships and Leadership Excellence for Labor Relations Professionals

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

Next Class:

Trends & Topics at the Table!

July 12, 2018 | Fullerton, CA

What is happening in that room? This workshop puts you into the negotiation session environment and focuses on tips from our time at the table. Trending topics, union tactics, creative problem solving, and techniques to tackle various contract provisions will be shared and demonstrated.

Register Now! ***https://www.lcwlegal.com/events-and-training/labor-relations-certification-program/trends-and-topics-at-the-table***

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LCW Webinar: Closing the Wage Gap: California and Federal Equal and Fair Pay Laws

Tuesday, July 24, 2018 | 10 AM - 11 AM

Presented by:

T. Oliver Yee

Although both California and Federal law now mandate "equal" and "fair pay" for all, many employers may not know exactly what those terms mean and what laws govern them. Intended as a broad introduction to this emerging area of the law, this presentation will address the nuts and bolts of both the Federal Equal Pay Act and the California Fair Pay Act – two overlapping but distinct laws that try to close the historic "wage gap" between men and women. The workshop will cover recent case developments, defenses to Equal Pay Act claims, and the extent to which equal pay laws apply to public sector employers.

Who Should Attend?

Managers, Supervisors, Department Heads, and Human Resources Staff.

Workshop Fee:

Consortium Members: $70, Non-Members: $100

LCW Webinar: Seminal PERB Cases and What They Mean For Your Agency's Labor Relations

Wednesday, August 15, 2018 | 10 AM - 11 AM

Presented by:

Adrianna E. Guzman

Many of the rules that govern public sector collective bargaining in California come from decisions issued by the Public Employment Relations Board (PERB). As a quasi-judicial entity, PERB has decided a number of seminal cases that have a significant impact on your agency's rights and obligations at and away from the bargaining table. Join us for this webinar where we will discuss many of PERB's most important cases. In addition to the facts and holdings of each case, we will address their broader legal implications and practical impacts on your agency's labor relations. Gaining this understanding is critical for avoiding and defending against unfair practice charges, and enforcing your agency's rights against potential unfair union practices.

Who Should Attend?

Human Resources and Labor Relations professionals.

Workshop Fee:

Consortium Members: $70, Non-Members: $100

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

Management Training Workshops

Firm Activities

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June 29 **"Handling Grievances"**
Probation Training Center | Pico Rivera | Los Angeles County Probation

July 10 **"Progressive Discipline"**
City of Gardena | Kristi Recchia

July 11 **"Management Professional Development"**
Barstow Community College District | Barstow | Eileen O'Hare-Anderson

July 12,25 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Walnut Creek | Jack Hughes

July 12 **"Risk Management Skills for Supervisors"**
College of the Desert | Palm Desert | Pilar Morin

July 19 **"File That! Best Practices for Documents and Record Management"**
City of Concord | Heather R. Coffman

July 24 **"Labor Relations 101"**
City of Gardena | Kristi Recchia

July 26 **"Management Professional Development - Classified and Academic Discipline"** and **"Classified and Academic Discipline"**
Barstow Community College District | Barstow | Eileen O'Hare-Anderson

Aug. 14 **"The Art of Writing the Performance Evaluation"**
San Joaquin Delta College | Stockton | Eileen O'Hare-Anderson

Aug. 15 **"Ethics in Public Service"**
City of Vallejo | Lisa S. Charbonneau

Aug. 16 **"Difficult Conversations"**
College of the Desert | Palm Desert | Pilar Morin

Aug. 17 **"Management Professional Development - Review and Catch Up"**
Barstow Community College District | Barstow | Eileen O'Hare-Anderson

Aug. 22 **"Faculty Engagement in the Disabled Student Accommodations Process"**
El Camino College | Torrance | Laura Schulkind

Aug. 28 **"Legal Issues Regarding Hiring"**
City of Glendale | Mark Meyerhoff

Aug. 28 **"Key Legal Principles for Public Safety Managers - POST Management Course"**
Peace Officer Standards and Training - POST | San Diego | Frances Rogers

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

Aug. 29 **"A Guide to Implementing Classified Employee Discipline"**
San Joaquin Delta College | Stockton | Eileen O'Hare-Anderson

Speaking Engagements

July 11 **"Bullying, A Hostile Workplace, and Sexual Harassment"**
International Public Management Association Central California Chapter (IMPA-CCC) Meeting | Merced | Che I. Johnson

Aug. 2 **"Webinar on Next Steps for Cities after Janus v. AFSCME"**
League of Cities City Attorneys' Webinar | Webinar | Laura Kalty

Seminars/Webinars

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

July 3 **"The Significant Impact of Janus v AFSCME and S.B. 866 on Public Sector Labor Relations"**
Liebert Cassidy Whitmore | Webinar | Che I. Johnson

July 12 **"Trends & Topics at the Table!"**
Liebert Cassidy Whitmore | Fullerton | Kristi Recchia & Frances Rogers

July 19 **"Payroll Processing & Regular Rate of Pay Seminar"**
Liebert Cassidy Whitmore Seminar | | Brian P. Walter & Jennifer Palagi

July 24 **"Closing the Wage Gap: California and Federal Equal and Fair Pay Laws"**
Liebert Cassidy Whitmore | Webinar | T. Oliver Yee

Aug. 15 **"Seminal PERB Cases and What They Mean for Your Agency's Labor Relations"**
Liebert Cassidy Whitmore | Webinar | Adrianna E. Guzman

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