



BRIEFING ROOM

News and developments in employment law and labor relations for
California Law Enforcement Management

AUGUST 2020

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



FIRM VICTORIES

Service In County's Work Release Program Is Not Employment Under The FEHA.

LCW Partner [Jesse Maddox](#) and Associate Attorney [Sue Ann Renfro](#) recently obtained a victory for Fresno County in a published Fair Employment and Housing Act (FEHA) case.

Ronald Talley is physically disabled and has to wear a foot brace to walk. He pleaded nolo contendere, or no contest, to a criminal offense. Instead of serving his 18-day sentence in Fresno County Jail, Talley was eligible to participate in the Adult Offender Work Program (AOWP) administered by Fresno County's Probation Department. Talley was injured while performing work in the AOWP and received workers' compensation benefits. Talley then sued Fresno County alleging, among other things, that the County violated the FEHA by failing to both accommodate his physical disability and to engage in the interactive process with him.

Because the FEHA generally protects employees only, Talley's claims rested on the theory that AOWP participants are County employees for the purposes of the FEHA. However, the County argued that because Talley was not paid for his time in the AOWP, he was not an employee under the FEHA. The County also argued that Talley's non-FEHA claim was barred by workers' compensation exclusivity. The trial court agreed and entered judgment in favor of the County on all of Talley's claims. Talley appealed.

On appeal, the California Court of Appeal affirmed the trial court's decision to enter judgment in favor of the County on all of Talley's claims. The Court of Appeal found that being paid is an essential condition to establish employee status under the FEHA. Because Talley did not receive direct or indirect pay, he was not an employee for purposes of the FEHA.

Talley v. County of Fresno, 2020 WL 3888093 (Cal. Ct of Appeal 2020).

NOTE:

This published decision clarified who is considered an employee under FEHA so that employers can better understand when workers who do not fit within the traditional category of a paid employee are covered by FEHA. Because the County prevailed at the appellate level, it was awarded its costs on appeal.

County Wins Bonus Pay Grievance.

LCW Partner [Adrianna Guzman](#) and Associate Attorney [Emanuela Tala](#) obtained a victory for a county in a grievance proceeding.

The grievants were clerks in the county's Health Services Department. Beginning sometime after 2014, the grievants worked with, and trained employees in the Health Information Associate classification (HIA). While the county paid HIA

employees a higher pay rate, the HIAs did substantially the same work as the grievants, with the exception of coding medical procedures.

Pursuant to the Memorandum of Understanding (MOU), the grievants submitted written requests to the county for an Additional Responsibility Bonus. Under the MOU, permanent, full-time employees are entitled to additional compensation for performing additional responsibilities beyond those typically assigned to the employee's class if the additional duties are those performed by a higher class, or in connection with a special assignment. After the county denied their requests, the grievants filed grievances.

The arbitrator noted that there was no dispute that with the exception of medical coding, the grievants did the same tasks as the HIAs, at least for part of the day. However, the grievants' duties were fully consistent with their classification as they were not performing the level-defining duties of the HIAs. While the arbitrator noted it might seem unfair that HIAs were paid more than the grievants for the same work, the county did not violate the MOU.

NOTE:

To prevent similar problems or fair pay complaints, pay all job classifications equal pay for equal work. LCW attorneys conduct fair pay audits to assist agencies with these issues.

County Nurse's Differential Pay Grievance Was Untimely.

LCW Partner [Adrianna Guzman](#) and Associate Attorney [Ronnie Arenas](#) won a grievance arbitration for a county. The grievance challenged the county's decision to deny various pay differentials.

The grievant, a registered nurse, requested that the county award her acting, weekend, and nightshift differential pays for shifts worked between April 2012 and May 2014. While the Memorandum of Understanding (MOU) provided that nurses were entitled to an additional \$2.25 per hour for working Friday, Saturday, or Sunday nights, the grievant's unit was only paid differentials for Saturday and Sunday nights.

The county audited the grievant's timecards and offered to resolve any errors it made between 2012 and 2014. However, the grievant rejected the offer and requested a 14-year audit of her timecards between 2000 and 2014.

The county argued that because the original grievance only alleged errors between 2012 and 2014, the nurse could not add the time between 2000 and 2011. The county also argued that the grievance was untimely

because the MOU required her to file a formal grievance within 10 business days of the MOU violation. Finally, the county argued that the doctrine of laches barred the grievance because the county was prejudiced by the grievant's delay. By the time the grievance was heard, the county could no longer ascertain when grievant's shifts had occurred because those records had been destroyed under the county's document retention policy. Ultimately, the arbitrator agreed with the county's arguments and concluded that the grievance was untimely.

Note:

In evaluating a grievance, always check whether the grievance is timely filed under the applicable grievance procedure. As this victory shows, LCW was able prove that the County was prejudiced by both the grievant's delay and her attempt to enlarge the scope of the grievance.

DUE PROCESS - PROBATION

Civil Service Rules Prevented The Extension Of A Sheriff Deputy's Probationary Period.

Christopher Trejo began work as a deputy sheriff with the Los Angeles County Sheriff's Department (Department) in February 2014. Pursuant to the County's Civil Service Rules (Rules), deputy sheriffs serve 12-month probationary periods before promotion into a permanent position, based on the employee's performance of the essential duties of the position. The Rules also provide that a probationary period shall not last more than 12 months from the date of appointment. However, the County may stop the 12-month clock if the employee is absent from duty. The Rules allow the County to then recalculate the length of time remaining on probation "on the basis of actual service exclusive of the time away." The Rules define "actual service" as "time engaged in the performance of the duties of a position or positions including absences with pay."

In June 2014, the Department investigated whether Trejo violated the Department's use-of-force policies. Pending the investigation, Trejo was relieved of duty and reassigned to administrative duties in the records unit. In this assignment, Trejo did not perform all of the essential duties of a deputy sheriff.

In August 2014, the Department extended Trejo's probationary period because he was relieved of peace officer duties during the investigation. The Department

informed Trejo that his probationary period would be recalculated upon his return to assigned duty as a deputy sheriff.

In January 2016, the Department released Trejo from probation. Although the Department's letter informed Trejo of certain appeal rights, it did not notify Trejo of any rights to a *Skelly* hearing or other due process procedures because it did not consider Trejo to be a permanent employee. Following a name-clearing hearing, the Department issued a decision confirming Trejo's termination.

Trejo filed a request for a hearing before the Civil Service Commission, asserting he was a permanent employee at the time of his termination. The Commission determined that Trejo's petition was untimely and made no ruling on whether he was entitled to pre-termination rights.

Trejo then filed a petition for writ of mandate in superior court against the County, claiming that the Department unlawfully extended his probationary period. The trial court granted the petition and ordered the County to set aside Trejo's dismissal on the grounds that he was a permanent employee entitled to pre-disciplinary rights.

The County appealed, claiming that the trial court: (i) relied on an erroneous interpretation of the Rules; and (ii) lacked jurisdiction because Trejo failed to exhaust his administrative remedies. The Court of Appeal disagreed on both counts.

First, the Court of Appeal examined the plain language of the Rules and held that the time Trejo spent on administrative duty in the records unit was "actual service," and therefore, Trejo became a permanent employee 12 months after his probationary period began. The court stated that Trejo's circumstances were different from those who are entirely relieved of duty and placed on paid administrative leave.

Second, the court concluded that Trejo did not fail to exhaust all administrative remedies available to him because the available grievance procedure excluded appeals of probation extensions, and claims regarding the interpretation of the Rules.

For these reasons, the court affirmed the trial court's order to set aside Trejo's dismissal. The court provided Trejo backpay from the date of his dismissal and all applicable pre-disciplinary rights as a permanent employee.

Trejo v. County of Los Angeles, 50 Cal.App.5th 129, 263 Cal. Rptr.3d 713 (2020).

NOTE:

Employers should closely review all applicable rules and procedures in determining whether an employee has achieved permanent status. Courts tend to narrowly interpret any rule that allows an employer to extend an employee's probationary period.

DISCRIMINATION

USSC Holds That Title VII Protects Gay And Transgender Employees.

In *Bostock v. Clayton County*, the U.S. Supreme Court (USSC) considered three similar cases regarding whether Title VII's non-discrimination protections apply to gay or transgender employees. In each case, the employee sued the employer under Title VII of the Civil Rights Act of 1964 alleging unlawful discrimination on the basis of sex.

In the first case, Gerald Bostock worked as a child welfare advocate for Clayton County, Georgia. After Bostock began participating in a gay recreational softball league, influential community members made disparaging comments about his sexual orientation. Not long after, the county fired Bostock for conduct "unbecoming" of a county employee.

In the second case, Donald Zarda worked as a skydiving instructor at Altitude Express in New York. A few days after Zarda mentioned he was gay, the company fired him.

In the third case, Aimee Stephens worked at R. G. & G. R. Harris Funeral Homes in Garden City, Michigan. When Stephens first started working at the funeral home, she presented as male. Two years into her service with the company, Stephen's clinicians diagnosed her with gender dysphoria and recommended that she begin living as a woman. After Stephens wrote a letter to her employer explaining that she planned to live and work full-time as a woman, the funeral home fired her, telling her "this is not going to work out."

Title VII provides that it is "unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual . . . because of such individual's race, color, religion, sex, or national origin." Accordingly, the USSC evaluated whether discrimination because of someone's sexual orientation or gender identity was discrimination on the basis of sex.

The USSC concluded that an employer who fires an individual merely for being gay or transgender violates Title VII. The USSC analyzed the Title VII statute and



previous USSC decisions. The parties conceded that the term “sex” referred to the biological distinctions between male and female. However, the Court noted that the inquiry did not end there. The USSC also reasoned that the phrase “because of” incorporated a “but-for” causation standard into Title VII. This means that an employer cannot avoid liability just by citing some other non-discriminatory factor that contributed to its challenged employment action.

The USSC also noted that in so-called “disparate treatment” cases, the Court has held that the difference in treatment must be intentional. Finally, the Court recognized that the statute’s repeated use of the term “individual” means that the focus is on “a particular being as distinguished from a class.”

Using this analysis, the USSC announced the following rule: an employer violates Title VII when it intentionally fires an individual based in part on sex. Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender violates Title VII.

Bostock v. Clayton Cty., Georgia, 140 S. Ct. 1731 (2020).

NOTE:

Unlike Title VII of the Civil Rights Act of 1964, California’s anti-discrimination statute -- the Fair Employment and Housing Act -- expressly prohibits sexual orientation discrimination and explicitly defines discrimination on the basis of sex to include gender identity and gender expression. (Cal. Government Code sections 12926(r) & (s).)

WAGE & HOUR

Hospital’s Quarter Hour Time-Rounding Policy Was Lawful.

Joana David worked as a registered nurse at the Queen of the Valley Medical Center (QVMC) from 2005 to 2015. From September 2011 to May 2015, David worked two, 12-hour shifts per week. To record her time, David clocked in and out of work using an electronic timekeeping system that automatically rounded time entries up or down to the nearest quarter hour.

After David’s employment ended, she sued QVMC alleging various California wage and hour violations. Among other claims, David alleged that QVMC did not pay her all wages owed because of the hospital’s time-rounding policy.

QVMC argued that it paid David for all time worked and that its rounding policy was legal. Specifically, QVMC noted that because David’s time entries were rounded to the nearest quarter hour, when she clocked in or out, her time was rounded up or down a maximum of seven minutes. Thus, David benefitted from the rounding policy on several occasions. QVMC’s expert witness reviewed David’s time entries and concluded that in a 128-day period, 47% of David’s rounded time entries favored her or had no impact and 53% favored QVMC. Further, the expert found that during that same period, the hospital paid David for 2,995.75 hours of work, and that had punch time entries been used, QVMC would have paid David for 3,003.5 hours. While David argued that the hospital’s failure to pay her for those 7.75 hours of work established that the rounding policy was unfair, the court found that QVMC had shown its policy was neutral. After the trial court decided in favor of QVMC, David appealed.

Under California wage and hour law, an employer may use a rounding policy if it is “fair and neutral on its face” and “is used in in such a manner that will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.” Further, a court may decide in favor of an employer if the employer can show the rounding policy does not systematically underpay the employee, even if the employee loses some compensation over time.

On appeal, the Court of Appeal affirmed the trial court’s decision and found that QVMC’s policy was neutral both on its face and in practice. The Court noted that the timekeeping software rounded all time, regardless of whether the rounding benefited QVMC or the employee. Further, the court reasoned that the policy did not systematically undercompensate David since the overall loss of 7.75 hours in the 128-day period was statistically meaningless. Thus, the court found that QVMC had satisfied its burden of establishing that the rounding policy was lawful.

David v. Queen of Valley Med. Ctr., 51 CalApp.5th 653, 264 Cal. Rptr.3d 279 (2020).

NOTE:

This case examines time-rounding policies under California law. While the federal wage and hour law generally governs public agencies, this decision offers guidance similar to that under the federal law regarding time-rounding policies.

VICARIOUS LIABILITY

Volunteer Was Not Acting In The Course And Scope Of His Volunteer Work During Commute.

Ralph Steger was a volunteer for Kaiser who provided pet therapy to a Kaiser patient at an assisted living facility. In July 2015, after a therapy session, Steger drove his own car to his credit union to do some personal business. On his way home from the bank, Steger struck and killed Wyatt Savaikie, a pedestrian who was crossing the street. Following the accident, Savaikie's parents filed a lawsuit against Kaiser alleging that Kaiser was vicariously liable for Steger's negligence.

Kaiser filed a motion to dismiss the lawsuit because Steger was not acting within the scope of his volunteer work at the time of the accident. Kaiser argued that the so-called "coming and going" rule applied. Under that rule, an employer is not liable for an employee's negligent acts committed during the commute to or from work. Savaikie's parents argued that an exception to the rule applied. The trial court disagreed, finding that in order to hold Kaiser liable for Steger's accident, Steger must have struck Savaikie in the course and scope of his volunteer work for Kaiser. The Savaikie's appealed.

First, the Court of Appeal considered whether the "required-vehicle" exception to the coming and going rule applied. Under the required-vehicle exception, if an employer requires an employee to furnish a vehicle as an express or implied condition of employment, the employee will be in the scope of his employment while commuting to and from the workplace. A Kaiser employee testified that Kaiser did not require Steger to use his own car and that other methods of transportation, such as Uber or Lyft, were permissible. While there was testimony regarding whether Kaiser offered mileage reimbursement to volunteer pet therapists, the court noted that payment for travel expenses is not evidence of an implied requirement that an employee must use his own vehicle. Finally, the court rejected the Savaikie's arguments that Kaiser's requirements that Steger provide annual proof of vehicle insurance and transport the therapy dog inferred that Kaiser required Steger to use his own car. The court concluded that there was no evidence that Kaiser expressly or impliedly required Steger to use his own car.

Next, the court evaluated whether Steger's use of his personal car provided an incidental benefit to Kaiser. The Savaikies suggested that a variation on the vehicle use exception focuses on whether the employer receives an incidental benefit from the employee's use of the employee's own car. The court declined to find that there was a distinct exception for such a situation. Instead, the court proposed that the employer's incidental benefit

is a factor to consider in deciding whether an implied vehicle use requirement exists. But, because there was no requirement that Steger use his own car as a condition of his volunteer work, there was no triable issue as to whether the incidental benefit pertained to the case.

Lastly, the court considered the Savaikie's argument that a "special mode of transportation" exception to the coming and going rule applied. The court reasoned that even if using a specially equipped vehicle is alone sufficient to create an exception to the coming and going rule, there is no evidence Steger had such a vehicle. Steger simply used a harness and clips to secure his therapy dog in the back of his vehicle; he did not make any modifications to the vehicle itself.

Savaikie v. Kaiser Found. Hosps., 2020 WL 4013134 (Cal. Ct. App. June 23, 2020).

NOTE:

Agencies that require an employee to use a personal car as a condition of employment may be liable for that employee's car accidents, even if the accidents do not occur at the workplace. LCW attorneys can review an agency's vehicle use policies to reduce risk while continuing to meet the agency's needs.

LEGISLATIVE HIGHLIGHTS: EMPLOYMENT-RELATED, PUBLIC SAFETY BILLS AT A GLANCE

The peak of California Legislature's lawmaking season has arrived. LCW summarizes some important, employment-related portions of public safety bills that have survived the legislative process so far. Some or all of these bills could be gutted, amended, fail to pass the legislature by the August 31, 2020 deadline, or vetoed by the Governor by the September 30, 2020 deadline. Here is where we stand as of the time of publication of this issue of *Briefing Room*.

Excessive Force:

AB 1022 (Holden D) Disqualifies from peace officer employment those who use excessive force or who fail to intercede; requires law enforcement policies to mandate immediate reporting of excessive force, no retaliation for whistleblowers, and same manner of discipline for both officers who use excessive force and those who fail to intercede; and creates a new Penal Code section making an officer who fails to intercede guilty as an accessory



Current law disqualifies a person from holding office as a peace officer if the person has been convicted of a felony, or found to be mentally incompetent, among other reasons. This bill would add the following reasons for disqualification: anyone who has been found by a law enforcement agency to have either used excessive force that resulted in great bodily injury or the death of a member of the public or to have failed to intercede in that incident.

Current law requires law enforcement agencies to have policies with several specific limits regarding the use of excessive force by January 1, 2021. This bill would require those policies to also include: immediate reporting for excessive force; for other officers who witness excessive force to intercede; prohibitions on retaliation for whistleblowers; use of the same manner of discipline for both officers who use excessive force and who fail to intercede as to another officer's excessive force.

This bill would add a new Penal Code section making an officer, who fails to intercede in an excessive force incident, an accessory to the excessive force.

AB 1709 (Weber D) Adds definition of "necessary" in the current law that limits the use of deadly force; requires a peace officer to use de-escalation tactics, render medical aide immediately, and intervene to stop an officer's use of excessive force or violation of law.

Under current law, a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against a threat of serious bodily injury/death, or to apprehend a person fleeing a felony that involved a threat of serious bodily injury/ death if the officer believes that the person will cause serious bodily injury/ death to another unless immediately apprehended.

This bill would define "necessary [force]" to be a situation when, based on the totality of the circumstances, a reasonable officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent imminent death or serious bodily injury to the peace officer or to another person. This bill would also require a peace officer to use de-escalation tactics, render medical aid immediately, and intervene to stop excessive force or a violation of law.

Internal Investigations:

AB 1599 (Cunningham R) Requires: completion of certain IA's regardless of officer's voluntary separation; certain IA's to result in findings; and disclosure of findings to the employing agency

This bill would require a law enforcement agency or oversight agency to complete its investigation into an allegation of the use of force resulting in death or great bodily injury, sexual assault, discharge of a firearm, or dishonesty relating to the reporting, investigation, or prosecution of a crime or misconduct by another peace officer or custodial officer, despite the peace officer's or custodial officer's voluntary separation from the employing agency.

The bill would also require the investigation to result in a finding that the allegation is either sustained, not sustained, unfounded, or exonerated, as defined. The bill would also require an agency other than an officer's employing agency that conducts an investigation of these allegations to disclose its findings to the employing agency no later than the conclusion of the investigation.

Release Or Reporting Of Peace Officer Information And Records:

SB 776 (Skinner D) Expands last year's SB 1421 release-of-records law to include incidents involving: use of force; not sustained sexual assault or dishonesty; wrongful arrest or seizure; and prejudice or discrimination. Eliminates the five-year limitation on retention of complaints and records to be reviewed in Pitchess. Adds penalties for failure to promptly disclose records. Requires an agency to review any records of investigation another agency conducted prior to hiring a peace officer candidate. Requires all peace officers to immediately report uses of force.

Unless found to be frivolous, this bill would make the following peace officer reports, investigations or findings disclosable public records: incidents involving use of force; incidents relating to sexual assault or dishonesty; incidents relating to sustained findings of wrongful arrests and wrongful searches; incidents involving prejudice or discrimination based on a protected category status. This bill would require disclosure of investigations that were not concluded prior to a peace officer/custodial officer resigning from their employment.

This bill would eliminate the five-year limitations on a law enforcement agency's retention of citizen complaints and on the records to be reviewed by a judge in the Pitchess process under Evidence Code section 1045.

This bill would make several procedural changes to the record disclosure requirements of SB 1421, including: limiting fees and costs to duplication costs; setting a \$1,000 fine for every day beyond 30 days after a record is not disclosed; and doubling the amount of attorney's fees and reasonable costs that can be provided as damages to a member of the public who files a Public Records Act suit for not receiving these records. This bill

would also preclude the attorney-client privilege from being asserted to limit disclosure of: factual information provided by a public entity to its attorney; factual information discovered by any investigation done by the public entity's attorney; or billing records related to the work done by the attorney.

This bill would require a public entity to review any records of investigations of misconduct involving a peace officer candidate from another agency prior to employing the individual as a peace officer.

This bill also creates a new Penal Code section 832.13 to require all peace officers to immediately report all uses of force by the officer to their department.

AB 1314 (McCarty D) Requires annual city or county website posting of information on use of force settlements and judgements.

Current law requires each law enforcement agency to annually furnish specified information to the Department of Justice regarding the use of force by a peace officer. This bill would create a new Government Code section to require cities and counties to annually post on their websites specified information relating to use of force settlements and judgements reached the previous year, including amounts paid, broken down by individual settlement and judgment, information on bonds used to finance use of force settlement and judgment payments, and premiums paid for insurance against use of force settlements or judgements.

AB 1299 (Salas D) Requires law enforcement agency to notify POST re all forms of peace officer separations from employment, and to complete and report IA findings to POST. Requires POST reporting of same to law enforcement agencies conducting pre-employment background investigations.

This bill would require any agency that employs peace officers to notify the Commission on Peace Officer Standards and Training (POST) when a peace officer separates from employment, including details of any termination or resignation in lieu of termination. This bill would require an agency to notify POST if an officer leaves the agency with a complaint, charge, or investigation pending, and would require the agency to complete the investigation and notify POST of its findings. The bill would require POST to include this information in an officer's profile and make that information available to specified parties including any law enforcement agency that is conducting a preemployment background investigation of the subject of the profile.

SB 1220 (Umberg D) Expands law enforcement agency's obligation to provide peace officer information to prosecuting agency; gives peace officers opportunity to challenge Brady listing.

This bill would, on and after January 1, 2022, require a law enforcement agency maintaining personnel records of peace officers or custodial officers to, upon request, provide a prosecuting agency a list of names and badge numbers of officers employed by the agency in the 5 years preceding the request who meet specified criteria, including, among other things, that the officer has had sustained findings for conduct of moral turpitude or group bias, or that the officer is on probation for a criminal offense. The bill would require the prosecuting agency to keep this list confidential, except as constitutionally required. The bill would additionally require a prosecuting agency, prior to placing an officer's name on a Brady list, to notify the officer as soon as practicable and provide the officer an opportunity to present information to the prosecuting agency against the officer's placement on the list, except as specified.

Limits On Public Employee Immunity:

SB 731 (Bradford D) Eliminates most public employee immunity for violation of Tom Bane Civil Rights Act.

The bill would, with a specified exception, eliminate immunity provisions for public employees involved in a violation of the Tom Bane Civil Rights Act. The bill would also authorize specified persons to bring an action for the death of a person caused by a violation of the act. (*See also SB 731 provisions on peace officer qualifications below.*)

Peace Officer Qualifications:

SB 731 (Bradford D) Adds new criteria for disqualifying persons from being employed as peace officers; gives POST new duties to issue and revoke POST certificates; allows CA DOJ to revoke POST certificates; requires law enforcement agencies to inform POST of any form of peace officer separation and to make related disclosures to POST; and gives POST new responsibilities on revocations of certificates.

This bill would disqualify a person from being employed as a peace officer if that person has been convicted of, or has been adjudicated in an administrative, military, or civil judicial process as having committed, a violation of certain specified crimes against public justice, including the falsification of records, bribery, or perjury.

The bill would also disqualify any person who: has been issued a POST certificate and had that certificate revoked by POST; has voluntarily surrendered the certificate; or has been denied issuance of a certificate. The bill would require a law enforcement agency employing peace officers to employ only individuals with a current, valid certification or pending certification.

This bill would require POST to issue a certificate, as specified, to any person employed as a peace officer who does not otherwise possess a certificate. This bill would declare certificates awarded by POST to be property of POST and would authorize POST to revoke a certificate on specified grounds, including: the use of excessive force; sexual assault; certain types of dishonesty; making a false arrest; failing to intercede as to excessive force; demonstrating bias against a person of a protected status; having three or more complaints against them within three years related to particular conduct; having three or more civil judgments in three years; or failing to cooperate with a POST investigation.

The bill would grant POST the power to investigate and determine the fitness of any person to serve as a peace officer. The bill would require POST to refer grounds for decertification to the Civil Rights Enforcement Section of the Department of Justice for investigation, which would then determine whether the certification should be denied or revoked, as specified. If a certificate holder or applicant provides notice to POST of the holder's or applicant's intent to contest the revocation or denial, the bill would require the Civil Rights Enforcement Section to file a petition with the Office of Administrative Hearings.

This bill would require law enforcement agencies to inform POST of various incidents involving peace officers related to appointment or any form of separation of employment that could require the revocation of POST certification. The bill would require an affidavit-of-separation to be signed under penalty of perjury.

This bill would require POST to report annually on number of certifications and types of actions leading to revocation of certification.

AB 846 (Burke D) Requires that psychological exam must also find peace officers to be free from protected-status bias; requires law enforcement agency review and amend peace officer job descriptions to emphasize community-based policing.

Current law requires peace officers to meet specified minimum standards, including, among other requirements, that peace officers be evaluated by a physician and surgeon or psychologist and found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer. This bill would require that evaluation to include bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation. This bill would also require law enforcement agencies that employ peace officers to review the job description that is used in the recruitment and hiring of those peace officers and make changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving, while de-emphasizing the paramilitary aspects of the job.

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NEW TO THE FIRM

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FIRM PUBLICATIONS

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

Los Angeles Partner [Steven M. Berliner](#) was quoted in *Daily Journal*, *Orange County Register*, *Sacramento Bee*, *EdSource* and *Courthouse News Service* regarding the California Supreme Court ruling on July 30, 2020 against a union of Alameda County sheriff's deputies over the legality of a 2013 law that limited retirement benefits.

Fresno Partner [Che I. Johnson](#) and San Diego Associate [Kevin J. Chicas](#) authored the *Daily Journal* article, "Post-Janus Power Shift of California's Private and Public Sector Unions," discussing how as private sector management rights grow, public sector employers are seeing a growing imbalance.

Los Angeles Partner [Geoffrey S. Sheldon](#) and Los Angeles Associate [James E. Oldendorph](#) authored the *Daily Journal* article, "Reform in Law Enforcement: an L&E Perspective," discussing how law enforcement agencies need to approach the calls for significant police reform in the wake of the deaths of George Floyd, Breonna Taylor and Rayshard Brooks.

Los Angeles Partner [T. Oliver Yee](#) and Los Angeles Associate [Alysha Stein-Manes](#) authored the *American City & County* articles, "Anticipating Legal Issues in a Post-COVID-19 Work Environment," addressing the legal risks and considerations that many public agencies will face in a remote work environment and "Adapting to the 'New Normal': Lessons Learned and Best Practices for a Post-COVID 19 Workplace," discussing how employers can best address remote working situations in the era of COVID-19.

Los Angeles Partner [Geoffrey S. Sheldon](#) was quoted in the *Orange County Register* article, "In Wake of Floyd Killing, Police in Orange County Talk Reform," discussing reforms needed in the hiring and discipline processes of public safety agencies.

Managing Partner [J.Scott Tiedemann](#) and Los Angeles Partner [Geoffrey S. Sheldon](#) were quoted in the *Daily Journal* article, "Public Employee Rights Might Block Some Police Discipline Efforts."

Managing Partner [J.Scott Tiedemann](#) and Los Angeles Partner [Geoffrey S. Sheldon](#) authored the *California Police Chief Magazine* article, "Returning to 'Normal': Legal Issues Law Enforcement Agencies Face in Returning to Work Post-COVID-19."

Los Angeles Partner [Elizabeth T. Arce](#) and Los Angeles Associate [Jennifer Palagi](#) authored an article for the *Daily Journal* titled "FFCRA Forces Public Agencies to Comply with FLSA 'Regular Rate of Pay' Calculations."

Los Angeles Partner [T. Oliver Yee](#) and Los Angeles Associate [Alysha Stein-Manes](#) authored an article for the *Daily Journal* titled "How COVID-19 Could Permanently Transform Public Agency Operations: Lessons Learned."

**And the award for Top Litigators and Trial Lawyers
for *Los Angeles Business Journal* Leaders of
Influence goes to...**



**Geoffrey
Sheldon**



**Brian
Walter**

Congratulations!



Congrats to all Super Lawyers and Rising Stars!



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Rising Stars



Tony Carvalho



Abigail Clark



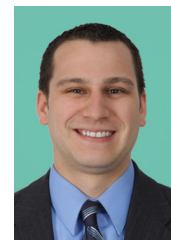
Erin Kunze



Matthew Nakano



N. Richard Shreiba



Michael Youril



Megan Atkinson

MANAGEMENT TRAINING WORKSHOPS

Firm ActivitiesConsortium Training

- Aug. 12** **“Managing COVID-19 Issues: Now and What’s Next”**
San Gabriel Valley ERC | Webinar | Alexander Volberding
- Aug. 12** **“Managing COVID-19 Issues: Now and What’s Next”**
South Bay ERC | Webinar | Alexander Volberding
- Aug. 13** **“Managing COVID-19 Issues: Now and What’s Next”**
Central Valley ERC | Webinar | Alexander Volberding
- Aug. 13** **“Managing COVID-19 Issues: Now and What’s Next”**
East Inland Empire ERC | Webinar | Alexander Volberding
- Aug. 13** **“Managing COVID-19 Issues: Now and What’s Next”**
Gateway Public ERC | Webinar | Alexander Volberding
- Aug. 13** **“Managing COVID-19 Issues: Now and What’s Next”**
Imperial Valley ERC | Webinar | Alexander Volberding
- Aug. 19** **“Disaster Service Workers - If You Call Them, Will They Come?”**
Gold Country ERC | Webinar | Brian J. Hoffman
- Aug. 20** **“Managing COVID-19 Issues: Now and What’s Next”**
LA County HR Consortium | Webinar | Alexander Volberding
- Aug. 27** **“Supervisor’s Guide to Understanding and Managing Employees’ Rights - Labor, Leaves and Accommodations”**
North San Diego County ERC | Webinar | Laura Drottz Kalty
- Aug. 27** **“Supervisor’s Guide to Understanding and Managing Employees’ Rights: Labor, Leaves and Accommodations”**
San Joaquin Valley ERC | Webinar | Laura Drottz Kalty
- Aug. 27** **“Supervisor’s Guide to Understanding and Managing Employees’ Rights: Labor, Leaves and Accommodations”**
San Mateo County ERC | Webinar | Laura Drottz Kalty
- Sep. 3** **“Maximizing Performance Through Evaluation, Documentation and Corrective Action”**
NorCal ERC | Webinar | Heather R. Coffman
- Sep. 3** **“Maximizing Performance Through Evaluation, Documentation and Corrective Action”**
Sonoma/Marin ERC | Webinar | Heather R. Coffman
- Sep. 9** **“Maximizing Performance Through Evaluation, Documentation And Corrective Action”**
North State ERC | Webinar | Monica M. Espejo
- Sep. 9** **“Managing COVID-19 Issues: Now and What’s Next”**
Ventura/Santa Barbara ERC | Webinar | Peter J. Brown & Alexander Volberding
- Sep. 9** **“Maximizing Performance Through Evaluation, Documentation And Corrective Action”**
San Gabriel Valley ERC | Webinar | Monica M. Espijo
- Sep. 10** **“Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor”**
Gateway Public ERC | Webinar | Che I. Johnson

- Sep. 10** **“Maximizing Supervisory Skills for the First Line Supervisor - Part 1”**
San Diego ERC | Webinar | Kristi Recchia
- Sep. 10** **“Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor”**
Imperial Valley ERC | Webinar | Che I. Johnson
- Sep. 10** **“Maximizing Supervisory Skills for the First Line Supervisor - Part 1”**
Mendocino County ERC | Webinar | Kristi Recchia
- Sep. 10** **“Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor”**
Monterey Bay ERC | Webinar | Che I. Johnson
- Sep. 10** **“Maximizing Supervisory Skills for the First Line Supervisor - Part 1”**
San Joaquin Valley ERC | Webinar | Kristi Recchia
- Sep. 15** **“Moving into the Future”**
San Mateo County ERC | Webinar | Erin Kunze
- Sep. 16** **“Moving Into The Future”**
Central Coast ERC | Webinar | T. Oliver Yee
- Sep. 16** **“Maximizing Supervisory Skills for the First Line Supervisor Part 1”**
Coachella Valley ERC | Webinar | Kristi Recchia
- Sep. 16** **“Moving Into The Future”**
Central Valley ERC | Webinar | T. Oliver Yee
- Sep. 16** **“Maximizing Supervisory Skills for the First Line Supervisor - Part 1”**
Gold Country ERC | Webinar | Kristi Recchia
- Sep. 16** **“Maximizing Supervisory Skills for the First Line Supervisor - Part 1”**
Humboldt County ERC | Webinar | Kristi Recchia
- Sep. 17** **“The Future is Now: Embracing Generational Diversity and Succession Planning”**
East Inland Empire ERC | Webinar | Danny Y. Yoo
- Sep. 17** **“Management Guide to Public Sector Labor Relations”**
Bay Area ERC | Webinar | Richard Bolanos
- Sep. 17** **“The Future is Now: Embracing Generational Diversity and Succession Planning”**
Orange County Consortium | Webinar | Danny Y. Yoo
- Sep. 17** **“Management Guide to Public Sector Labor Relations”**
West Inland Empire ERC | Webinar | Richard Bolanos
- Sep. 23** **“Leaves, Leaves and More Leaves”**
South Bay ERC | Webinar | Danny Y. Yoo
- Sep. 23** **“Leaves, Leaves and More Leaves”**
Ventura/Santa Barbara ERC | Webinar | Danny Y. Yoo
- Sep. 24** **“Maximizing Supervisory Skills for the First Line Supervisor - Part 1”**
Napa/Solano/Yolo ERC | Webinar | Kristi Recchia
- Sep. 24** **“Maximizing Supervisory Skills for the First Line Supervisor - Part 1”**
North San Diego County ERC | Webinar | Kristi Recchia

Sep. 24 **“Maximizing Supervisory Skills for the First Line Supervisor - Part 1”**
West Inland Empire ERC | Webinar | Kristi Recchia

Sep. 30 **“CALPERS Disability Retirement - Everything You Always Wanted to Know”**
San Diego Fire Districts | Webinar | Frances Rogers

Customized Training

Our customized training programs can help improve workplace performance and reduce exposure to liability and costly litigation. For more information, please visit www.lcwlegal.com/events-and-training.

Aug. 18 **“Key Legal Principles for Public Safety Managers - POST Management Course”**
Peace Officer Standards and Training - POST | San Diego | Frances Rogers

Aug. 26 **“Ethics in Public Service”**
CJPRMA | Webinar | Heather R. Coffman

Aug. 26 **“The Brown Act”**
San Luis Obispo County Integrated Waste Management Authority | Webinar | Heather R. Coffman

Aug. 27 **“Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor”**
California District Attorneys Association | Webinar | Michael Youril

Aug. 27 **“Freedom of Speech and The Right to Privacy In Public Safety”**
California District Attorneys Association | Webinar | Mark Meyerhoff

Sep. 1 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
California District Attorneys Association | Webinar | Michael Youril

Sep. 2 **“Unconscious Bias”**
City of Gilroy | Webinar | Suzanne Solomon

Sep. 9 **“Key Legal Principles for Public Safety Managers - POST Management Course”**
Peace Officer Standards and Training - POST | San Diego | Frances Rogers

Sep. 22 **“Key Legal Principles for Public Safety Managers - POST Management Course”**
Peace Officer Standards and Training - POST | San Diego | Stefanie K. Vaudreuil

Sep. 23 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
County of San Luis Obispo | Webinar | Christopher S. Frederick

Sep. 24 **“Employee Rights: MOUs, Leaves and Accommodations”**
City of Santa Monica | Laura Drottz Kalty

Speaking Engagements

Aug. 20 **“Understanding the Legal Impacts of AB 5 on the Use of Independent Contractors”**
California Society of Municipal Finance Officers (CSMFO) Webinar | Webinar | T. Oliver Yee

Sep. 23 **“Employment Law: Disciplining Police Officers”**
International Municipal Lawyers Association (IMLA) Virtual Annual Conference | Webinar | J. Scott Tiedemann & James E. Brown

Seminars/Webinars

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

Sep. 23 **“Labor Relations for Public Safety Executives in Times of Crisis”**
Liebert Cassidy Whitmore | Webinar | Adrianna E. Guzman & Laura Drottz Kalty

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