LCW Liebert Cassidy Whitmore

Client Update

News and developments in employment law and labor relations for California Public Agencies.

October 2018

INDEX

LCW NEWS

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

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FLSA

LCW Attorneys Win Dismissal of Two FLSA Collective Action Lawsuits.

Liebert Cassidy Whitmore attorneys succeeded in decertifying two Fair Labor Standards Act (FLSA) cases brought by approximately 2,500 City of Los Angeles police officers seeking overtime pay for a 13-year period. This victory means that the City will not incur the tremendous costs that would have been required to proceed to trial on these two collective action lawsuits.

An employer is liable for FLSA overtime worked if the employer has actual or constructive knowledge that FLSA overtime work is occurring. In this case, the police officers claimed that the City's Police Department knew or should have known that they were working uncompensated overtime. The Department argued that it had no knowledge that its officers were not following its overtime policy.

Both sides in these two cases agreed that the Department maintained a written, widely-disseminated FLSA-compliant policy that required officers to accurately report all overtime worked in six minute increments, whether or not the overtime was approved in advance by a supervisor. The policy further provided that failure to report overtime could result in discipline. The Department's evidence showed that it had paid 330,000 reports for overtime worked in amounts of less than one hour during the relevant time period, including 64,000 such reports from the police officers who opted into these lawsuits.

Nevertheless, the officers claimed that the Department maintained an unwritten policy of requiring them to perform extra work, while discouraging or rejecting their claims for small amounts of overtime pay for less than one hour of overtime worked. Following extensive discovery and exchange of information between the parties, the federal trial court granted the City's motion to decertify these FLSA collective actions and dismissed the officers' claims. The officers appealed the decertification to the Ninth Circuit.

LCW Welcomes New Partners!

Liebert Cassidy Whitmore is pleased to announce Linda Adler, Jennifer Rosner, and Max Sank have been named partners.
For more information, turn to page 9

Under the FLSA, multiple employees cannot join together in a collective action unless they are "similarly situated." The FLSA does not define the "similarly situated" standard, and the Ninth Circuit decided that the standards other circuit courts used to assess whether employees were similarly situated were vague and not useful. The Ninth Circuit reasoned that a standard similar to that used for a motion for summary judgment should apply to decertify a collective action if the basis for the collective action is also the basis for the FLSA claim. In these two collective actions, the basis for the officers' FLSA claim was also the basis for their claim that they were similarly situated -- namely, that the Department had an unwritten policy that discouraged the reporting overtime work of less than one hour.

The volume of evidence presented was significant. The Ninth Circuit described the Department's evidence of FLSA compliance as "overwhelming". The Department's evidence included a statistical analysis of the 6.6 million overtime reports that the officers submitted during the 13 years at issue in the case. The officers' evidence included 232 declarations describing their individual experiences, but the officers failed to tie their individual experiences to the work force generally. Only a few of the declarations identified specific instances when officers were discouraged from claiming overtime. The officers did not present any evidence of any directives, conversations, or emails from Department leadership to supervisors to communicate any policy that contradicted the Department's well-known policy on reporting all overtime worked in six minute increments.

The Ninth Circuit found that the officers failed to prove that any unwritten policy discouraging overtime reporting existed at a Department-wide level. The Ninth Circuit decided that no reasonable trier of fact could conclude that the Department fostered or tolerated a tacit policy of non-compliance with the FLSA, given the Department's overwhelming evidence of compliance with its valid FLSA overtime policy, and dismissed the officers' two collective lawsuits.

Campbell v. City of Los Angeles, Case No. 15-56990, 2018 WL 4354379 (9th Cir. Sept. 13, 2018).

NOTE:

LCW attorneys **Brian P. Walter**, **Geoffrey S. Sheldon**, **David A. Urban**, *and* **Danny Y. Yoo** *successfully represented the City of Los Angeles in this case. LCW has a very deep bench of exceptional attorneys who know how to handle complex and multi-party litigation or grievances in a cost-effective way.*

DISABILITY

Employer Must Pay Cost of Medical Testing It Required of an Applicant with Perceived Disability.

Russell Holt applied for a position with the BNSF Railway Company ("BNSF") and received a conditional job offer. As part of the application process, BNSF required Holt and other applicants to undergo a medical exam. Holt's exam revealed he had injured his back several years earlier. In response to BNSF's request for additional information, Holt submitted his medical records and a note from his medical provider which stated that Holt was able to function normally. BNSF's medical representative requested further information, including a current MRI of Holt's back.

When Holt learned that an MRI costs more than $2,500, he requested that BNSF waive the MRI requirement. BNSF informed Holt that he would not be hired without the MRI, and rescinded its job offer when Holt did not provide one. Holt filed an EEOC complaint alleging that BNSF violated Americans With Disabilities Act (ADA) restrictions on the use of medical exams.

The ADA generally prohibits employers from discriminating against a qualified individual on the basis of disability in regard to job application procedures or hiring and other terms, conditions, and privileges of employment.

The issues decided in this case were whether Holt had a disability as defined in the ADA, and whether BNSF discriminated against Holt because of his disability. The parties did not dispute that Holt was qualified.

First, the Ninth Circuit found that BNSF perceived Holt as an individual with a physical impairment – a back injury. The ADA's definition of "perceived impairment" encompasses "situations where an employer assumes an employee has an impairment or disability." In this case, BNSF requested that Holt complete an MRI examination because of his back condition, conditioned his employment offer on completion of the MRI, and treated him like an applicant whose MRI revealed a physical impairment. Therefore, Holt had a perceived disability as defined in the ADA.

Next, the court found that although the ADA is silent on the issue, the ADA nonetheless requires employers, and not employees, to pay the cost of post-offer, pre-employment medical testing of an applicant with a perceived impairment. The court noted that an employer would not violate the ADA if it required all applicants receiving a conditional offer to participate in follow up medical testing at their own expense. But requiring an applicant with a perceived disability to shoulder the cost of follow up testing imposes "an additional financial burden on a person with a disability because of that person's disability." In that scenario, the ADA requires the employer to bear the cost of the additional testing.

This approach is consistent with the ADA's requirement that employers pay for reasonable accommodations, unless doing so creates an undue hardship. BNSF discriminated against Holt because of his perceived lower back impairment when it required him, and not all other applicants, to undergo further medical testing at his own expense. This is the case whether the follow up testing is inexpensive or would be a significant cost to the applicant.

Finally, the court rejected BNSF's argument that the company was simply attempting to confirm the condition of Holt's back through the MRI. ADA regulation 12112 allows employers to require post-offer medical exams, and allows employers to condition an offer upon the results of the exam, but states that these medical exams can only be given if "all entering employees are subjected to such an examination regardless of disability." BNSF's treatment of Holt did not meet these requirements.

Thus, the Ninth Circuit affirmed the trial court order granting summary judgment in favor of Holt, and finding BNSF liable for disability discrimination.

EEOC v. BNSF Railway Company, 2018 WL 4100185, as amended (9th Cir. Sept. 12, 2018).

Note:

Agencies should pay for post-offer, pre-employment medical testing that does not apply to all job applicants. Be sure to follow the reasonable accommodation process by considering all accommodations that may be available to an applicant with an actual or perceived disability. The employer should document the reason why the accommodation is or is not reasonable.

Employee Had to Prove to the Jury that a Reasonable Accommodation Was Available.

Danny Snapp worked for Burlington Northern Santa Fe Railway Co. ("BNSF") as a trainmaster. However, after being diagnosed with sleep apnea, and undergoing two failed surgeries to correct the condition, a fitness for duty evaluation determined Snapp was totally disabled. Snapp took a disability leave for approximately five years until his disability benefits were discontinued for lack of evidence of a continuing disability. Snapp did not request reinstatement

or request a reasonable accommodation during this time but instead demanded that BNSF reinstate his disability benefits. BNSF informed Snapp that he had 60 days to secure a position consistent with BNSF's long term disability program. After he failed to do so, BNSF terminated Snapp's employment.

Snapp sued BNSF, claiming the company failed to accommodate his alleged disability in violation of the Americans with Disabilities Act ("ADA"). At trial, the jury decided in favor of BNSF, finding no disability discrimination occurred.

On appeal the Ninth Circuit affirmed the jury's determination and rejected Snapp's claim that BNSF was responsible for proving that no reasonable accommodation was available to Snapp. The Ninth Circuit confirmed that to prevail at trial, an employee alleging disability discrimination due to the employer's alleged failure to accommodate must prove: 1) that the employee is a qualified individual; 2) the employer received notice of the employee's disability; and 3) a reasonable accommodation was available that would not create an undue hardship for the employer. Thus, Snapp's claim that it was BNSF's burden to prove a reasonable accommodation was available in order to avoid liability failed. The Ninth Circuit affirmed the jury's decision in favor of BNSF.

Snapp v. BNSF Railway Company, 889 F.3d 1088 (9th Cir. 2018).

NOTE:

California's Fair Employment and Housing Act (FEHA) provides employees and applicants greater rights than the ADA does. The FEHA, unlike the ADA, makes it unlawful for the employer to fail to provide an interactive process. Under the ADA, there is no stand alone cause of action for failure to provide an interactive process; there is only liability if a reasonable accommodation was possible and the employer did not provide it. California employers must provide an interactive process upon an appropriate request to avoid liability.

FIRST AMENDMENT

Last Chance Agreement Violated Public Employee's Free Speech Rights.

Thelma Barone began working as a Community Service Officer ("CSO") for the City of Springfield Police Department in 2003. She served as a victim advocate and as a Department liaison to the City's minority communities. She received and reported community member complaints to the Department leadership. Latino community members repeatedly complained to Barone about alleged racial profiling in the Department and the number of complaints increased beginning in 2013. In 2014, the Department investigated Barone for two incidents of alleged misconduct – whether she: 1) improperly allowed students to take photos in restricted areas of the Department during a tour; and 2) appropriately relayed a report of a potential crime.

In 2015, Barone attended a Department-sponsored community outreach event entitled "Come Meet Thelma Barone from the Springfield Police Department." Barone was in uniform and being paid for her time. Her supervisor also attended. A citizen asked whether Barone was aware of increasing complaints of racial profiling – Barone responded that she "had heard such complaints."

A week after the event, the Department placed Barone on administrative leave for alleged dishonesty during the investigation of the photo and crime report incidents. Ultimately, Barone was placed on administrative leave for her conduct, suspended without pay and asked to sign a Last Chance Agreement ("LCA"). The LCA terms stated:

"…Employee will not speak or write anything of a disparaging or negative manner related to the Department/Organization/City of Springfield or its Employees. Employee is not prohibited from bringing forward complaints she reasonably believes involves discrimination or profiling by the Department."

When Barone refused to sign the LCA, the Department terminated her employment. Barone sued, claiming that she was terminated in retaliation for exercising her First Amendment right to free speech at the community meeting, and that the LCA was an unlawful prior restraint (or restriction) on her right to speak.

The Ninth Circuit agreed with the federal trial court that Barone's comments at the event were made in her capacity as a public employee, and therefore were not protected by the First Amendment. It was significant that Barone was at the event as a Department representative, had special access to the event because of her position, spoke about complaints she regularly received in the course of her duties, and attended in uniform and for pay. Because Barone commented in her role as a public employee, and not as a private individual, the Department could lawfully discipline Barone for the comments she made at the event.

However, the Ninth Circuit found that the terms of the very broad Last Chance Agreement violated Barone's rights to free speech as a private citizen speaking on matters of public concern. The LCA restricted Barone from speaking on topics unrelated to her job duties, and topics of concern to the general public, such as: City or Department misconduct, "the City's services, employees, or elected officials …cleanliness, water quality, or tax and revenue policies." The part of the LCA that excluded complaints of discrimination or profiling was insufficient to address this problem. The court noted an employer may unlawfully restrict First Amendment protected speech even if the employer does not intend to do so. The key question is whether an employee would understand a policy or restriction to prohibit protected speech, and not whether a public employer actually intended to restrict the speech.

Thus, the Ninth Circuit affirmed the trial court's finding that the Department did not retaliate against Barone for her comments at the community outreach event in violation of the First Amendment, but that the LCA was an unlawful restriction on speech.

Barone v. City of Springfield, Oregon, (No. 17-35355) 902 F. 3d 1091 (9th Cir. 2018).

NOTE:

Public employees have a First Amendment right to speak out on matters of public concern in their roles as private citizens. Any rule or agreement that limits a public employee from communicating must be carefully drafted to allow a public employee to speak out as a private citizen on matters of public concern.

AGE DISCRIMINATION

County's Restructuring of Retiree Medical Premiums Was Not Age Discrimination.

The Ninth Circuit Court of Appeals decided that Orange County did not violate the Fair Employment and Housing Act (FEHA) by restructuring its retiree medical premium program to address unfunded liability in a way that was less advantageous to retirees receiving medical benefits.

In 2006, Orange County restructured two aspects of its retiree medical benefits – its "Retiree Premium Subsidy," and its Grant Benefit. Prior to 2006, the County subsidized retiree medical benefit premiums by combining retired and active employees into a single pool. This approach effectively lowered the premium that retirees paid than what retirees would have paid had they been maintained in a separate pool. The County also provided retirees with a monthly grant to defray the cost of coverage. However, to address unfunded liability of its retiree medical benefits program, the County negotiated the separation of active employees and retirees into separate pools and reduced the Grant Benefit.

A class of retirees sued the County, claiming: 1) that the County's actions violated an implied contractual agreement to provide retirees with a lifetime Grant Benefit and deprived them of a vested employment benefit; and 2) that elimination of the premium subsidy, by virtue of separating active employees and retirees into separate premium pools, constituted age discrimination in violation of the FEHA.

On the first issue, the Ninth Circuit found that the retirees' lawsuit supported a claim of an implied County agreement to provide retirees with a lifetime Grant Benefit. State contract law principles applied, and "under California law, a vested right to health benefits for retired county employees can be implied under certain circumstances from a county ordinance or resolution." *Retired Emps. Ass'n of Orange Cty., Inc. v. Cty. of Orange* (REAOC III), 52 Cal. 4th 1171, 1194 (2011).

The retirees relied on the part of the MOU that stated that an eligible retiree "shall receive" a Grant Benefit. The retirees further alleged that they had an implied contractual right to continue receiving the Grant Benefit throughout retirement. The retirees cited: an agreement to allow the County to access surplus investment earnings in exchange for providing the Grant Benefit; the fact that active employees were required to contribute a portion of their wages to fund the Grant Benefit; and an MOU rebate provision allowing active employees to recoup their wage contributions upon separation before becoming eligible for the Grant Benefit. The court cited its decision in Sonoma Cty. *Ass'n of Retired Emps. v. Sonoma Cty.*, 708 F.3d 1109 (9th Cir. 2013) which stated that once a retiree identifies "an express contract covering the substance of a benefit, it may rely on extrinsic evidence to prove the existence of an implied term requiring the continuation of that benefit in perpetuity." The court found the retirees met this standard and allowed their contract claim to proceed.

On the second issue, the court found that the County's changes to retiree health benefits did not violate the FEHA. The court interpreted the FEHA definition of "employee" broadly to include already retired employees, and found that "changes in retirees' health benefits are covered by the FEHA." But the court found that the County did not discriminate against retirees because of their age. The County simply treated "retirees as a group differently, with regard to medical benefits, than employees as a group taking into account that the cost of providing medical benefits to the retiree group is higher because the retirees are on average older." The Ninth Circuit found that the County's treatment of retirees was based on pension status (which correlated to age), and was not motivated by the age of the pensioner.

Thus, the Ninth Circuit allowed the retirees' contract claim to proceed but affirmed the trial court order dismissing the retirees' FEHA claim.

Harris v. County of Orange, 902 F.3d 1061 (9th Cir. 2018).

BACKGROUND CHECKS

California Supreme Court Confirms Validity of Two Background Check Laws.

The California Supreme Court confirmed that employers can, and must, comply with two California laws governing job applicant consumer reports (or background checks): the Investigative Consumer Reporting Agencies Act ("ICRAA"); and the Consumer Credit Reporting Act ("CCRA"). The case addressed similarities and differences between these two laws, and clarified that employers must comply with both laws when applicable.

The ICRAA defines a "consumer report" as a report on an individual's character, general reputation, personal characteristics and similar information. Among other things, the ICRAA requires that an employer that procures such information from job applicants or existing employees must certify that: 1) the employer has provided the individual who is the subject of the report with a clear notice that discloses the requirements of the ICRAA; and 2) the subject of the report authorized the report in writing.

The CCRA defines "consumer report" as any communication by a consumer reporting agency bearing on credit worthiness, credit standing, or credit capacity that is "used or is expected to be used . . . for . . . employment purposes" but excludes reports that are based "solely on …character…reputation, personal characteristics…obtained through personal interviews with neighbors, friends or associates…"

The court found that both statutes apply to reports containing information about character and creditworthiness when the reports are based on public information and interviews, and are used for employment background check purposes.

In this case, Eileen Connor worked as a school bus driver with Laidlaw Education Services which was later acquired by First Student. When First Student conducted background checks on Connor and other employees, the employees sued, claiming that First Student did not provide them with the notice required by the ICRAA. In its defense, First Student argued that because of overlap between the two statutes, the ICRAA was unconstitutionally vague and should not be enforced. Rejecting this argument, the Court found that the requirements of both statutes are sufficiently clear, and each regulates information that the other does not. The Court concluded that both statutes applied to the report on Connor, and First Student must comply with both.

Connor v. First Student, 5 Cal.5th 1026 (2018).

Note:

The Supreme Court's decision resolves conflicting decisions issued by California's appellate divisions and makes clear that if there is potential overlap between the ICRAA and CCRA, and the substance of a consumer report relates to creditworthiness and character, an employer may be required to comply with both statutes. LCW's earlier discussion of the Court of Appeals decision in Connor v. First Student *is available here:* **https://www.lcwlegal.com/news/company-hired-to-conduct-background-checks-and-employer-that-hired-company-were-required-to-comply-with-notice-requirements-of-investigative-consumer-reporting-agencies-act-2**.

CONSORTIUM CALL OF THE MONTH

Members of Liebert Cassidy Whitmore's employment relations consortiums may speak directly to an LCW attorney free of charge regarding questions that are not related to ongoing legal matters that LCW is handling for the agency, or that do not require in-depth research, document review, or written opinions. Consortium call questions run the gamut of topics, from leaves of absence to employment applications, disciplinary concerns to disability accommodations, labor relations issues and more. This feature describes an interesting consortium call and how the question was answered. We will protect the confidentiality of client communications with LCW attorneys by changing or omitting details.

Issue: An agency manager had a question regarding FLSA overtime exemptions. The manager explained that certain exempt employees work a 9-80 schedule and work up to nine hours during their shifts. Agency holidays are paid at 8 hours per holiday. The agency requires exempt employees who work a 9-80 schedule to use one hour of accrued paid vacation time during holidays in order to receive nine hours of holiday pay. The manager wished to know whether this practice compromises the employees' FLSA exempt status. The applicable MOU and agency policies did not address this issue.

Answer: The attorney noted that to be exempted from FLSA overtime pay requirements, an employee must meet both the salary basis test and duties test of the relevant FLSA exemption. The salary basis test is met if the employee regularly receives, each pay period, a predetermined amount of pay that is not subject to deductions based on variations in the in the amount or quality of work performed. In other words, if the employee performs any work in a work period, the employee must receive his or her full salary regardless of the number of days or hours worked, unless an exception to this rule

applies. The attorney noted making a reduction from paid leave (as opposed to salary) does not violate the FLSA salary test. Thus, the agency's practice would not destroy the exempt status of employees working a 9-80 schedule, so long as the other requirements of the FLSA overtime exemption are met.

BENEFITS CORNER

ACA Reporting – IRS Releases 2018 Drafts: Forms 1094, 1095 and Instructions

Applicable Large Employers and Employers who offer self-insured health plans must comply with information reporting required by the Affordable Care Act. See our prior article: **https://www.calpublicagencylaboremploymentblog.com/healthcare/irs-extends-affordable-care-act-reporting-deadlines/**.

The new draft forms may be found here:

Draft Form 1094B **https://www.irs.gov/pub/irs-dft/f1094b--dft.pdf**
Draft Form 1095B **https://www.irs.gov/pub/irs-dft/f1095b--dft.pdf**
Draft Form 1094C **https://www.irs.gov/pub/irs-dft/f1094c--dft.pdf**
Draft Form 1095C **https://www.irs.gov/pub/irs-dft/f1095c--dft.pdf**

Draft Form B Instructions https://www.irs.gov/pub/irs-dft/i109495b--dft.pdf
Draft Form C Instructions https://www.irs.gov/pub/irs-dft/i109495c--dft.pdf

The Forms have not changed significantly from last year. Employers must provide statements to employees (or copies of the Forms) to each employee for whom the employer intends to file a Form 1095, to such employees by March 2, 2018. For calendar year 2018, Forms 1094 and 1095 must be filed by February 28, 2019, or April 1, 2019, if filing electronically.

Health FSA's and the $500 Carryover Option

Recently, the IRS issued an Information Letter confirming the carryover rules for Health Flexible Spending Arrangements, or Health FSAs. The Information Letter is available at: **https://www.irs.gov/pub/irs-wd/18-0012.pdf**.

As a reminder, a Health FSA is an employer-owned account that employees can contribute to on a pre-tax basis in order to pay for eligible healthcare expenses. It is an employee benefit that may be offered under a Section 125 cafeteria plan.

Employee contributions to a Health FSA are subject to an annual cap, which for 2018 is $2,650. Unused funds are forfeited to the employer at the end of each calendar year, except that an employer has the option to offer employees one of the following in its Section 125 plan documents:

- A grace period of 2.5 months (extending the deadline to use the FSA funds until March 15 of the following year); or
- A carryover of the unused FSA balance, up to $500, to be used in the following year.

The IRS's Information Letter pertains to the second of these options. The IRS issued the letter in response to a request that "the [carryover] rules be changed to allow savings to be accumulated in these accounts over several years." The IRS responds that "Health FSAs can provide for the carryover of unused amounts on a limited basis." The IRS notes that, "[a]t its option, an employer can include a provision in a health FSA that allows amounts unused at the end of the plan year to be carried over to the next year up to $500." In the letter, the IRS also distinguishes Health FSAs from health savings accounts (HSAs) and Health Reimbursement Arrangements (HRAs), which do permit funds to be accumulated into later years to pay for certain medical expenses.

Employers looking to provide employees some relief from automatic forfeiture of their unused Health FSA contributions at the end of each year might consider updating their plan documents to allow a grace period of 2.5 months or a carryover of $500 into the following year.

Linda Adler Jennifer Rosner Max Sank

OUR NEW PARTNERS

Liebert Cassidy Whitmore (LCW) is pleased to announce that Linda Adler, Jennifer Rosner and Max Sank have been named Partner effective October 1, 2018.

"We are extremely proud to welcome this group to the partnership," said J. Scott Tiedemann, Managing Partner of LCW. "Linda, Jennifer and Max are experts in their respective areas of law and embody the qualities that our clients expect from LCW. We are very fortunate to call them our partners and look forwards to their contributions for years to come."

Linda Adler advises on business and risk management practices and policies in the areas of preventing harassment claims, student discipline and expulsion, faculty and staff discipline and termination, equal employment opportunity law compliance, and contracts. She also regularly conducts training classes for faculty, staff and administrators on sexual harassment, discrimination, retaliation and disability accommodations. Adler received her JD from Santa Clara School of Law.

Jennifer Rosner is a prolific litigator with experience in lawsuits involving discrimination, harassment and retaliation, disciplinary and due process issues. She has been successful in obtaining summary judgments on behalf of clients in both state and federal court and has extensive appellate and administrative appeal experience. Rosner also works closely with local agencies on every facet of the disability accommodation process and is a sought-after speaker on topics such as disability and the interactive process, managing the marginal employment, the Fair Labor Standards Act (FLSA), harassment, discrimination and retaliation. Rosner received her JD at Loyola Marymount University School of Law.

Max Sank's areas of expertise include the interactive process and reasonable accommodations for employees and students, workplace and student investigations, employment/enrollment agreements (including arbitration agreements), and student discipline. He is passionate about advising clients on employment law and student matter issues to help them avoid disputes when possible. Sank is also one of the firm's top litigators and has successfully defended schools in matters brought by employees and students, such as racial harassment, age discrimination, and breach of employment and enrollment agreements. Sank received his JD from the University of Southern California School of Law.

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LCW LIEBERT CASSIDY WHITMORE

REGULAR RATE OF PAY: MAKING IT SIMPLE

REGISTRATION IS NOW OPEN!

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

Thursday, November 15, 2018 in Buena Park
Buena Park Community Center
6688 Beach Blvd.
Buena Park, CA 90621

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

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

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

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

Register TODAY!
https://www.lcwlegal.com/events-and-training/webinars-seminars

Management Training Workshops

Firm Activities

Consortium Training

Oct. 3	**"Labor Negotiations from Beginning to End" and "Leaves, Leaves and More Leaves"** Central Coast ERC | Santa Maria | Che I. Johnson
Oct. 3	**"Public Service: Understanding the Roles and Responsibilities of Public Employees"** Monterey Bay ERC | Webinar | Heather R. Coffman
Oct. 4	**"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"** Gateway Public ERC | Commerce | Danny Y. Yoo
Oct. 4	**"The Future is Now – Embracing Generational Diversity and Succession Planning"** Gold Country ERC | Rancho Cordova | Jack Hughes
Oct. 4	**"Maximizing Supervisory Skills for the First Line Supervisor"** Mendocino County ERC | Ukiah | Kristin D. Lindgren
Oct. 10	**"Moving Into the Future" and "The Art of Writing the Performance Evaluation"** NorCal ERC | San Ramon | Lisa S. Charbonneau
Oct. 10	**"Public Sector Employment Law Update" and "Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"** San Gabriel Valley ERC | Alhambra | Geoffrey S. Sheldon
Oct. 11	**"Preventing Workplace Harassment, Discrimination and Retaliation"** LA County HR Consortium | Los Angeles | Jolina A. Abrena & Elizabeth Tom Arce
Oct. 16	**"Maximizing Supervisory Skills for the First Line Supervisor"** Bay Area ERC | Sunnyvale | Kelly Tuffo
Oct. 16	**"Leaves, Leaves and More Leaves"** San Mateo County ERC | Webinar | Danny Y. Yoo
Oct. 17	**"Preventing Workplace Harassment, Discrimination and Retaliation"** Orange County Consortium | Buena Park | Jenny-Anne S. Flores
Oct. 17	**"A Guide to Implementing Public Employee Discipline"** South Bay ERC | Palos Verdes Estates | Jennifer Rosner
Oct. 17	**"Maximizing Supervisory Skills for the First Line Supervisor"** Ventura/Santa Barbara ERC | Camarillo | Kristi Recchia
Oct. 18	**"Supervisor's Guide to Public Sector Employment Law" and "A Guide to Implementing Public Employee Discipline"** San Joaquin Valley ERC | Lodi | Jack Hughes
Oct. 18	**"Maximizing Supervisory Skills for the First Line Supervisor"** West Inland Empire ERC | Rancho Cucamonga | Kristi Recchia
Oct. 25	**"The Art of Writing the Performance Evaluation"** Mendocino County ERC | Ukiah | Jack Hughes
Nov. 1	**"The Future Is Now - Embracing Generational Diversity and Succession Planning" and "Moving Into the Future"** Monterey Bay ERC | Morgan Hill | Drew Liebert

Nov. 1	**"Maximizing Supervisory Skills for the First Line Supervisor"** South Bay ERC | Redondo Beach | Kristi Recchia
Nov. 6	**"Accommodating Bad Behavior: The Limits on Disciplining Disabled Employees"** Imperial Valley ERC | El Centro | Laura Drottz Kalty
Nov. 6	**"Privacy Issues in the Workplace"** San Mateo County ERC | Webinar | T. Oliver Yee
Nov. 7	**"Managing the Marginal Employee" and "Maximizing Performance Through Evaluation, Documentation and Discipline"** Bay Area ERC | Campbell | Michael J. Le & Suzanne Solomon
Nov. 7	**"Maximizing Performance Through Evaluation, Documentation and Discipline" and "A Guide to Implementing Public Employee Discipline"** Central Valley ERC | Fresno | Michael Youril
Nov. 7	**"The Disability Interactive Process" and "The Meaning of At-Will, Probationary, Seasonal, Part-Time and Contract Employement"** Coachella ERC | TBD | Danny Y. Yoo
Nov. 8	**"Workplace Bullying: A Growing Concern" and "Advanced Investigations of Workplace Complaints"** East Inland Empire ERC | Fontana | Laura Drottz Kalty
Nov. 8	**"Moving Into the Future"** Gateway Public ERC | Pico Rivera | Kevin J. Chicas
Nov. 8	**"Difficult Conversations" and "The Art of Writing the Performance Evaluation"** San Diego ERC | La Mesa | Danny Y. Yoo
Nov. 14	**"Moving Into the Future" and "12 Steps to Avoiding Liability"** Central Coast ERC | Arroyo Grande | Jesse Maddox
Nov. 14	**"Labor Negotiations from Beginning to End"** Gold Country ERC | Placerville and Webinar | Gage C. Dungy
Nov. 14	**"An Agency's Guide to Employee Retirement"** Humboldt County ERC | Eureka | Jack Hughes
Nov. 14	**"A Supervisor's Guide to Labor Relations"** Orange County Consortium | Buena Park | Melanie L. Chaney
Nov. 15	**"Prevention and Control of Absenteeism and Abuse of Leave"** Humboldt County ERC | Eureka | Jack Hughes
Nov. 15	**"Labor Code 101 for Public Agencies"** North State ERC | Webinar | Heather R. Coffman
Nov. 15	**"Administering Overlapping Laws Covering Discrimination, Leaves and Retirement"** West Inland Empire ERC | Rancho Cucamonga | Danny Y. Yoo
Nov. 20	**"Employees and Driving" and "The Future is Now: Embracing Generational Diversity and Succession Planning"** North San Diego ERC | Vista | Christopher S. Frederick
Nov. 29	**"Maximizing Supervisory Skills for the First Line Supervisor Part I"** LA County HR Consortium | Los Angeles | Kristi Recchia

Nov. 29 **"Issues and Challenges Regarding Drugs and Alcohol in the Workplace" and "Human Resources Academy"**
Napa/Solano/Yolo ERC | Napa | Michael J. Le & Richard Bolanos

Customizing Training

Oct. 1, 2 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of San Carlos | Heather R. Coffman

Oct. 3 **"Preventing Workplace Harassment, Discrimination and Retaliation and Mandated Reporting"**
East Bay Regional Park District | Oakland | Casey Williams

Oct. 3 **"HR for Non-HR Managers"**
ERMA | Chowchilla | Michael Youril

Oct. 5 **"Ethics in Public Service"**
Merced County | Merced | Che I. Johnson

Oct. 8, 16, 25 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Newport Beach | Christopher S. Frederick

Oct. 8 **"ADA"**
County of Humboldt | Eureka | Heather R. Coffman

Oct. 8 **"Preventing Workplace Harassment, Discrimination and Retaliation and Ethics in Public Service"**
County of Humboldt | Eureka | Lisa S. Charbonneau

Oct. 9 **"Supervisory Skills for the First Line Supervisor"**
City of Glendale | Laura Drottz Kalty

Oct. 11 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Campbell | Casey Williams

Oct. 16 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Carlsbad | Stephanie J. Lowe

Oct. 16 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
East Bay Regional Park District | Oakland | Lisa S. Charbonneau

Oct. 16 **"Performance Management: Evaluation, Discipline and Documentation"**
Fresno County | Bass Lake | Che I. Johnson

Oct. 17 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Pico Rivera | Danny Y. Yoo

Oct. 17 **"Mandated Reporting"**
City of Stockton | Kristin D. Lindgren

Oct. 18 **"Making the Most of Your Multi-Generational Workforce"**
ERMA | Perris | Christopher S. Frederick

Oct. 23 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Glendale | Laura Drottz Kalty

Oct. 23 **"Meet and Confer"**
Port of Stockton | Stockton | Gage C. Dungy

Oct. 25 **"Ethics in Public Service"**
City of La Mesa | Stephanie J. Lowe

Oct. 25	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Los Banos | Gage C. Dungy
Oct. 26	**"Embracing Diversity"** Los Angeles Conservation Corps | Los Angeles | Jennifer Rosner
Oct. 30	**"Preventing Workplace Harassment, Discrimination and Retaliation and Mandated Reporting"** East Bay Regional Park District | Oakley | Lisa S. Charbonneau
Nov. 1	**"MOU's, Leaves and Accommodations"** City of Santa Monica | Laura Drottz Kalty
Nov. 2	**"Ethics in Public Service"** City of Yuba City | Gage C. Dungy
Nov. 6	**"Ethics in Public Service"** Metropolitan Water District of Southern California | Los Angeles | Christopher S. Frederick
Nov. 8	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Tracy | Kristin D. Lindgren
Nov. 13	**"Legal Update"** County of Fresno | Fresno | Shelline Bennett
Nov. 13	**"Legal Aspects of Violence in the Workplace"** City of Glendale | Mark Meyerhoff
Nov. 13	**"Unconscious Bias and Microaggressions"** City of Stockton | Kristin D. Lindgren
Nov. 14	**"Preventing Workplace Harassment, Discrimination and Retaliation and Mandated Reporting"** East Bay Regional Park District | Oakland | Erin Kunze
Nov. 14	**"Bias in the Workplace"** ERMA | Ceres | Kristin D. Lindgren
Nov. 14	**"FLSA"** Los Angeles World Airports (LAWA) | Elizabeth Tom Arce
Nov. 14	**"Public Service: Understanding the Roles and Responsibilities of Public Employees"** Southern California Regional Rail Authority | Los Angeles | Jennifer Rosner
Nov. 15	**"Public Service: Understanding the Roles and Responsibilities of Public Employees"** Southern California Regional Rail Authority | Pomona | Jennifer Rosner
Nov. 16	**"Ethics in Public Service"** City of San Carlos | Lisa S. Charbonneau
Nov. 29	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Glendale | Laura Drottz Kalty

Speaking Engagements

Oct. 10	**"Collective Bargaining in 2018 & Beyond; The Twists & Turns on Things You Need to Know!"** Public Employer Labor Relations Association of California (PELRAC) Annual Conference | Anaheim | Peter J. Brown
Oct. 12	**"Put Your Investigation in the Best Light - Common Areas of Attack in Investigations"** Association of Workplace Investigators (AWI) Annual Conference 2018 | Burlingame | Morin I. Jacob & Megan Lewis

Oct. 19	**"The Significant Impact of Janus v. AFSCME and S.B. 866 on Public Sector Labor Relations"** Municipal Managers Association of Southern California (MMASC) Annual Conference | Indian Wells | Kevin J. Chicas
Oct. 23	**"Public Records Act Requests and Bid Protests from Unsuccessful Bidders"** Association of Chief Business Officials (ACBO) 2018 Fall Conference | Rancho Mirage | Christopher Fallon & Charlie Ng
Oct. 24	**"District Documentation- What to Look For"** California Special District Association (CSDA) | South Lake Tahoe | Che I. Johnson
Oct. 25	**"U.S. Supreme Court Decision in Janus v. AFSCME - Impact and Tips for Counties"** County Counsels' Association of California (CCAC) Employment Law Conference | San Diego | Mark Meyerhoff
Oct. 25	**"Labor and Employment Legal Update"** CCAC Employment Law Conference | San Diego | Mark Meyerhoff
Oct. 26	**"Advanced Workplace Investigations"** CCAC Employment Law Conference | San Diego | Stefanie K. Vaudreuil
Nov. 6	**"HR Boot Camp for Special Districts"** CSDA HR Boot Camp | Sacramento | Gage C. Dungy
Nov. 14	**"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"** California District Attorneys Association (CDAA) Conference | Paso Robles | Michael Youril

Seminars/Webinars

Oct. 1, 2	**"FLSA Academy"** Liebert Cassidy Whitmore Seminar | Piedmont | Richard Bolanos & Lisa S. Charbonneau
Oct. 11	**"The Rules of Engagement: Issues, Impacts & Impasse"** Liebert Cassidy Whitmore | Fullerton | Kristi Recchia & T. Oliver Yee
Oct. 30	**"Bona Fide Plan Assessment & the Cash-In-Lieu Conundrum"** Liebert Cassidy Whitmore | Webinar | Peter J. Brown
Nov. 7	**"Nuts & Bolts of Negotiations"** Liebert Cassidy Whitmore | Citrus Heights | Kristi Recchia & Jack Hughes
Nov. 12	**"Critical Considerations When Changing or Evaluating a New Payroll System"** Liebert Cassidy Whitmore | Webinar | Brian P. Walter
Nov. 13	**"2019 Legislative Update for Public Agencies"** Liebert Cassidy Whitmore | Webinar | Gage C. Dungy
Nov. 15	**"Regular Rate of Pay Seminar"** Liebert Cassidy Whitmore Seminar | Buena Park | Peter J. Brown

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