LCW Liebert Cassidy Whitmore

# Client Update

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

December 2018

## INDEX



## LCW NEWS





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## LABOR RELATIONS

### *Employee's Allegedly Dishonest Comments Are Protected by the MMBA Unless the Employer Can Prove the Employee Knew the Comments Were False.*

Under the Meyers Milias Brown Act ("MMBA"), employee statements related to the terms and conditions of employment are legally protected. They lose the protection of the MMBA only if they are flagrant, defamatory, insubordinate, or made with malice such that they cause a "substantial disruption of or material interference with" an agency's operations.

In this case, the County terminated employee and Union Chief negotiator, Wendy Thomas, because she allegedly made false statements in the course of pending litigation. The County later investigated the statements and found them to be false. The Union then filed an unfair labor practice charge claiming that the statements were protected by the MMBA and that the County unlawfully terminated Thomas in retaliation for her protected activity.

The PERB Board reversed the Administrative Law Judge ("ALJ") decision dismissing the Union's charge. Instead, the Board found that the County had not proven that the employee knew that the statements at issue were false. Thus, PERB found the statements were indeed protected by the Act.

PERB relied on its prior decision in *Chula Vista Elementary School District* (2018) PERB Decision No. 2586, which found that an employer must prove that an employee was knowingly dishonest (that the employee acted with "actual malice"):

> A party claiming employee speech is unprotected [because the speech is false] therefore must prove that (1) the employee's statement was false and (2) the employee made the statement 'with knowledge of its falsity, or with reckless disregard of whether it was true or false.' This standard focuses on the employee's subjective state of mind, not on whether a reasonable person would have investigated before making the statement. Even gross or extreme negligence as to the statement's truth is insufficient to prove the actual malice necessary to strip employee speech of statutory protection.

(internal citations omitted). The employer must prove the employee was dishonest under the "clear and convincing" standard, a higher standard of

proof than the "preponderance of the evidence" standard.

PERB found the evidence did not show that Thomas was intentionally dishonest in making the statements at issue. Among other things, the PERB Board found that in describing her worksite as "remote" and "substandard," Thomas made statements of opinion which PERB did not find to be knowingly false.

Thomas had also stated that her County-issued vehicle had been removed from its usual parking spot even though Thomas had possession of the vehicle keys. The County claimed that Thomas omitted the material fact that the car was inoperable so the keys were not needed.

PERB rejected the ALJ's finding that Thomas' assertion was maliciously false. The evidence confirmed that the County moved Thomas' vehicle without notifying her or asking her for the keys. PERB also reasoned that because Thomas experienced other County actions that she may have viewed as retaliatory, Thomas' assertions more likely reflected her genuine belief that the County's actions were inappropriate.

PERB found that the evidence did not support the County's position that Thomas made these statements knowing that they were false. Therefore, Thomas' statements were indeed protected by the MMBA, and PERB found the County violated the MMBA's prohibitions on retaliation when it terminated her for making these statements.

*SEIU v. County of Riverside*, (2018) PERB Dec. No. 2591-M

***NOTE:***

*As this decision indicates, the MMBA is very protective of employee comments relating to terms and conditions of employment. Proving that an employee's comments lose the protection of the Act because they were intentional or reckless requires clear and convincing evidence that the employee knew the statements to be false. LCW attorneys are available to advise agencies in evaluating whether employee conduct is protected by the MMBA.*

## WAGE AND HOUR

### *No Travel Time Pay for Employees Who Voluntarily Drove Company Vehicles During Commute.*

Pacific Bell Telephone Company ("Pac Bell") employs technicians to install and repair residential video and internet services. Prior to 2009, Pac Bell required all technicians to pick up company vehicles loaded with equipment each day at a Pac Bell garage. Pac Bell paid technicians for time spent picking up the vehicle at the garage, loading it with equipment, and driving to the first work site. Pac Bell also paid technicians for time spent driving from the last customer worksite to the garage at the end of the work day, but did not pay them for time spent traveling to or from the garage and their homes at the start and end of their shifts.

In 2009, Pac Bell created a voluntary "Home Dispatch Program" ("HDP") that gave technicians the option to commute between their homes and work sites using a Pac Bell vehicle. Use of the company vehicle was not mandatory, and technicians had the option to use their own cars instead. Technicians participating in the HDP traveled to the garage once a week to load the Pac Bell vehicle with the necessary tools and equipment. Pac Bell paid technicians for the time spent driving the vehicle to the garage and loading it with equipment on a weekly basis. Technicians could drive the company vehicle home at the end of each work day, and drive from their home to their first work site the next day. Pac Bell did not pay technicians for time spent driving the company vehicle between their homes and work sites at the start or end of the work day.

Several technicians participating in the HDP sued, claiming they were entitled to pay for the time they spent driving a Pac Bell vehicle from their homes to and from their work site. Because Pacific Bell is a private employer, California wage and hour laws governing travel time (not the Fair Labor Standards Act) governed the dispute.

The California Court of Appeal ultimately dismissed the technicians' claims.

First, the Court of Appeal found that because Pac Bell did not *require* employees to participate in the HDP or use a company vehicle, technicians were not under Pac Bell's "control" during their commute between their home and work sites, and were not entitled to be paid for the time.

Pac Bell did place restrictions on technicians' personal activities while they were in a company vehicle. Pac Bell required technicians to use its vehicles only for company business and they could not: carry unauthorized persons as passengers; run errands; pick up or drop off their children; or talk on a cell phone while driving. But the Court found that the restrictions did not establish "control" because the use of the company vehicle was completely voluntary and not required.

The Court of Appeal noted that the California Supreme Court found in *Morillion v. Royal Packing Co.* that "[E]mployers do not risk paying employees for their travel time merely by providing them transportation. Time employees spend traveling on transportation that an employer provides but does not require its employees to use may not be compensable as 'hours worked.'" (2000) 22 Cal.4th 557, 581 (*Morillion*). Because Pac Bell did not require technicians to use company vehicles to travel between their homes and work sites, it was not required to compensate technicians for that time.

Second, the Court of Appeal found that Pac Bell was not obligated to pay technicians merely because technicians transported tools in their vehicles. The technicians claimed that by transporting tools and equipment necessary for their work, they were "suffered or permitted to work," and should be paid for their labor. However, the Court of Appeal found that technicians were merely "commuting with necessary tools in tow," but were not delivering heavy or specialized equipment to their work sites. The former does not require additional time, effort, or exertion beyond what is required for commuting. Thus, time spent driving with equipment was not compensable for this additional reason.

*Isreal Hernandez v. Pacific Bell Telephone Co.* C974359, 2018 WL 5993860 (Cal. App. 3 Dist. Nov. 15, 2018)

***NOTE:***

*The legal standards governing travel time and whether it is compensable, differ and depend upon the legal status of each public agency. The rules for Charter Cities and all Counties are governed by the FLSA. But the travel time rules for general law cities and special districts are governed by California wage and hour laws.*

## DISCRIMINATION

### *Injured Employee Gets a Jury Trial After His Employer Denies Previously Approved Transfer and Requests a Resignation.*

The U.S. Court of Appeals for the Ninth Circuit found that an employee presented enough evidence to survive summary judgment and have his case heard by a jury.

Herman Nunies was a delivery driver for HIE Holdings, Inc. ("HIE"). His job duties included operating a vehicle, loading and unloading five-gallon water bottles, and carrying and lifting heavy items. Nunies allegedly requested, and was approved to be transferred to a part-time warehouse positon, but HIE denied his request and forced him to resign after he reported that he had incurred a shoulder injury. Nunies sued, claiming that HIE had discriminated against him in violation of the ADA, because of a perceived physical disability.

To prevail on his claim of disability discrimination, Nunies was required to present evidence that he was regarded as having a

physical impairment (as defined in the ADA), that he was qualified for the part-time position, and that HIE denied him the transfer and forced him to resign because of the impairment.

An individual is protected by the ADA if the individual is "regarded as" having a physical impairment.

> An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited [by the ADA] because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

The parties disputed whether HIE "regarded" Nunies as an individual with a disability due to his shoulder injury. The trial court granted summary judgment in favor of HIE and dismissed Nunies' claims.

On Nunies' appeal, the Ninth Circuit applied the employee-friendly summary judgment standard that requires a court to view the evidence in the light most favorable to Nunies and reversed summary judgement.

The Ninth Circuit was persuaded by Nunies' evidence that: on June 14th, a supervisor told Nunies that his transfer to a part-time position had been approved; three days later, Nunies informed his supervisor and manager that he injured his shoulder; and two days after learning of the injury, HIE informed Nunies that he could not transfer to a part-time position but must resign due to budget cuts. There was also evidence that on June 26th, HIE posted an opening for a part-time warehouse position. On June 27th, one day after posting the position, HIE's termination report listed Nunies as having "resigned." Thereafter, Nunies was diagnosed with a partial tear of his left shoulder. HIE presented evidence that Nunies requested transfer to a part-time position to have more time to focus on his side business.

Viewing this evidence favorably to Nunies, the court noted that a jury could reasonably conclude that HIE misrepresented that the part-time warehouse position was no longer available. A jury could also reasonably find that HIE forced Nunies to resign because of his shoulder injury given that Nunies' request to transfer to a part-time position was approved, and then rescinded shortly after Nunies reported his injury. Finally, the court noted that under the ADA, an employee need not prove that the employer subjectively believes the employee is substantially limited in a major life activity in order to be protected by the ADA. The trial court was wrong to require Nunies to do so. Thus, the Ninth Circuit reversed the trial court's decision granting summary judgment for HIE and allowed Nunies to try his claims to a jury.

*Nunies v. HIE Holdings*, 908 F.3d 428 (9th Cir. 2018).

## 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 contacted LCW with a question regarding the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), a federal law that ensures that employees are not adversely affected in their

employment when they return to work after completing military service. An employee of the agency took military leave for 60 days and, upon the employee's return to work, requested to be reemployed. The manager wished to know whether the agency may require an employee to provide certain documentation relating to the employee's military leave when the employee requests reemployment.

**Answer:** The attorney noted that USERRA standards relating to reemployment rights vary depending on the nature and duration of an employee's military service. If the employee's period of military service exceeds 30 days, and if the employer requests the employee to provide documentation for reasons permitted by USERRA, the employee must provide the documentation. However, the USERRA only permits requests for documentation to confirm that: timeliness of the employee's reemployment application; the employee has not exceeded the USERRA five-year limit on the duration of service (some exceptions apply); and the employee's discharge from service does not disqualify the employee from USERRA protections. An employer may not delay or deny reemployment by demanding documentation that is not readily available or does not exist. An employer may not impose requirements, beyond USERRA's requirements, that delay or deny reemployment. The attorney noted that while California's Military and Veterans Code does not address documentation, state law also governs military leaves and reemployment rights.

## PUBLIC RECORDS

### *Agency Was Permitted to Recover Costs of Redacting Electronic Public Records.*

The California Court of Appeal found that the California Public Records Act ("CPRA") permits a public agency employer to recover, from the requestor of public records, the actual costs to the agency of redacting information from electronic records in response to a request for electronically stored public records.

In this case, the National Lawyers Guild ("NLG") San Francisco Chapter requested from the City of Hayward ("City") electronic records related to a demonstration for which the City's Police Department provided security. The NLG initially requested 11 categories of records including electronic and paper records. The NLG made a second request for video recordings of police body camera footage from 24 named officers and additional unnamed officers.

The City complied with the NLG's records requests. In response to the first request, the City produced more than six hours of body camera footage. City staff spent approximately 170 hours reviewing and redacting portions of the video that were exempt from disclosure under the CPRA. The task required the City to research and acquire a special software program to edit and redact the video recordings. The City sought reimbursement for $2,939.58 in costs incurred in copying and redacting the videos, including costs for: City staff time spent reviewing and editing/redacting exempt portions of the requested video recordings and costs incurred in copying the videos. In response to the NLG's second request for videos, the City offered to produce copies for $308.89 to reimburse the City for its production costs.

The NLG filed a legal action seeking reimbursement for its payment of $2,939.58, and access to the second set of its requested videos for no more than the City's direct production costs. The parties agreed that the video recordings that the NLG requested were subject to disclosure but disputed which party should bear the costs incurred in connection with the City's production of these records. The trial court granted the NLG's request and the City appealed.

First, the Court of Appeal recognized that a person's protected right of access to information regarding the conduct of a police force must

sometimes yield to the personal privacy interests of others. The CPRA specifies that "if only part of a record is exempt, the agency is required to produce the remainder, if segregable" but the agency may not withhold the entire document. (Gov. Code 6253, subd. (a).)

Second, the Court of Appeal interpreted section 6253 and section 6253.9 of the CPRA. Section 6253 allows an agency to recover the direct costs of duplication (interpreted to cover, for example, photocopying costs and the expense of running the machine). Section 6253.9 requires government agencies that keep public records in an electronic format to make them available in electronic format and permits an agency to recover ancillary costs of producing public records. Specifically, section 6253.9 specifies: a requester "shall bear the cost of producing a copy of the record, including the *cost to construct* a record, and the *cost of programming and computer services necessary to produce* a copy of the record when…[t]he 'request would require data compilation, extraction, or programming to produce the record.'" (Gov. Code 6253.9, subd. (b), (b)(2) (emphasis provided).) The Court of Appeal found that the legislative history of the CPRA indicated that section 6253.9 was added to allow public agencies to recover, in addition to the direct costs of duplication, the costs of acquiring and utilizing computer programs "to extract exempt material from otherwise disclosable electronic public records."

For these reasons, the Court of Appeal found that the CPRA allowed the City to charge a requestor of records for the costs of creating a redacted version of an existing public record.

*National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward, et al.,* 27 Cal.App.5th 937 (2018).

## PUBLIC SAFETY

### *District Attorney's Final Determination Not to Prosecute Restarts POBRA Statute of Limitations.*

Under the Police Officer Bill of Rights Act ("POBRA"), when the one-year statute of limitations on an internal affairs investigation is tolled (or paused) during the pendency of a criminal investigation or prosecution, that tolling ends when the District Attorney makes a final determination not to prosecute the public safety officer.

Under the POBRA, public employers must investigate officer misconduct within one year of discovering the alleged misconduct. (Gov. Code 3301, subd. (d)(1).) If the alleged misconduct is also the subject of a criminal investigation or prosecution, "the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period." (Gov. Code 3304, subd. (d)(2)(A).)

In *Bacilio v. City of Los Angeles,* the Court of Appeal clarified that the tolling ends when the District Attorney formally drops criminal charges against an officer. In this case, Officers Bacilio and Escobar were employed with the Los Angeles Police Department ("LAPD" or "Department"). On August 4, 2011, the Department received reports that the officers committed criminal misconduct while conducting a child welfare check; the Department immediately investigated. After the conclusion of the investigation, on June 3, 2013, the LAPD Internal Affairs Division then presented its findings to the Los Angeles County District Attorney, and sought criminal prosecution of Escobar. The District Attorney then began its investigation.

During the investigation, the Deputy District Attorney commented to the Internal Affairs investigator that she did not intend to file criminal charges against Bacilio. Later, on October 3, 2013, the District Attorney's office sent the Department a signed Charge Evaluation Worksheet indicating

there was insufficient evidence to prove criminal charges against Bacilio, Escobar, and a third officer, and that it declined to prosecute all three officers. The Department served Bacilio with notice of its intent to formally reprimand him on September 20, 2014 – less than a year after the DA formally declined to prosecute Bacilio – and brought administrative charges against Bacilio. Bacilio appealed to a hearing officer, and then to a trial court – both found that the Department timely initiated disciplinary proceedings against Bacilio because the one-year POBRA limitations period was tolled until October 3, 2014. The hearing officer and trial court partially sustained the charges.

On Bacilio's further appeal, the California Court of Appeal found that substantial evidence supported the Department's position that disciplinary proceedings against Bacilio were timely in light of the investigation and prosecution of his alleged criminal conduct. Bacilio claimed that the one-year deadline to bring charges began to run when the Deputy District Attorney commented that she did not intend to prosecute him. The Court of Appeal found that the Deputy District Attorney's comment that she did not intend to prosecute Bacilio were tentative and informal.

The Court of Appeal decided that under Government Code Section 3304 (d)(2)(A), the Department's one-year deadline to investigate and discipline Bacilio was tolled until October 3, 2014 when the district attorney's office issued a formal Charge Evaluation Worksheet, declining to prosecute Bacilio. Because the one-year POBRA limitations period was tolled until October 3, 2014, and the Department served Bacilio with Notice of the charges in September 2014, the Department met the POBRA one-year statute of limitations.

*Edgar Bacilio v. City of Los Angeles, et al.*, 28 Cal.App.5th 717 (2018).

### *Court of Appeal Clarifies that Questions that Focus on Misconduct Trigger Right to Representation During Interrogation.*

The Public Safety Officers Procedural Bill of Rights Act ("POBRA") lists several rights that employers must give peace officers. These rights include the opportunity, upon request, to have a representative present for any interrogation focusing on matters that are likely to result in "punitive action." (Gov. Code section 3303, subd. (i).) The POBRA defines "punitive action" as "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." (Gov. Code section 3303.)

This unpublished California Court of Appeal case may offer some guidance regarding the circumstances in which the right to representation under the POBRA applies.

Pete Allen was a detective with the Burbank Police Department. After exhausting internal appeal procedures, Allen was terminated for misleading internal investigators about the conduct of another officer. Allen filed a writ petition seeking reinstatement, arguing that his misleading statements should have never been considered because he made them during an interrogation that did not conform to the POBRA. Specifically, Allen claimed that the Department told him prior to the interrogation that the POBRA did not apply because he was merely a witness in the investigation, even though the Department suspected at the time that Allen may have improperly failed to report an excessive force violation.

The trial court denied the writ petition, finding that there was no POBRA violation and even if there had been, it did not justify suppressing the statements as a remedy. The trial court held that the POBRA's right to representation only triggers when the investigator has knowledge that the interviewee is likely to make statements during the interview that may lead to punitive action against him or her. Based on this interpretation,

the court concluded that Allen's POBRA rights never came into effect because the internal affairs investigators were, at the time, only investigating "rumors" of an excessive force violation. Nothing that Allen said during the interview suggested he was providing information that would turn him into a subject of the investigation.

The Court of Appeal reversed the trial court, and found that the Department interfered with Allen's right to a representative during the investigative interview. The Court of Appeal disagreed with the trial court's interpretation that the right to representation under the POBRA depends on whether the investigator knows that the interviewee is likely to make statements during the interview that may lead to punitive action. Rather, the right to representation applies if the questions that the investigator asks during the interview focus on matters that, if proven true, are likely to result in punitive action. Because Allen's interview focused on what he knew about the rumored use of excessive force by another officer, the Court of Appeal held that the POBRA entitled him to obtain representation for the interview.

The Court of Appeal also rejected the trial court's finding that there was no POBRA violation since Allen had never requested representation for the interview. The trial court's interpretation of the request requirement did not adequately account for the effect of the Department's pre-interview communications to Allen, i.e., the Department expressly told Allen that he had no POBRA rights because he was a mere witness.

Although the Court of Appeal reversed the trial court on the POBRA violation issue, it found that the trial court had properly rejected the remedy to suppress Allen's misleading statements. The POBRA grants trial courts broad discretion to fashion "appropriate" equitable remedies to redress POBRA violations and deter future ones. Here, Allen was not substantially prejudiced by the alleged POBRA violation, because he understood his duty and obligation as a peace officer, to be honest during the investigation. The adverse consequences of excluding the statements would have vastly outweighed the deterrent value of suppression. That is, excluding the statements would have effectively sanctioned dishonesty by a peace officer, meanwhile having little deterrence value, since the Department had already "expelled" the administrator who made the decision to withhold Allen's POBRA rights.

The Court of Appeal remanded the case to the trial court for further proceedings to determine what relief is appropriate – other than suppression of Allen's statements – to remedy the POBRA violation.

*Allen v. City of Burbank* (Cal. Ct. App., Sept. 7, 2018) 2018 WL 4275453.

***NOTE:***

*This case is unpublished, and therefore not citable. However, it may signal how other courts may decide cases that address similar POBRA issues.*

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If you have any questions, contact **Sara Gardner-Madiuk** at 310.981.2000 or at info@lcwlegal.com.

# 2019 Public Sector Employment Law Annual Conference

JW Marriot Desert Springs Resort & Spa
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Satisfies requirements for the LCW Labor Relations Certification Program

## Pre-Conference Session:

### Costing Labor Contracts

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Join us at this workshop to learn the importance of costing and methods you can use to make costing easy.

## Full General Conference:

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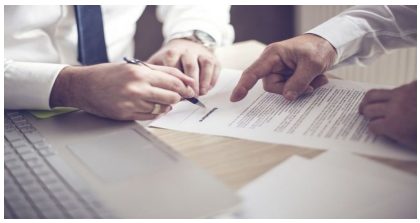
# LCW Webinar: Watch Out for the Wage & Hour Issues in the MOU

**Wednesday, December 12, 2018 | 10 AM - 11 AM**



Public agency MOU's are filled with sections that overlap with wage & hour issues including work schedules, overtime, shift trading, rates of pay, work periods, canine/motor officer pay, etc. This webinar will help you spot potential issues and offer strategies to incorporate compliant contract language in your contracts. Don't miss this webinar that will help you ensure that your agency has FLSA bullet proof provisions.

**Presented by:**

Peter J. Brown

***Who Should Attend?***

Human Resources, City Attorney, and City Manager's Office.

***Workshop Fee:***

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

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# NEW TO THE FIRM

**Ronnie Arenas** is an Associate in our Los Angeles Office where he assists clients in matters regarding labor and employment law. Ronnie has experience in all phases of litigation, from the pleading stage through trial. He represents cities, counties, and public schools in legal matters arising out of public employment, including issues involving discrimination, harassment, wrongful termination, and retaliation. Ronnie is fluent in Spanish. He can be reached at 310-981-2038 or rarenas@lcwlegal.com.

**Kelsey Cropper** is an Associate in Liebert Cassidy Whitmore's San Francisco Office where she provides assistance to clients in matters pertaining to employment and education law. Kelsey provides litigation support including researching, drafting pleadings, conducting discovery and preparing witnesses. She has assisted clients in litigation of alleged disability discrimination, sexual harassment, and whistleblower retaliation. Kelsey also assists clients with employee grievances including appeal hearings and arbitrations. She can be reached at 415.512.3026 or kcropper@lcwlegal.com.

**Andrew Pramschufer** is an Associate in Liebert Cassidy Whitmore's Los Angeles office where he provides assistance to clients in matters pertaining to labor and employment law. Andrew has experience researching and drafting pleadings, motions, and memoranda, including demurrers, motions to dismiss, and motions for summary judgment. He also advises clients on remedial measures, including drafting settlement agreements and releases of liability. He can be reached at 310.981.2000 or apramschufer@lcwlegal.com.

**Lars T. Reed i**s an Associate in our Sacramento office where he provides counsel and representation to clients on matters involving employment law and litigation. Lars has experience in all aspects of the litigation process from pre-litigation advice to enforcement and appeals. He is fluent in Norwegian, and also speaks Swedish and Danish. He can be reached at 916-584-7011 or lreed@lcwlegal.com.

# New to the Firm

**Bryan Rome** joins our Fresno office where he provides advice and counsel as well as civil litigation assistance to the firm's public entity clients. Bryan is experienced in all aspects of discovery and motion practice, including drafting demurrers, motions for summary judgment, appellate briefs, and writ petitions. Bryan has also represented public entities in administrative hearings and appeals, in Pitchess motions, and in criminal prosecutions. Bryan has experience conducting legal research, preparing written analysis on legal matters, and conducting mediations. He can be reached at 559.256.7816 or brome@lcwlegal.com.

**Emanuela Tala** joins our Los Angeles office where she provides representation and legal counsel to clients in matters related to employment law and litigation. She has defended employers in litigation claims for discrimination, harassment, retaliation, wage and hour, and other employment claims. Emanuela has successfully argued dispositive motions, including motions for summary judgment. She can be reached at 310-981-2000 or etala@lcwlegal.com.

**Alexander (Alex) Volberding** is an Associate in Liebert Cassidy Whitmore's Los Angeles office where he provides assistance to clients in matters pertaining to labor and employment law and litigation. Alex has significant experience drafting and negotiating Project Labor Agreements (PLAs) on behalf of public sector clients throughout the state, as well as providing advice and counsel to clients regarding issues that arise under such agreements after adoption, including disputes about payments and threatened work stoppages. He can be reached 310.981.2021 or avolberding@lcwlegal.com.

**Casey Williams** is an employment litigator and nonprofit business attorney, based in Liebert Cassidy Whitmore's San Francisco office. Her dynamic practice is focused on helping mission-driven organizations achieve their goals while staying compliant and working through complex disputes. She can be reached at 415.512.3018 or cwilliams@lcwlegal.com.

MANAGEMENT TRAINING WORKSHOPS

## Firm Activities

**Consortium Training**

**Dec. 6** **"Leaves, Leaves and more Leaves" and "Navigating the Crossroads of Discipline and Disability Accommodation"**
Imperial Valley ERC | Calexico | Stefanie K. Vaudreuil

**Dec. 6** **"Difficult Conversations"**
South Bay ERC | Carson | Christopher S. Frederick

**Dec. 7** **"Maximizing Supervisory Skills for the First Line Supervisor"**
LA County HR Consortium | Los Angeles | Kristi Recchia

**Dec. 11** **"FLSA at the Collective Bargaining Table"**
San Mateo County ERC | Menlo Park | Richard Bolanos

**Dec. 12** **"Maximizing Supervisory Skills for the First Line Supervisor"**
San Gabriel Valley ERC | Alhambra | Kristi Recchia

**Dec. 13** **"Management Guide to Public Sector Labor Relations"**
Gateway Public ERC | Webinar | T. Oliver Yee

**Jan. 9** **"Supervisor's Guide to Public Sector Employment Law"**
Gold Country ERC | Placerville & Webinar | Jack Hughes

**Jan. 10** **"Maximizing Performance Through Evaluation, Documentation and Discipline" and "The Art of Writing the Performance Evaluation"**
East Inland Empire ERC | Fontana | Christopher S. Frederick

**Jan. 10** **"Maximizing Supervisory Skills for the First Line Supervisor"**
Gateway Public ERC | Santa Fe Springs | Kristi Recchia

**Jan. 10** **"Public Sector Employment Law Update"**
North State ERC & San Diego ERC & San Mateo County ERC | Webinar | Richard S. Whitmore

**Jan. 16** **"Management Guide to Public Sector Labor Relations"**
South Bay ERC | Manhattan Beach | Melanie L. Chaney

**Jan. 16** **"Public Sector Employment Law Update"**
Ventura/Santa Barbara ERC | Webinar | Richard S. Whitmore

**Jan. 17** **"Advanced FSLA" and "Public Sector Employment Law Update"**
Coachella Valley ERC | La Quinta | Elizabeth Tom Arce

**Jan. 17** **"Labor Negotiations from Beginning to End"**
LA County HR Consortium | Los Angeles | Adrianna E. Guzman

**Jan. 17** **"Preventing Workplace Harassment, Discrimination and Retaliation" and "Moving Into the Future"**
West Inland Empire ERC | Diamond Bar | Kevin J. Chicas

**Customized Training**

**Dec. 5** **"Maximizing Performance Through Evaluation, Documentation, and Corrective Action"**
County of Nevada | Grass Valley | Jack Hughes

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| **Dec. 11** | **"Preventing Workplace Harassment, Discrimination and Retaliation"**<br>Cemetery Special District \| Coachella \| Pilar Morin |
| **Dec. 11** | **"Ethics in Public Service"**<br>City of National City \| Stephanie J. Lowe |
| **Dec. 11** | **"Preventing Workplace Harassment, Discrimination and Retaliation"**<br>City of Stockton \| Gage C. Dungy |
| **Dec. 12** | **"Maximizing Performance Through Evaluation, Documentation, and Discipline and Legal Issues Regarding Hiring and Promotions"**<br>County of Plumas \| Quincy \| Gage C. Dungy |
| **Dec. 12** | **"Ethics in Public Service"**<br>Ojai Valley Sanitary District \| Jennifer Rosner |
| **Dec. 12** | **"Preventing Workplace Harassment, Discrimination and Retaliation"**<br>Santa Clara County Fire Department \| Los Gatos \| Lisa S. Charbonneau |
| **Dec. 13** | **"Legal Aspects of Violence in the Workplace"**<br>City of Stockton \| Kristin D. Lindgren |
| **Dec. 13** | **"Preventing Workplace Harassment, Discrimination and Retaliation"**<br>City of Sunnyvale \| Lisa S. Charbonneau |
| **Dec. 13** | **"Nuts & Bolts Navigating Common Legal Risks for the Front Line Supervisor and Bullying"**<br>El Dorado County \| Placerville \| Che I. Johnson |
| **Dec. 14** | **"Public Service - Understanding the Roles and Responsibilities of Public Employees"**<br>County of Monterey - Auditor Controllers Office - Annual Payroll Conference \| Seaside \| Heather R. Coffman |
| **Dec. 18** | **"Key Legal Principles for Public Safety Managers - POST Management Course"**<br>Peace Officer Standards and Training - POST \| San Diego \| Frances Rogers |
| **Jan. 10** | **"Reasonable Suspicion: Drugs and Alcohol"**<br>Ventura County Fire District \| Camarillo \| James E. Oldendorph |
| **Jan. 14** | **"Applied Ethics in Law Enforcement"**<br>City of Westminster Police Department \| J. Scott Tiedemann |
| **Jan. 15,17,24,30** | **"Preventing Workplace Harassment, Discrimination and Retaliation"**<br>City of Santa Monica \| TBD |
| **Jan. 15** | **"Bias in the Workplace"**<br>ERMA \| Cathedral City \| Jennifer Rosner |
| **Jan. 15** | **"Preventing Workplace Harassment, Discrimination and Retaliation"**<br>Las Gallinas Valley Sanitary District \| San Rafael \| Morin I. Jacob |
| **Jan. 18** | **"Embracing Diversity"**<br>Los Angeles Conservation Corps \| Jennifer Rosner |

**Speaking Engagements**

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| **Dec. 5** | **"Splitting The Check: Having Employees Pay More Toward Increasing Pension And Retiree Health Costs, And Other Cost Saving Strategies"**<br>California Public Employer Labor Relations Association (CALPELRA) Annual Conference \| Monterey \| Steven M. Berliner & Frances Rogers |

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| **Dec. 5** | **"The Impact Of Philosophy, Psychology, and Data on Labor Negotiations"**<br>CALPELRA Annual Conference \| Monterey \| Richard Bolanos & Peter J. Brown |
| **Dec. 5** | **"Performance And Discipline Documentation: An Advanced Course"**<br>CALPELRA Annual Conference \| Monterey \| Laura Drottz Kalty & J. Scott Tiedemann |
| **Dec. 6** | **"Understand the Regular Rate of Pay with Five Payroll Examples"**<br>CALPELRA Annual Conference \| Monterey \| Peter J. Brown & Lisa S. Charbonneau |
| **Dec. 6** | **"Health Benefits: Identifying Red Flags for Labor Negotiators"**<br>CALPELRA Annual Conference \| Monterey \| Heather DeBlanc & Jack Hughes |
| **Dec. 7** | **"Practical Applications of FLSA, FMLA and FBOR for Fire Administration"**<br>California Fire Chiefs - Administrative Fire Service Section \| San Diego \| Stefanie K. Vaudreuil |
| **Dec. 7** | **"Labor Relations Game Show"**<br>CALPELRA Annual Conference \| Monterey \| Laura Drottz Kalty & J. Scott Tiedemann |
| **Dec. 11** | **"2018 Government Tax and Employee Benefits Seminar"**<br>GTS Annual Government Tax and Employee Benefits Seminar \| Millbrae \| Heather DeBlanc, Marcus Wu & Bill Morgan |
| **Dec. 12** | **"Legal Update"**<br>League of California Cities Fire Chiefs Leadership Seminar \| San Francisco \| Morin I. Jacob |
| **Dec. 13** | **"Payroll Compliance & the Fair Labor Standards Act Post Flores"**<br>League of California Cities 2018 Municipal Finance Institute \| San Francisco \| Richard Bolanos & Nicholas Briscoe |
| **Dec. 18** | **"New Labor & Employment Laws for 2019"**<br>Sacramento County Bar Association \| Sacramento \| Gage C. Dungy |
| **Jan. 9** | **"The Leadership Role of Finance and FLSA Compliance"**<br>California Society of Municipal Finance Officers (CSMFO) Annual Conference \| Palm Springs \| Brian P. Walter & Lori Sassoon |
| **Jan. 10** | **"Strategies to Manage Increasing Pension Costs"**<br>CSMFO Annual Conference \| Palm Springs \| Steven M. Berliner & Monica Irons |
| **Jan. 10** | **"Legal Update"**<br>International Public Management Association for HR (IPMA) Sacramento-Mother Lode Chapter Meeting \| Roseville \| Gage C. Dungy |
| **Jan. 16** | **"What Public Procurement Officials Need to Know About California's New Independent Contractor Test"**<br>California Association of Public Procurement Officers (CAPPO) Conference \| Sacramento \| Kristin D. Lindgren |
| **Jan. 28** | **"Performance Management - Evaluation, Documentation and Discipline" and "The Art of Writing the Performance Evaluation"**<br>National Association of Housing and Redevelopment Officials (NAHRO) \| Napa \| Kristin D. Lindgren |
| **Jan. 30** | **"Legal Update"**<br>Inland Empire Public Management Association for Human Resources (IEPMA-HR) \| Riverside \| J. Scott Tiedemann |
| **Jan. 30** | **"AB 1661 Training"**<br>League of California Cities New Mayors and Council Members Academy \| Irvine \| Laura Drottz Kalty |

**Seminars/Webinars**

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| **Dec. 12** | **"Watch Out for These Wage & Hour Issues in the MOU"**<br>Liebert Cassidy Whitmore \| Webinar \| Peter J. Brown |
| **Jan. 23** | **"Costing Labor Contracts"**<br>LCW Conference 2019 \| Palm Desert \| Peter J. Brown & Kristi Recchia |
| **Jan. 24-25** | **"2019 LCW Conference"**<br>Liebert Cassidy Whitmore \| Palm Desert |

## LCW WEBINAR ONDEMAND: 2019 LEGISLATIVE UPDATE FOR PUBLIC AGENCIES

The California legislature passed numerous bills, which will go into effect on January 1, 2019, that will impact California employers. This webinar will provide an overview of key legislation, as well as pertinent employment law cases that will impact California's public agencies.

**Presented by:**

Gage C. Dungy

### Who Should Attend?

Management and Supervisory Personnel, Human Resources Staff and Agency Counsel.

### Training Fee:

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

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