



CLIENT UPDATE

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

MARCH 2018

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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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PUBLIC SAFETY

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

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

Internal Affairs (IA) Investigation and Release from Probation

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

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

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

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

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

Soon after her release from probation, the Department issued Perez a second written reprimand. The second written reprimand reversed the Department's findings of unsatisfactory work performance and conduct unbecoming as stated on the first reprimand and instead charged Perez with violation of the Department's "Use of Personal Communication Devices" policy. Perez did not appeal because she had been informed she had no appeal right.

Constitutional Rights to Privacy and Intimate Association

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

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

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

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

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

1. her conduct during her response to a domestic violence call;

2. her work relationships with female officers; and
3. her belief that the shift trade policy was unfairly applied.

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

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

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

Perez v. City of Roseville, et al. (9th Cir. 2/9/2018) 2018 WL 797453.

NOTE:

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

CONSORTIUM CALL OF THE MONTH

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

ISSUE:

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

RESPONSE:

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

BENEFITS CORNER

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

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

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

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

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

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

HIRING

Hiring Process Do's and Don'ts.

Public agencies should be aware of the legal risks associated with the hiring process, and use best practices to avoid common pitfalls. While not

exhaustive, the following list provides a general framework for trouble-shooting your agency's hiring process.

1. Utilize Accurate Job Descriptions:

At the very outset of the hiring process, it is critical to develop accurate and sufficiently detailed job descriptions. An accurate job description will help the agency focus questions on job applications and during interviews so that the hiring process elicits only those facts that are job-related. Also, to prevent disability discrimination in both the hiring process and during employment, an agency's identification of and focus on the "essential functions of the job" is critical. Courts generally treat the job description the employer prepares prior to advertising or interviewing for the job as evidence of the job's essential functions.

2. Establish a Uniform Screening Process for Applications:

The next phase to consider is the initial "screening" of applications for those who are not qualified or not competitive in light of the quality and experience of other applicants. As a general matter, an employer's initial "screening" must be conducted in a neutral manner that does not result in an unjustifiable disproportionate impact with regard to a protected characteristic, such as race, gender, religion, or age over 40. Accordingly, the agency should establish a set of job-related screening criteria which include all individuals who have the qualifications for the job. The agency should also have a process in place to: review the fairness and appropriateness of screening criteria; make sure the screening guidelines are followed uniformly; and confirm that the screening decisions were not influenced by improper considerations.

3. Focus Interviews on Job-Related Questions:

Questions should focus on qualifications for the job in question, and not pertain to protected characteristics. Some unlawful

questions may be obvious, such as asking about an applicant's race, age, religion, or other protected characteristics. But questions may indirectly relate to protected categories, such as questions about: the date of completion of school (age); religious days the applicant observes (religion); or the applicant's birthplace (national origin). However, questions can be phrased to request job-related information the employer legitimately needs without creating an impression of bias. For example, it would be appropriate to ask which languages an applicant speaks, if multi-language fluency is relevant to the job at issue. It is vital that agencies ensure that those employees conducting interviews are trained to know what categories or statuses are protected, and what questions are prohibited.

4. Limitations on Background Investigations, Including Reference Checks:

To fill some positions such as police officer, a public agency is required by law to conduct a background investigation. However, peace officer applicants have state and federal constitutional privacy rights that may limit the information an agency can seek and in what manner the information may be sought. An important step in the background investigation process is obtaining a signed waiver and authorization from each selected applicant. Beginning in 2018, a public agency employer cannot conduct a criminal history background for non-police applicants without first giving an offer of employment that is conditioned upon the successful completion of the criminal history check. The employer must carefully analyze any convictions to determine if they have a direct and adverse relationship with the specific duties of the job. If the employer makes a preliminary determination that the conviction history is disqualifying because of the nature and gravity of the offense, when the offense occurred, and the nature of the job, the employer must notify the applicant in writing and allow the applicant five business days

to respond. An employer's right to receive a consumer credit report is also limited to certain types of positions.

5. Generally, under both federal and state law, employers cannot ask questions about disabilities or require medical examinations prior to making a conditional offer of employment. The EEOC has described that a "conditional offer of employment" is a real job offer that is made after the employer has evaluated all relevant and lawful non-medical information which could reasonably have been obtained and analyzed prior to making the offer. As a result, the medical examination condition should be the final condition to any job offer, and occur after any condition related to passing a criminal history check. Any medical examination must be directly related to job performance and be justified by the agency's business necessity.

6. Rejection of Applicants Based on Results of Medical Examination:

If an agency rejects an applicant based on the results of a medical examination, it must be prepared to present evidence that the decision comports with state and federal laws prohibiting discrimination on the basis of disability. Considerations include whether a reasonable accommodation was available that would not impose an undue hardship, an interactive process with the applicant, the extent to which the applicant's holding the position would pose a direct threat to health or safety of the applicant or others that could not be eliminated by reasonable accommodation, and others.

FIRST AMENDMENT

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

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

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

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

area. BP agents allegedly made comments that the enforcement zone was intended to exclude protestors who might interfere with BP activities.

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

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

The district court assumed that the checkpoint was a public forum but rejected PHP’s claims that BP’s restrictions on protestor access were viewpoint discrimination. The district court found that DHS had a substantial interest in conducting routine stops at the checkpoint, and that requiring PHP protestors to locate themselves within the enforcement zone was a valid restriction because conducting traffic stops would otherwise be less effective. Finally, the district court found that PHP members were still able to observe BP agent interactions with motorists during traffic stops, which meant that there were alternative methods of communication left open to them. The district court therefore denied both the protestors’ request for a preliminary injunction, and

granted DHS’ motion for summary judgement without giving the protestors the opportunity to conduct discovery to try to reveal additional facts to support their position.

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

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

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

Jacobson et al. v. U.S. Department of Homeland Security, et al. (9th Cir. 2/13/2018) 2018 WL 827542.

NOTE:

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

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GOVERNOR BROWN APPOINTS LCW ATTORNEY ERICH SHINERS TO PERB BOARD



Erich Shiners

Governor Brown on Tuesday announced the appointment of Erich Shiners to the California Public Employment Relations Board (PERB). Erich Shiners is an attorney in the Sacramento office of Liebert Cassidy Whitmore where he serves the firm's public agency clients including cities, counties and special districts.

"I am extremely honored and proud to accept this appointment and serve on PERB. I have enjoyed working with the outstanding attorneys at LCW and appreciate the opportunity to be part of it. The firm's reputation as a leader in its fields of practice is well deserved," Erich said.

Erich served as a legal advisor to PERB from 2008-2011. He is a member of the California Lawyers Association, Sacramento County Bar Association and the American Bar Association. He earned a Juris Doctor degree from the University of the Pacific, McGeorge School of Law.

The firm's Managing Partner, J. Scott Tiedemann, remarked, "This is a prestigious appointment and we are very excited for Erich. While we are sad to say goodbye to him as a member of the firm, we wish him the best in this role."

LCW VICTORY NAMED “2017 TOP VERDICT”



Jesse Maddox



Kimberly Horiuchi

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

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

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

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



REGULAR RATE OF PAY -
MAKING IT SIMPLE
REGISTRATION IS NOW OPEN!

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

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

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

Intended Audience:

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

Time:

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

Pricing:

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

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



*Developing Positive Partnerships
and Leadership Excellence
for Labor Relations Professionals*

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

Upcoming Classes:

Costing Labor Contracts

March 22, 2018 | Falls Event Center, Fresno, CA

The keys to successful negotiations include planning and costing. Just like planning a vacation, the amount of time and effort you put into planning and costing can determine the success of the trip. Costing contract proposals is similar to costing excursions on a vacation - they all sound like a good idea but can we afford them? Join us at this workshop to learn the importance of costing and methods you can use to make costing easy.

The Public Employment Relations Board (PERB) Academy

April 12, 2018 | Fullerton, CA

This workshop will help you understand unfair labor practices, PERB hearing procedures, representation matters, agency shop provisions, employer-employee relations resolutions, mediation services, fact-finding, and requests for injunctive relief - all subjects covered under PERB's jurisdiction. Join us and we share the insight on PERB!

Register Now! <https://www.lcwlegal.com/events-and-training/labor-relations-certification-program>

LEARN MORE AT WWW.LCWLEGAL.COM/LRCP



SAVE SOME MONEY AND BE IN COMPLIANCE BECOME A CERTIFIED AB 1825, AB 2053, AND AB 1661 TRAINER FOR YOUR AGENCY

Government Code Section 12950.1 (AB 1825), requires employers with 50 or more employees to provide harassment prevention training to all supervisory employees every two years and to new supervisors within 6 months of their assumption of a supervisory position.

Liebert Cassidy Whitmore, leaders in client education, is offering "Train the Trainer" sessions to provide you with the necessary tools to conduct mandatory of AB1825 (harassment/retaliation), AB2053 (bullying), and AB1661 (elected officials) training for your agency.

You are eligible to attend LCW's Train the Trainer session if you meet any of the following:

1. "Attorneys" serving as in-house counsel, admitted for two or more years to the bar of any state in the United States and whose practice includes employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964, or
2. "Human resource professionals" or "harassment prevention consultants" working as employees with a minimum of two or more years of practical experience in one or more of the following; a) designing or conducting discrimination, retaliation and sexual harassment prevention training; b) responding to sexual harassment complaints or other discrimination complaints; c) conducting investigations of sexual harassment complaints; or d) advising employers or employees regarding discrimination, retaliation and sexual harassment prevention, or
3. "Professors or instructors" in law schools, colleges or universities who have a post-graduate degree or California teaching credential and either 20 instruction hours or two or more years of experience in a law school, college or university teaching about employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964.

TRAIN THE TRAINER SEMINARS

SAN FRANCISCO
APRIL 11, 2018

LOS ANGELES
APRIL 20, 2018

SAN DIEGO
APRIL 20, 2018

FRESNO
April 27, 2018

9:00 a.m. - 4:00 p.m.

Location: LCW Offices

Cost:
\$1,500 each or \$1,350
each if ERC Member

ATTENDEES WILL RECEIVE:

- 6 hours of instruction to be completed in one day
- Facilitator Guide, PowerPoint slides and case studies (on CD and hard copy) complete with detailed speakers' notes for use in future presentations
- Participant Guide for distribution in their future presentations
- Legal updates, where warranted, through 2020, including updated slides and facilitator/participant guides
- Certificate of Attendance for "Train the Trainer session"
- Ability for 5 employees from their own agency to attend the pre-scheduled workshop

REGISTRATION:

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

MANAGEMENT TRAINING WORKSHOPS

Firm Activities**Consortium Training**

- Mar. 7 **“Maximizing Performance Through Evaluation, Documentation and Discipline”**
Los Angeles County Human Resources Consortium | Los Angeles | Melanie L. Chaney
- Mar. 7 **“Public Sector Employment Law Update”**
Monterey Bay ERC | Webinar | Richard S. Whitmore
- Mar. 7 **“Public Sector Employment Law Update”**
Ventura/Santa Barbara ERC | Webinar | Richard S. Whitmore
- Mar. 8 **“Difficult Conversations” and “Workplace Bullying: A Growing Concern”**
Central Valley ERC | Hanford | Che I. Johnson
- Mar. 8 **“Navigating the Crossroads of Discipline and Disability Accommodation” and “Iron Fists or Kid Gloves: Retaliation in the Workplace”**
East Inland Empire ERC | Fontana | T. Oliver Yee & Kevin J. Chicas
- Mar. 8 **“Introduction to the FLSA”**
Gold Country ERC | Nevada City & Webinar | Gage C. Dungy
- Mar. 14 **“The Art of Writing the Performance Evaluation” and “Inclusive Leadership”**
Coachella Valley ERC | Indio | Kristi Recchia
- Mar. 14 **“Introduction to the FLSA”**
Gateway Public ERC | Santa Fe Springs | Jennifer Palagi
- Mar. 14 **“Managing the Marginal Employee”**
Humboldt County ERC | Fortuna | Kristin D. Lindgren
- Mar. 14 **“Workplace Bullying: A Growing Concern” and “Issues and Challenges Regarding Drugs and Alcohol in the Workplace”**
San Joaquin Valley ERC | Merced | Kimberly A. Horiuchi
- Mar. 15 **“Moving Into the Future”**
Bay Area ERC | Milpitas & Webinar | Erin Kunze
- Mar. 15 **“File That! Best Practices for Document and Record Management”**
Humboldt County ERC | Fortuna | Kristin D. Lindgren
- Mar. 15 **“The Art of Writing the Performance Evaluation”**
San Mateo County ERC | Foster City | Heather R. Coffman
- Mar. 20 **“Difficult Conversations” and “Inclusive Leadership”**
North San Diego County ERC | Vista | Kristi Recchia
- Mar. 21 **“Public Sector Employment Law Update”**
NorCal ERC | Piedmont | Richard S. Whitmore
- Mar. 21 **“Navigating the Crossroads of Discipline and Disability Accommodation”**
NorCal ERC | Piedmont | Richard Bolanos
- Mar. 21 **“Risk Management Skills for the First Line Supervisor” and “Maximizing Performance Through Evaluation, Documentation and Discipline”**
Orange County Consortium | Brea | Christopher S. Frederick

- Mar. 22 **“Workers’ Compensation: Managing Employee Injuries, Disability and Occupational Safety”**
West Inland Empire ERC | Diamond Bar | Jeremiah Heisler
- Mar. 28 **“Maximizing Supervisory Skills for the First Line Supervisor”**
Sonoma/Marin ERC | Rohnert Park | Kelly Tuffo
- Apr. 4 **“Difficult Conversations” and “Maximizing Performance Through Evaluation, Documentation and Discipline”**
Gold Country ERC | Roseville | Jack Hughes
- Apr. 4 **“Inclusive Leadership” and “Difficult Conversations”**
Ventura/Santa Barbara ERC | Ventura | Kristi Recchia
- Apr. 5 **“Disaster Service Workers – If You Call Them, Will They Come?”**
Mendocino Country ERC | Webinar | Gage C. Dungy
- Apr. 5 **“Disaster Service Workers – If You Call Them, Will They Come?” and “Employees and Driving”**
Mendocino County ERC | Ukiah | Gage C. Dungy
- Apr. 5 **“Maximizing Performance Through Evaluation, Documentation and Discipline”**
South Bay ERC | Inglewood | Danny Y. Yoo
- Apr. 10 **“Supervisor’s Guide to Public Sector Employment Law”**
San Mateo County ERC | Webinar | Lisa S. Charbonneau
- Apr. 11 **“An Agency’s Guide to Employee Retirement” and “Navigating the Crossroads of Discipline and Disability Accommodation”**
Central Coast ERC | San Luis Obispo | Michael Youril
- Apr. 11 **“Terminating the Employment Relationship”**
Gateway Public ERC | Norwalk | Christopher S. Frederick
- Apr. 11 **“A Supervisor’s Guide to Labor Relations” and “Moving Into The Future”**
San Gabriel Valley ERC | Alhambra | T. Oliver Yee
- Apr. 12 **“Advanced Investigations of Workplace Complaints” and “Navigating the Crossroads of Discipline and Disability Accommodation”**
Bay Area ERC | Santa Clara | Suzanne Solomon
- Apr. 12 **“Moving Into The Future” and “Workplace Bullying: A Growing Concern”**
Imperial Valley ERC | El Centro | Judith S. Islas
- Apr. 12 **“Maximizing Performance Through Evaluation, Documentation and Discipline” and “Prevention and Control of Absenteeism and Abuse of Leave”**
North State ERC | Redding | Erik M. Cuadros
- Apr. 12 **“Maximizing Performance Through Evaluation, Documentation and Discipline” and “Legal Issues Regarding Hiring”**
San Diego ERC | Coronado | Danny Y. Yoo
- Apr. 18 **“The Future is Now - Embracing Generational Diversity and Succession Planning” and “Disciplinary and Harassment Investigations: Who, What, When and How”**
Central Valley ERC | Clovis | Shelline Bennett

- Apr. 19 **“Public Service: Understanding the Roles and Responsibilities of Public Employees” and “Maximizing Performance Through Evaluation, Documentation and Discipline”**
Napa/Solano/Yolo ERC | Fairfield | Kristin D. Lindgren
- Apr. 19 **“Supervisor’s Guide to Public Sector Employment Law” and “Navigating the Crossroads of Discipline and Disability Accommodation”**
Orange County Consortium | San Juan Capistrano | Laura Kalty
- Apr. 19 **“Moving Into the Future” and “Navigating the Crossroads of Discipline and Disability Accommodation”**
San Joaquin Valley ERC | Tracy | TBD
- Apr. 25 **“Issues and Challenges Regarding Drugs and Alcohol in the Workplace”**
Humboldt County ERC | Eureka | Gage C. Dungy
- Apr. 25 **“Iron Fists or Kid Gloves: Retaliation in the Workplace”**
Los Angeles County Human Resources | Los Angeles | Geoffrey S. Sheldon
- Apr. 25 **“Maximizing Supervisory Skills for the First Line Supervisor”**
NorCal ERC | Dublin | Kelly Tuffo
- Apr. 26 **“Navigating the Crossroads of Discipline and Disability Accommodation”**
Humboldt County ERC | Eureka | Gage C. Dungy

Customized Training

- Mar. 1,8,9,15,22 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of Irvine | Christopher S. Frederick
- Mar. 2 **“Ethics in Public Service”**
County of San Luis Obispo | San Luis Obispo | Laura Kalty
- Mar. 5 **“Ethics in Public Service”**
City of Indian Wells | Christopher S. Frederick
- Mar. 6 **“Supervisory Skills for the First Line Supervisor/Manager”**
City of Glendale | J. Scott Tiedemann
- Mar. 6 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of Stockton | Kristin D. Lindgren
- Mar. 6,20 **“A Guide to Implementing Public Employee Discipline”**
Sanitation Districts of Los Angeles County | Whittier | T. Oliver Yee
- Mar. 6 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
Santa Barbara County Air Pollution & Control District | Santa Barbara | Lee T. Patajo
- Mar. 7 **“Preventing Workplace Harassment, Discrimination and Retaliation and Mandated Reporting”**
East Bay Regional Park District | Castro Valley | Erin Kunze
- Mar. 12 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of Lynwood | Lee T. Patajo
- Mar. 13 **“Building the Best Management Skills Toolbox”**
City of Beverly Hills | Kristi Recchia

Mar. 13	“Hiring Practices/EEO” Vista Irrigation District Frances Rogers
Mar. 15	“MOU’s, Leaves and Accommodations” City of Santa Monica Laura Kalty
Mar. 15	“Preventing Workplace Harassment, Discrimination and Retaliation” and “Supervisor’s Guide to Public Sector Employment Law” City of Upland Jennifer Palagi
Mar. 15	“Must-Have Employment Policies and Guide to Making an Offer of Employment and Guide to Lawful Termination and The Disability Interactive Process” CSRMA Oakland Lisa S. Charbonneau
Mar. 15	“Preventing Workplace Harassment, Discrimination and Retaliation” Film LA Hollywood Lee T. Patajo
Mar. 16	“Performance Evaluations and Disciplinary Investigations” San Diego County Water Authority San Diego Frances Rogers
Mar. 16	“New Marijuana Laws and The Workplace” Solano County Fairfield Gage C. Dungy
Mar. 20	“A Blunt Reality? Drugs & Alcohol in the Workplace” CSAC Excess Insurance Authority Long Beach Danny Y. Yoo
Mar. 20	“Preventing Workplace Harassment, Discrimination and Retaliation” REMIF Ukiah Erin Kunze
Mar. 21	“Preventing Workplace Harassment, Discrimination and Retaliation” Midpeninsula Regional Open Space District Los Altos Joy J. Chen
Mar. 21	“Progressive Discipline” Mono County AM workshop - Mammoth Lakes & PM Workshop - Bridgeport Gage C. Dungy
Mar. 21	“Personnel Records and Brady Obligations for Sworn and Non-Sworn Staff” San Bernardino County Probation Department San Bernardino Lee T. Patajo
Mar. 22	“Preventing Workplace Harassment, Discrimination and Retaliation” City of Rialto Danny Y. Yoo
Mar. 22	“Introduction to Public Service” City of Stockton Gage C. Dungy
Mar. 28	“Preventing Workplace Harassment, Discrimination and Retaliation” and “File That! Best Practices for Document Record Management” City of Riverside Christopher S. Frederick
Mar. 28	“A Blunt Reality? Drugs & Alcohol in the Workplace” CSAC Excess Insurance Authority Pleasanton Jack Hughes
Mar. 28	“Train the Trainer Refresher: Harassment Prevention” Liebert Cassidy Whitmore Fresno Shelline Bennett
Mar. 29	“Handling Labor Relations Without Violating Statute” Butte County Oroville Jack Hughes
Mar. 29	“A Blunt Reality? Drugs & Alcohol in the Workplace” CSAC Excess Insurance Authority Sacramento Gage C. Dungy

Mar. 29	“Performance Management: Evaluation, Documentation and Discipline” ERMA West Hollywood Jennifer Rosner
Mar. 30	“Preventing Workplace Harassment, Discrimination and Retaliation” ERMA Farmersville Kimberly A. Horiuchi
Mar. 30	“Train the Trainer Refresher: Harassment Prevention” Liebert Cassidy Whitmore San Diego Judith S. Islas
Mar. 30	“Train the Trainer Refresher: Harassment Prevention” Liebert Cassidy Whitmore Los Angeles Christopher S. Frederick
Apr. 3	“Motivation, Influence & Accountability in the Public Sector” City of Beverly Hills Kristi Recchia
Apr. 3,19	“Preventing Workplace Harassment, Discrimination and Retaliation” East Bay Regional Park District Oakland Erin Kunze
Apr. 5	“FLSA” Los Angeles World Airports (LAWA) Elizabeth Tom Arce
Apr. 7,12,14	“Preventing Workplace Harassment, Discrimination and Retaliation” City of Irvine Christopher S. Frederick
Apr. 10,19	“Legal Aspects of Violence in the Workplace” Midpeninsula Regional Open Space District Los Altos Joy J. Chen
Apr. 11	“Harassment Prevention: Train the Trainer” Liebert Cassidy Whitmore San Francisco Erin Kunze
Apr. 12	“FLSA” City of Citrus Heights Lisa S. Charbonneau
Apr. 12	“Performance Management: Evaluation, Documentation and Discipline” East Bay Regional Park District Oakland Erin Kunze
Apr. 17	“Supervisory Skills for the First Line Supervisor” City of Stockton Kristin D. Lindgren
Apr. 17	“Performance Evaluations and Disciplinary Investigations” San Diego County Water Authority San Diego Frances Rogers
Apr. 18	“Preventing Workplace Harassment, Discrimination and Retaliation” City of Stockton Gage C. Dungy
Apr. 19	“Train the Trainer Refresher: Harassment Prevention” Liebert Cassidy Whitmore San Francisco Suzanne Solomon
Apr. 20	“Harassment Prevention: Train the Trainer” Liebert Cassidy Whitmore San Diego Judith S. Islas
Apr. 20	“Harassment Prevention: Train the Trainer” Liebert Cassidy Whitmore Los Angeles Christopher S. Frederick
Apr. 24	“Labor Relations 101” City of Beverly Hills Kristi Recchia

- Apr. 25 **“Introduction to the FLSA and Prevention and Control of Absenteeism and Abuse of Leave”**
City of Riverside | Jennifer Rosner
- Apr. 25 **“Retaliation in the Workplace”**
ERMA | San Ramon | Erin Kunze
- Apr. 26 **“The Brown Act and Grievance Procedure”**
County of Imperial | El Centro | Stefanie K. Vaudreuil
- Apr. 27 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
County of San Luis Obispo | San Luis Obispo | Christopher S. Frederick
- Apr. 27 **“Harassment Prevention: Train the Trainer”**
Liebert Cassidy Whitmore | Fresno | Shelline Bennett
- Apr. 28 **“Preventing Workplace Harassment, Discrimination and Retaliation in the Workplace”**
City of Newport Beach | Christopher S. Frederick

Speaking Engagements

- Mar. 9 **“Employment Law and the Interactive Process”**
Judicial Branch Workers’ Compensation Program (JBWCP) | Sacramento | Erich Shiners
- Mar. 15 **“Preparing for Your Next Arbitration- The Who’s, When’s, Why’s, and How’s”**
Northern California Chapter International Public Management Association (NCC-IPMA)
Annual Chapter Conference | Rohnert Park | Richard Bolanos
- Mar. 16 **“Workplace Harassment Training”**
California State Association of Counties (CSAC) Capitol Network Workplace Harassment
Training | Sacramento | Kristin D. Lindgren
- Mar. 23 **“Elimination of Bias in the Legal Profession”**
City Attorney’s Association of San Diego (CAASD) | Palm Springs | Jennifer Rosner
- Mar. 23 **“Impact of Prop 64 and Recreational Marijuana on Drug Testing in the Workplace”**
County Personnel Administrators Association of California (CPAAC) Meeting | Lodi |
Gage C. Dungy
- Mar. 28 **“Social Media and Privacy”**
Public Agency Risk Managers Association (PARMA) | San Diego | Stephanie J. Lowe
- Apr. 17 **“Defining Staff Board & Staff Roles and Relationships”**
California Special Districts Association (CSDA) Special District Leadership Academy |
Seaside | Che I. Johnson
- Apr. 18 **“Legal Updates Fit for a Ringmaster”**
Southern California Personnel Management Association - Human Resources (SCPMA-HR)
Annual Training Conference | J. Scott Tiedemann
- Apr. 19 **“Preventing Workplace Harassment, Discrimination and Retaliation (AB 1661/ AB 1825)”**
League of California Cities Los Angeles Division | Cerritos | Jennifer Rosner
- Apr. 25 **“An Ounce of Prevention is Worth its Weight in Gold: Workplace Bullying”**
Western Region IPMA-HR Annual Training Conference | Sacramento | TBD
- Apr. 25 **“The New Frontier of Meet and Confer Strategies for Success at the Table”**
Western Region IPMA-HR Annual Training Conference | Sacramento | Jack Hughes

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

Seminars/Webinars

Mar. 15 **“Mandated Official Harassment Training for Elected Officials and High Level Employees: AB 1661”**
Liebert Cassidy Whitmore | Webinar | Suzanne Solomon

Mar. 22 **“Costing Labor Contracts”**
Liebert Cassidy Whitmore | Fresno | Peter J. Brown & Kristi Recchia

Mar. 28 **“Train the Trainer Refresher: Harassment Prevention”**
Liebert Cassidy Whitmore | Fresno | Shelline Bennett

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

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

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

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

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

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

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

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

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

Apr. 20 **“Harassment Prevention: Train the Trainer”**
Liebert Cassidy Whitmore | San Diego | Judith S. Islas

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

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

To register for any seminar or webinar visit: <https://www.lcwlegal.com/events-and-training/webinars-seminars>

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