CLIENT UPDATE

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

AUGUST 2018

INDEX

Benefits Corner 13
Consortium Call of the Month. . 12
Discrimination. 5
Due Process 7
Employer Liability 11
Independent Contractor 10
Labor Relations 3
Public Safety. 2
Retirement 1
Wage and Hour. 12

LCW NEWS

FLSA Academy 18
LCRP Upccoming Classes. . . 19
Firm Activities 20

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.

Los Angeles | Tel: 310.981.2000
San Francisco | Tel: 415.512.3000
Fresno | Tel: 559.256.7800
San Diego | Tel: 619.481.5900
Sacramento | Tel: 916.584.7000

©2018 Liebert Cassidy Whitmore
https://www.lcwlegal.com/news

RETIREMENT

Retirement Board Must Provide Pensioner with Due Process to Determine Whether Felony Conviction Arose Out of Performance of Official Duties.

Government Code section 7522.72 of the Public Employees' Pension Reform Act ("PEPRA") states that a public pensioner forfeits a portion of retirement benefits if the pensioner is convicted of a criminal felony that occurred in the performance of the pensioner's official duties. The California Court of Appeal upheld the constitutionality of this law and decided that the applicable retirement board must provide appropriate due process.

Tod Hipsher was a firefighter for the Los Angeles County Fire Department ("County"). Hipsher conducted an illegal gambling operation while employed at the County. After federal authorities charged Hipsher with managing the illegal operation, Hipsher retired. Hipsher was ultimately convicted of a felony related to the gambling operation.

The Los Angeles County Employees Retirement Association ("LACERA") sent Hipsher a letter stating that it was required to reduce his retirement benefits under section 7522.72. The letter stated that the County Human Resources Department had determined that Hipsher's felony conviction arose out of Hipsher's performance of his official duties. Human Resources relied on investigation reports from federal authorities which stated that Hipsher met with undercover agents at a fire station where Hipsher allegedly showed them a room where he conducted his gambling operations. LACERA reduced Hipsher's retirement benefits and sent Hipsher's attorney a second letter stating there were no administrative remedies available to challenge the benefits reduction. Hipsher sued LACERA, naming the County a real party in interest, claiming that section 7522.72 was unconstitutional, and challenging the determination that his felony conviction related to his performance of his official duties.

The Court of Appeal ruled that section 7522.72 is not unconstitutional. The Court of Appeal noted that although Hipsher's right to pension benefits was vested at the time of LACERA's determination, a felony criminal conviction arising from the pensioner's public service constitutes a valid justification for "limited forfeiture of vested retirement benefits under section 7522.72," and the County was not required to provide Hipsher a comparable benefit to replace what was forfeited. Thus, the Court of Appeal denied Hipsher's request to invalidate this section of PEPRA.

Next, the Court of Appeal found that LACERA, in its capacity as the retirement board, was required to provide Hipsher with additional due process protections in determining whether the misconduct underlying his felony conviction arose out of the performance of his official duties. The Court of Appeal noted that a pensioner has a protected interest in his/her retirement benefits, but that section 7522.72 does not establish a mechanism by which a pensioner can challenge a determination that a felony conviction arises from the pensioner's job duties. At a minimum, Hipsher had the due process rights to "written notice reasonably calculated to apprise him of the pendency of the section 7522.72 action," and to "contest his eligibility for forfeiture before an impartial decision maker." The Court found that LACERA, rather than the County, should provide such due process because the California Constitution provides that a public pension retirement board "holds the 'sole and exclusive responsibility' to administer the system". The Court of Appeal therefore reversed the trial court finding that the County, as Hipsher's employer, was responsible for providing this additional process.

Hipsher v. Los Angeles County Retirement Association, 24 Cal. App.5th 740 (2018)

Note:

> *LCW attorneys and public retirement experts **Steven M. Berliner**, **Joung H. Yim**, **Christopher Frederick** and **Jennifer Rosner** successfully represented the County of Los Angeles in this matter during both the superior court and appellate proceedings. Agencies are encouraged to contact LCW's retirement experts with questions regarding this or other public retirement issues.*

PUBLIC SAFETY

One Year Statute of Limitations on Police Officer Discipline Did Not Apply While Criminal Prosecution Was Pending.

The Public Safety Officers Procedural Bill of Rights Act ("POBRA") section 3304 requires that investigations into officer misconduct be conducted within one year after a person who is authorized to initiate an investigation discovers the allegations of misconduct. The Court of Appeal confirmed that the limitations period was "tolled," or paused in this case, while the misconduct at issue was subject to criminal investigation or prosecution.

Federal agents investigated a San Francisco Police Department ("Department") Sergeant, Ian Furminger, for corruption. Officers from the SFPD Internal Affairs Division Criminal ("IAD-Crim") unit assisted the agents. During the criminal investigation, federal agents obtained a search warrant for Furminger's cell phone records. In December 2012, they discovered a series of text messages between Furminger and other officers. The text messages were racist, sexist, homophobic, and anti-Semitic. Federal authorities brought criminal charges against Furminger that led to a guilty verdict. The text messages were subject to a protective order while the investigation and trial were ongoing, but federal authorities shared the messages with the Internal Affairs Division Administrative ("IAD-Admin") unit three days after the criminal trial ended. The IAD-Admin unit investigated the text messages, and presented disciplinary allegations against Furminger and others in April 2015.

On behalf of himself and other officers, officer Rain Daugherty challenged the discipline, claiming that the IAD-Admin unit was required to complete its investigation within one year of December 2012 when federal investigators and members of the IAD-Crim unit first discovered the messages.

First, the Court found that the Department's discipline was not untimely under the POBRA. The POBRA section 3304 statute of limitations begins to run when "persons[s] authorized to initiate an investigation," discover the misconduct at issue. The IAD-Admin officers who discovered the text messages in December 2012 were not authorized to investigate the text messages. The Court of Appeal noted that under SFPD policy, only IAD-Admin officers are authorized to conduct internal affairs disciplinary investigations of officers. The Court

stated that "law enforcement agencies have latitude to designate [who is] a person authorized to initiate an investigation," under POBRA, and "courts should generally apply the agency's designation in determining when the limitations period began to run." Additionally, even if the IAD-Crim officers who assisted in the federal criminal investigation were authorized to conduct an internal affairs investigation, that authority was revoked when federal authorities required the officers to sign an agreement to maintain the confidentiality of the text messages until after a criminal verdict was rendered. IAD-Admin officers did not receive the text messages until federal authorities released the messages after the criminal verdict.

Additionally, the Court of Appeal found that the POBRA section 3304 (d)(2)(A) exception applied to the one-year limitations period. It provides that if "misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period." The criminal investigation into Furminger's conduct was focused on potential criminal conspiracy, and the text messages were evidence which would enable investigators to identify additional co-conspirators.

The Court of Appeal therefore found that POBRA's one-year statute of limitations was tolled until federal authorities released the text messages to SFPD's IAD-Admin investigators.

Daugherty v. City and County of San Francisco, 24 Cal.App.5th 928 (2018).

NOTE:

This decision shows how the POBRA allows local agencies to cooperate with federal agencies without sacrificing the local agency's ability to investigate and address officer misconduct.

LABOR RELATIONS

U.S. Supreme Court Says Mandatory Agency Shop Fees Are Unconstitutional; California Legislature Responds with AB 866.

In a long-awaited decision, the U.S. Supreme Court held that requiring public employees to pay agency shop service fees as a condition of continued employment violates the First Amendment of the U.S. Constitution. The *Janus v. AFSCME* decision reverses the Court's 1977 decision in *Abood v. Detroit Bd. of Education* (1977) 431 U.S. 209, and became effective immediately on June 27, 2018.

Under an agency shop arrangement, employees within a designated bargaining unit of a labor organization (i.e., a union or local labor association) who decline to join as full members must pay a proportionate "fair share" agency shop fee to the labor organization, as a condition of employment. These agency shop fees are different from union dues, which union members voluntarily pay to unions as a payroll deduction.

Mark Janus, represented by AFSCME, challenged the constitutionality of agency fees. Janus had refused to become an AFSCME member because he opposed the union's position in bargaining and the policy positions that the union advocated. Janus claimed that all "nonmember fee deductions are coerced political speech" which violates the First Amendment of the U.S. Constitution.

The U.S. Supreme Court applied "exacting scrutiny" to the Illinois Public Labor Relations Act (IPLRA) that authorized agency fees and ruled against AFSCME 5-4, holding that public agencies and "public-sector unions may no longer extract agency fees from non-consenting employees." In its prior opinion in *Abood*, the U.S. Supreme Court upheld a Michigan law that allowed a public employer to require employees represented by a union to pay fees to the Union because nonunion member employees also benefitted from the union's collective bargaining. According to *Abood*, the fees could only be great enough to cover union activities that were "germane to [the union's]

duties as collective bargaining representative," but nonmembers could not be required to fund the union's political and ideological projects.

In *Janus*, the Court reasoned that the First Amendment right to free speech includes the right to refrain from speaking. Requiring public employees to pay agency fees was equivalent to compelling the agency fee payer to subsidize union speech, i.e. positions which the union takes in collective bargaining that have "political and civic consequences." The Court went on to reject *Abood's* justifications for upholding agency fees. First, the Court found that "labor peace" did not justify agency fees because labor peace could be achieved through less restrictive means, and the *Abood* Court's fears that labor conflicts would result if agency fees were not paid, had not materialized.

Additionally, the Court rejected *Abood's* finding that states have a compelling interest in avoiding "free riders" – nonmember employees who enjoy the benefits of union representation without contributing to the costs that unions incur while representing them. A compelling interest is not present, reasoned the Court, on the grounds that unions would otherwise be unwilling to represent non-members, or that it would be unfair to require unions to represent non-members who do not pay a fee for the representation. The Court also noted that the burden of representing non-members is offset by the benefits the union enjoys as the exclusive representative, and that unions can eliminate the burden of representing nonmembers through less restrictive means. For example, as to representation in grievance proceedings, unions may simply decline to represent non-members or require nonmembers to pay for union representation in grievance proceedings.

The Court further found that stare decisis – the principle that courts should follow the precedent set by prior decisions -- did not require it to uphold *Abood*. The Court found several reasons to ignore stare decisis and overrule *Abood* including: "quality of []reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." Among other things, the Court noted, *Abood*: did not provide a workable distinction between chargeable and non-chargeable fees; was out of step with First Amendment jurisprudence because it did not apply the "exacting scrutiny" standard to state legislation allowing agency fees to be charged as a condition of employment; and unions' reliance on agency fees was not a decisive factor.

Thus, the Court held that compelling public employees to pay agency fees "violates the First Amendment and cannot continue."

Janus v. American Federation of State, County, and Municipal Employees, 138 S.Ct. 2448 (2018).

Senate Bill 866 Provides Public Employee Unions Greater Control Over Dues, Communications and New Employee Orientations.

Immediately after the U.S. Supreme Court decided Janus, Governor Brown signed Senate Bill 866. This law is urgency legislation that applies to all California public employers effective June 27, 2018. Among other things, S.B. 866 amends the Government Code and creates new state laws regulating: organization membership dues and membership-related fees; employer communications with employees about their rights to join or support, or refrain from joining or supporting unions; and the disclosure of the date, time, and place of the union's access to new employee orientations. The Government Code now requires public agencies to honor union requests to deduct voluntary union membership dues and initiation fees (distinct from agency fees) from employee wages, and requires agencies to rely on union certifications that the union has and will maintain member dues deduction authorizations. (Gov. Code, Sections 1152, 1157.3.) Additionally, if an employee requests to "cancel or change deductions," the agency must direct the employee to the union. (Gov. Code, Section 1157.12.) Unions are responsible for processing these requests, not the public employer.

Additionally, SB 866 adds section 3553 to the Government Code which defines a "mass

communication" as a "written document, or script for an oral or recorded presentation or message, that is intended for delivery to multiple public employees." A public agency that chooses to send mass communications to its employees or applicants concerning the right to "join or support an employee organization, or to refrain from joining or supporting an employee organization" must first meet and confer with the union about the content of the mass communication. If the employer and exclusive representative do not come to an agreement about the content of the communication, the employer may still choose to send its communication but must simultaneously send a communication of reasonable length provided by the exclusive representative.

Senate Bill 866 now requires that new employee orientations be confidential. In addition to existing law that provides exclusive representatives with mandatory access to new employee orientations following the passage of AB 119 in 2017, the newly enacted Government Code section 3556 requires that the "date, time, and place of the orientation shall not be disclosed to anyone other than the employees, the exclusive representative, or a vendor that is contracted to provide services for the purposes of the orientation."

Although SB 866 makes changes to the Government Code affecting all public sector employers, it does not apply to all employers in the same manner. Thus, public school employers, community college districts, and other public agencies should familiarize themselves with SB 866 and its impact in light of the *Janus* decision.

DISCRIMINATION

California Expands Protections Against National Origin Discrimination.

Effective July 1, 2018, California's Fair Employment and Housing Commission regulations expand protections against "national origin" discrimination under the Fair Employment and Housing Act ("FEHA"). The FEHA applies to public employers in California.

Newly Expanded Definition of "National Origin"

Prior to July 1, 2018, the FEHA did not define "national origin." The regulations (2 C.C.R. Section 11027.1) now define the term broadly to include "the individual's or an ancestor's actual or perceived characteristics" including:

(1) Physical, cultural, or linguistic characteristics associated with a national origin group;

(2) Marriage to or association with persons of a national origin group;

(3) Tribal affiliation;

(4) Membership in or association with an organization identified with or seeking to promote the interests of a national origin group;

(5) Attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of a national origin group; and

(6) A name that is associated with a national origin group.

The regulations also extend protections to "national origin groups" which are defined broadly to include ethnic groups, geographic places of origin, and countries that are not presently in existence. Under this definition, an employee's protected national origin status includes a geographic location or country, a formerly existing country, or a region that is not a country but that is associated with an ethnic group. The regulations also state that "undocumented applicant or employee" is the appropriate reference to someone who lacks authorization under federal law to be or work in the United States.

Further Restrictions on Employer "English-Only" Policies

The new regulations establish additional restrictions on employer policies that limit or prohibit employees from speaking a particular language in the workplace. Workplace language restrictions are prohibited unless: the restriction is justified by a "business necessity"; the restriction is narrowly tailored; and the employer effectively notifies employees of the circumstances and time when the restriction must be observed and the consequences for violating the restrictions. A "business necessity" does not exist where the restriction is based on mere "business convenience."

The new regulations also specify that employment discrimination based on an individual's accent is unlawful, unless the employer proves the accent "interferes materially" with job performance. An employer is also prohibited from discriminating based upon English proficiency, unless the action is justified by "business necessity." It is not unlawful for employers to ask applicants or employees for information related to proficiency in any language, if the inquiry is justified by a business necessity.

Restrictions on Employment Actions Related to Immigration Status

The new regulations apply to undocumented job applicants to the same extent that they apply to any other applicant or employee. The regulations also establish specific prohibited "immigration-related" practices related to an individual's immigration status. For example, employers are prohibited from inquiring into an applicant or employee's immigration status, or discriminating based on immigration status, unless the employer clearly and convincingly shows that doing so is necessary to comply with federal immigration law. Under the Federal Immigration Reform and Control Act of 1986 ("IRCA"), employers must verify new employee authorization to work in the U.S. using federal Form I 9. IRCA also prohibits employers from knowingly hiring or continuing to employ individuals who are not authorized to work in the U.S.

Additionally, under the new regulations, employers may not take adverse action against an employee who updates or attempts to update the employee's personal information because of a change in the employee's name, social security number, or government issued employment documents.

Note:

> *Agencies are encouraged to review existing handbooks, applications, and other policies to ensure they comply with the new FEHA regulations. LCW can provide legal guidance when navigating questions relating to job applicant or employee immigration status. A full copy of the revised regulations is available here:* https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2018/05/FinalTextRegNationalOriginDiscrimination.pdf.

Supervisor Who Mocked Employee's Stutter Over a Period of Two Years Violated FEHA's Prohibition on Disability Harassment.

The California Court of Appeal upheld a $500,000 award to a prison guard whose supervisor frequently mocked the guard's stutter in front of other supervisors and colleagues. The evidence supported the guard's claims that: he was harassed because of his disability; and that the prison failed to prevent the harassment in violation of the Fair Employment and Housing Act (FEHA).

Augustine Caldera worked as a correctional officer in a state prison. Caldera is an individual with a speech impediment that causes him to stutter or stammer. Over a period of about two years, Caldera's supervisor, Sergeant Grove, mocked Caldera's stutter about a dozen times. On one occasion, after Caldera made an announcement over the loudspeaker, Sergeant Grove repeated Caldera's announcement and mimicked the stutter; the announcement was heard by about 50 employees. On multiple other occasions, Sergeant Grove would repeat the words that Caldera stuttered on in front of other employees. Caldera filed a formal complaint about Grove's actions with the Department of Corrections and raised concerns with his superiors when he learned that Grove was to be assigned to the same work

area as Caldera (though under a different chain of command). Grove was reassigned to Caldera's work area and continued to mock Caldera's stutter. At trial, Caldera presented testimony from two witnesses to Grove's conduct; one witness testified that he observed Grove mocking Caldera about a dozen times, and that there was a "culture of joking" about Caldera's stutter at the prison. The jury found the harassment to be both severe and pervasive. To prevail on a FEHA claim, an employee need only prove either that the harassment was severe or that it is pervasive. The jury awarded Caldera $500,000 in noneconomic damages. The trial court judge found the damage award to be excessive, but the Court of Appeals reversed the trial court.

The Court of Appeal found that the jury's award was appropriate because: Caldera was subjected to unwanted harassing conduct based on his disability; the harassment was severe and pervasive; a reasonable person in Caldera's position would have considered the work environment to be hostile or abusive; a supervisor participated in, assisted, or encouraged the harassing conduct; the Corrections Department had failed to take reasonable steps to prevent the harassment; and the Department's failure to prevent the harassment was a substantial factor in causing Caldera harm.

Caldera v. Department of Corrections and Rehabilitation, et al., 235 Cal.Rptr.3d 262 (2018).

Note:

> *Supervisors and other public agency employees can be held personally liable for harassment that violates the FEHA. In order to fulfill its duty to prevent harassment, a public agency employer must promptly investigate and remedy complaints regarding any protected status. LCW attorneys are available to discuss appropriate responses to such complaints.*

DUE PROCESS

No Pre-Suspension Evidentiary Hearing Required for Officer Who Was Charged With Criminal Misdemeanor Offense.

David Moser, a Sergeant employed by the Los Angeles County Sherriff's Department ("Department"), worked as a correctional officer. During one of his shifts, Moser was responsible for monitoring an inmate who was restrained in his cell on suspicion of possessing contraband. The inmate alleged that he remained shackled in his cell for 15 hours, and that while he was restrained, he was injured by sheriff deputies. Evidence corroborated the inmate's claims. After a Department administrative investigation, and subsequent criminal investigation, the District Attorney's Office brought criminal misdemeanor charges alleging cruel punishment or impairing the health of an inmate, and arrested Moser.

The Department issued Moser notice of its intent to suspend him without pay for up to 30 days after a decision on the criminal charges was rendered (consistent with applicable civil service rules), and notified Moser of his right to respond to the charges. The Department ultimately imposed the suspension and notified Moser of its decision and his right to request a post-suspension hearing to challenge the decision. Moser requested and was granted a hearing, but requested that the hearing be held in abeyance until the conclusion of the criminal case.

Moser then filed a petition in state court claiming that the Department violated his due process rights when it failed to provide him with an evidentiary hearing prior to suspending him. The Department asserted that its pre-suspension *Skelly* meeting provided Moser with sufficient process and Moser was not entitled to an evidentiary hearing prior to being suspended.

The trial and appellate courts agreed with the Department. Specifically, the Court of Appeal reasoned that Due Process principles are flexible, and on the facts of the case, did not require the

Department to provide Moser an evidentiary hearing prior to suspension. The Court of Appeal relied on the U.S. Supreme Court decision in *Gilbert v. Homar*, which held that due process does not always require a public employer to provide a trial-like evidentiary hearing to a tenured public employee prior to taking disciplinary action against the employee.

First, the Court of Appeal found that Moser's significant interest in receiving a paycheck from the Department was "lessened by the fact that he was temporarily suspended, rather than terminated," as well as the availability of a relatively prompt hearing. Moser was receiving unemployment benefits during his suspension and could have obtained a hearing within about three months of suspension had he not requested the hearing be held in abeyance. The scope of the hearing was also sufficient to satisfy due process if made available after suspension – issues to be heard included: whether there was a nexus between the criminal charge and Moser's job duties; whether suspension was appropriate; the Department's interest in suspension and any defenses asserted by Moser.

Second, the Department had a "significant" interest in immediately suspending Moser given the nature of the criminal allegations against him. The Court of Appeal noted that the principles in *Gilbert* applied to Moser's case even though the officer in *Gilbert* was charged with a felony and Moser was charged with a misdemeanor. "Under the unique circumstances of this case, we do not find the misdemeanor/felony distinction particularly meaningful. Although it may not be true of all misdemeanor charges, there is no question that a charge of inflicting cruel punishment on an inmate calls into question an officer's ability to do his or her job." That Moser was criminally charged with such an offense was sufficient to raise "serious public concern," and was additional justification for the Department's actions.

Finally, the Court of Appeal found that the countervailing risks associated with erroneously suspending Moser, and the cost to the Department of providing Moser with additional process did not require a hearing prior to suspending Moser. The misdemeanor complaint and arrest provided sufficient grounds for the unpaid suspension, and were enough to ensure the Department's suspension was not arbitrary.

Thus, the Court of Appeal upheld the trial court's decision in favor of the Department and confirmed that the Department's hearing following its unpaid suspension of Moser did not violate Moser's due process rights.

Los Angeles County Professional Peace Officers Association v. County of Los Angeles, 2018 WL 23882152- unpublished (2018).

Note:

LCW attorneys ***Geoff Sheldon*** *and* ***Jennifer Palagi*** *secured this victory for the Los Angeles County Sherriff's Department.*

Community College Employee's Claims of Employment Discrimination Were Barred by Adverse Ruling of Administrative Law Judge.

Carol Wassmann was a tenured librarian employed by the South Orange County Community College District ("District") when she was dismissed for multiple incidents of unsatisfactory performance, and discourteous and unprofessional behavior. Wassmann challenged her dismissal during a five-day administrative proceeding which was conducted in accordance with the California Education Code. Pursuant to the Code, an Administrative Law Judge ("ALJ") conducted a hearing in which Wassmann had the opportunity to present witnesses. At the end of the hearing, the District provided Wassmann with a written statement describing the District Board's dismissal decision. The ALJ that presided over the hearing determined that the District terminated Wassmann for cause, and a trial court upheld the judge's decision. Although the Education Code allowed Wassmann to object to the ALJ decision "on any ground," Wassmann did not assert that she was terminated because of her race, age, or for any other discriminatory reason.

Years later, Wassmann filed a civil lawsuit against the District and other parties, claiming that she was terminated because of her race and age, in violation of the Fair Employment and Housing Act ("FEHA") and other claims. The trial court granted defendants' motions for summary judgment and the Court of Appeal affirmed on the ground that the FEHA claims were barred by *res judicata*, and collateral estoppel. These legal principles prevent a party from re-litigating issues or legal claims that have already been heard or decided in another forum. The Court of Appeal found that the ALJ's decision at the hearing on Wassmann's dismissal barred her civil lawsuit because it had a "sufficiently judicial character." The hearing was conducted by an impartial decision maker, witnesses gave testimony under oath, Wassmann had the opportunity to subpoena and examine witnesses, introduce evidence, make written and oral argument, the proceeding was transcribed, and the ALJ issued a written decision. After Wassmann's subsequent challenge to the ALJ's decision was unsuccessful, the decision became final and binding.

Thus, the Court of Appeal found that Wassmann had a sufficient opportunity to present any evidence that she was terminated due to the unlawful discrimination but failed to do so during her administrative proceedings. The Court upheld the ALJ's determination that she was terminated for cause.

Wassmann v. South Orange County Community College District, 24 Cal.App.5th 825 (2018).

Court Upholds Dismissal of Administrative Law Judge ("ALJ") from State Personnel Board Where ALJ's Misconduct was Repeated, Egregious and Likely to Recur.

Richard Paul Fisher served as an Administrative Law Judge ("ALJ") for the California State Personnel Board (SPB). While still serving as an ALJ, Fisher joined the law firm of Simas & Associates as "of counsel." The firm represented clients in administrative actions before the SPB, including one high-profile case that was heard by the SPB while Fisher was serving in his ALJ and "of counsel" roles. Fisher never disclosed his "of counsel" role to the SPB during any of these events.

Fisher's dual role violated the SPB's policies, including its policy prohibiting ALJ's from participating in activities that are incompatible with their duties as an SPB ALJ. The policy stated that an Officer of SPB who engages in any employment or activity "which might conceivably be incompatible, or interfere in any way with his or her duties as a State officer or employee, whether or not specifically covered by the Statement must consult with his or her supervisor…" When Fisher's involvement with the Simas & Associates law firm was discovered, the SPB dismissed him from his ALJ position.

Fisher challenged his dismissal. He claimed, among other things, that dismissal was unwarranted because the SPB never served him with notice that working for a law firm that represented clients in administrative matters was impermissible.

California's Office of Administrative Hearings ("OAH") heard Fisher's appeal and upheld his dismissal. The Court of Appeal affirmed that the SPB's dismissal of Fisher was appropriate, and that the OAH's denial of Fisher's appeal was supported by substantial evidence. The Court of Appeal rejected Fisher's argument that he should have been expressly informed that it was inappropriate for him to work for a law firm that was litigating cases before the very agency for which Fisher worked as an ALJ. The Court of Appeal also found that substantial evidence supported the OAH findings that Fisher "displayed an appalling lack of judgment when he became of counsel with Simas & Associates" and "continued to demonstrate poor judgment when he failed to disclose his of counsel relationship to SPB." The Court of Appeal therefore found that SPB did not abuse its discretion when it dismissed Fisher, and affirmed the decision of the OAH denying Fisher's appeal.

Fisher v. State Personnel Bd., 2018 WL 3327710 (2018).

WAGE & HOUR

Starbucks Case Provides Guidance to Public Employers on the FLSA De Minimis Rule.

Starbucks was on the losing end of a California Supreme Court decision regarding whether the Fair Labor Standards Act's (FLSA's) *de minimis* rule applies to private employers who are governed by the California Wage Orders. FLSA fans and regular readers of LCW's *Client Update* know that the California Wage Orders generally do *not* apply to public sector employers (i.e., a notable exception is that California's minimum wage applies). Instead, the FLSA is the go-to wage and hour law for public employers.

The California Supreme Court found that the FLSA's *de mimimis* rule does not apply to claims for unpaid wages under California's wage and hour laws. The facts of the *Troester v. Starbucks* case, however, still provide a good case study for public employers.

Douglas Troester was a shift supervisor for Starbucks who was responsible for closing the store. Starbucks's computer software required him to clock out before he initiated the software's "close store procedure" on a separate computer terminal that was located in the back office. After Troester completed the "close store procedure" he activated the store alarm, exited the store, and locked the front door. Also per Starbucks policy, he walked his coworkers to their cars. Occasionally, Troester: had to reopen the store to allow employees to retrieve items they left in the store; waited with employees for their rides to arrive; or brought in store patio furniture that was mistakenly left outside. Over 17 months, Troester's unpaid time doing these tasks added up to 12 hours and 50 minutes. The evidence showed that Troester's off-the-clock work generally took 4-10 minutes each day, not including the additional time required on the occasional periods when he had to reopen the store.

Under the FLSA, in order to determine whether work time is *de minimis*, or too small to account and pay for, the courts consider the facts of each case in light of three factors: 1) the practical administrative difficulty of recording the additional time; 2) the aggregate amount of compensable time; and 3) the regularity of the additional work. (*Lindlow v. US*, 738 F.2d 1057(9th Cir. 1984).

This decision found only that the FLSA *de minimis* rule does not apply to the California wage and hour law. Public employers should not interpret this case to mean that they need not pay employees for off-the-clock work. Instead, public employers should pay for all off-the-clock work as required by the FLSA *de minimis* rule.

Troester v. Starbucks, Inc., 2018 WL 3582702 (7/26/18).

INDEPENDENT CONTRACTORS

California's New Independent Contractor Test Does Not Apply in Joint Employer Context.

LCW previously reported on the California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, in which the Court created a new test to determine whether a worker is properly classified as an independent contractor or as an employee. The decision overturned well-established legal standards in this area and held that the burden is on the hiring entity to prove independent contractor status under the newly created "ABC Test."

In *Curry v. Equilon Enterprises, LLC*, the California Court of Appeal held that the ABC Test does not apply to the question whether a worker has been hired by more than one employer, or "joint employers." In that case, Sadie Curry, worked for A.R.S., a company that had entered into an agreement with Shell to operate Shell service stations throughout California. Curry was hired directly by A.R.S. and employed to manage two Shell gas stations. Curry completed an A.R.S. employment application, A.R.S. assigned Curry her job duties and controlled her hours of work, and Curry reported to A.R.S. employees. In spite of this, Curry sued A.R.S., and Equilon Enterprises, LLC (doing business as Shell Oil Products), claiming that both entities were

her employers, misclassified her as exempt from overtime, and failed to pay her wages for overtime work and missed meal and rest breaks.

The Court of Appeal found that the policies reasons underlying the Supreme Court's decision in *Dynamex* did not apply to questions relating to joint employer status. While the Supreme Court in *Dynamex* cited concerns that cost savings could incentivize employers to misclassify a worker as an independent contractor, these concerns are unique to misclassification. "In the joint employer context, the alleged employee is already considered an employee of the primary employer; the issue is whether the employee is also an employee of the alleged secondary employer. Therefore, the primary employer is presumably paying taxes and the employee is afforded legal protections due to being an employee of the primary employer."

Thus, the Court of Appeal rejected Curry's argument and concluded that "placing the burden on the alleged employer to prove that the worker is not an employee is meant to serve policy goals that are not relevant in the joint employment context."

Curry v. Equilon Enterprises, 24 Cal.App.5th 289 (2018) .

Note:

> *Because* Curry v. Equilon Enterprises *is a Court of Appeals decision, it does not reverse* Dynamex. *However, this narrow interpretation of* Dynamex *tests whether the California Supreme Court intended to apply the "ABC" test only to the question of whether independent contractors are appropriately classified. LCW will continue to monitor developments in this area. LCW's discussion of the* Dynamex *decision is available here:* https://www.lcwlegal.com/news/california-supreme-court-adopts-abc-test-for-independent-contractor-status.

EMPLOYER LIABILITY

Employer Was Not Liable for Harm Caused by Employee Who Injured a Pedestrian During Employee's Normal Commute.

The California Court of Appeal clarified an exception to the circumstances under which an employer may be liable for harm caused by an employee, i.e. a car accident, when the employee is commuting to and from work in the employee's personal vehicle.

In *Newland v. County of Los Angeles*, the Court of Appeal noted that an employee can attribute the employee's injury-causing conduct to an employer only if the employee shows that at the time of the accident: 1) the employer required the employee to drive the employee's personal car to and from the work place; or 2) the employee was using his or her personal car to the benefit to the employer. Whether these two exceptions apply depends on the circumstances of each case.

Donald Prigo worked as a public defender for the County of Los Angeles. Prigo drove his personal vehicle about eight to ten days per month to accomplish job duties outside of the office such as: appearing in court, visiting clients at jails, interviewing witnesses, and viewing crime scenes. County policy did not require Prigo to use his personal car for work purposes, or to have his personal car available for work purposes on a daily basis or for emergencies. The County only required Prigo to possess a valid Class C driver's license or use public transportation as needed to perform his job duties. Although it was impractical for Prigo to use public transportation to perform these duties, Prigo did not perform these duties on a daily basis. Prigo also had "authority and discretion to determine when he needed to drive to a location for work" and, when it was not necessary for him to use his personal car for work, Prigo could, and did use public transportation or carpools to commute.

Prigo left work at the end of one work day and drove his personal car to a post office to mail his rent check. While in route to the post office, Prigo's car collided with another car; the collision forced the other car

off the road and it hit and injured pedestrian, Jake Newland. Newland sued the County and Prigo, claiming the County was at fault for his injuries because Prigo was acting within the scope of his employment duties at the time of the collision that caused Newland's injuries.

The County asserted, and the Court of Appeal agreed, that Prigo was not acting with the scope of his job duties at the time of the collision. There was no evidence that the County required Prigo to use his personal car for work purposes at the time of Prigo's accident and there was no evidence that Prigo's use of his personal car at that time was a benefit to the County. Indeed, Prigo had left work for the day and was performing a personal errand during his commute home.

The Court of Appeal also noted that this case differed from others cases that have found that the employee's commute was within the scope of employment. In those cases, the employer *required* the employee to bring a personal vehicle to work, to have it available to provide transportation to various remote work sites during the work day, or to have the vehicle available for client meetings and emergencies.

Thus, the Court of Appeal reversed the jury's finding that the County was liable for the injuries caused by Prigo's accident.

Newland v. County of Los Angeles, 24 Cal.App.5th 676 (2018).

Note:

> *Agencies wishing to evaluate whether employee use of private vehicles for job duties constitutes use of a private vehicle within the scope of employment are encouraged to reach out to LCW attorneys.*

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.

Question: If an application for employment includes a question asking whether the applicant is authorized to work in the U.S., and the applicant states s/he is not, may the employer ask follow up questions regarding the applicant's work authorization during the interview?

Answer: The interview should be limited to the question, "Are you presently legally authorized to work in the United States?" Asking follow up questions during the interview could lead the applicant to disclose information relating to a protected status, which the employer may be prohibited from considering during hiring. State and federal laws prohibit discrimination on the basis of protected statues such as national origin, ethnicity, or race. State regulations have recently expanded protections based on national origin. The employer should pose the same question to all applicants without variation, to avoid creating the appearance of discrimination.

BENEFITS CORNER

ACA Back to Basics: Measuring Full-Time Employees

This article is the second installment in LCW's ACA Back to Basics series. The series will help employers brush up on the Patient Protection and Affordable Care Act's (also known as "the ACA") Employer Shared Responsibility Provisions ("ESRP"). In our June 2018 *Client Update*, we published an article discussing the applicability of ACA's ESRP to Applicable Large Employers ("ALE") and how to calculate whether an employer is an ALE. This month we will discuss how an ALE may identify full-time employees under the ACA.

Measuring Full-Time Employees

An ALE must offer minimum essential coverage to substantially all full-time employees and their dependents to avoid Penalty A. Also, the coverage an ALE offers must provide minimum value and be affordable in order to avoid Penalty B. For further explanation of Penalty A and Penalty B, see [include link to June 2018 article on ACA]

The ACA rules for measuring full-time employees are relevant to determine: (1) benefit eligibility, (2) ACA reporting obligations, or (3) both benefit eligibility and ACA reporting obligations.

Benefit Eligibility: Employers may have existing contracts or policies in place that dictate benefit eligibility. These contracts or policies may provide different eligibility requirements for benefits than the ACA's ESRP. Employers should consult with legal counsel before making an offer of coverage if the provisions of a contract or policy differ from the ACA's ESRP requirements. The ACA does not necessarily trump existing contracts or policies.

ACA Reporting Obligations: An ALE must file informational returns with the Internal Revenue Service ("IRS") for each full-time employee to whom it offered coverage (i.e. Form 1095-C). In connection with this reporting, an ALE also must provide a copy of the Form 1095-C (or compliant written statement) to each full-time employee conveying the information the ALE reported to the IRS.

For the above two potential purposes, an ALE must be able to identify its **full-time employees** as that term is defined under the ACA. The ESRP provide two methods to measure full-time employees, the Monthly Measurement Method and the Look Back Measurement Method Safe Harbor.

1) Monthly Measurement Method

Under the Monthly Measurement Method, an employee is a full-time employee if he/she has on average at least 30 hours of service per week during the calendar month, or at least 130 hours of service during the calendar month.
An "hour of service" is generally defined as "each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence." If an employee has 130 hours of service in any given month, then the IRS will consider that employee to be an ACA full-time employee for that month.

An ALE will have trouble using the Monthly Measurement Method to determine benefit eligibility unless it can predict the hours of service for an employee. However, many employers use this method to identify ACA full-time employees for reporting purposes.

The Monthly Measurement Method is the default that the IRS will apply unless the employer has adopted the Look Back Measurement Method Safe Harbor.

2) Look Back Measurement Method Safe Harbor ("Look Back Safe Harbor")

The Look Back Safe Harbor has different rules for ongoing employees than it does for new variable hour and new seasonal employees. We will explore these rules in depth in our next article in

our “ACA Back to Basics” series. Generally, this method allows an employer to measure hours of service over a longer period of time (e.g. up to 12 months) by looking back over past months and calculating hours of service. For example, an employee who hits at least 1560 hours of service over a 12 month period will have a status that is “locked in” as full-time for the next 12 month period.

An ALE who is using the Look Back Safe Harbor will need to establish a “Standard Measurement Period,” “Administrative Period,” and “Stability Period” for ongoing employees and an “Initial Measurement Period,” “Administrative Period” and “Stability Period” for new variable hour and seasonal employees, that comply with the restrictions in the ESRP regulations. Once the ALE establishes these periods, it must comply with a set of rules to measure the hours of employees (either for ACA reporting, benefit eligibility, or both).

The benefit of the Look Back Safe Harbor is that it allows an employer to plan and predict who may be full-time. It also allows seasonal or variable hour employees to work more than 130 hours of service in any given month without them qualifying as ACA full-time.

Later installments in our ACA Back to Basics series will provide additional details on the Look Back Measurement method Safe Harbor Rules.

IRS Releases 2019 HSA Contribution Limits, High Deductible Health Plan Minimum Deductibles, and High Deductible Health Plan Out-of-Pocket Maximums

See IRS Publication located at: **https://www.irs.gov/pub/irs-drop/rp-18-30.pdf**

The IRS released the 2019 cost-of-living adjusted limits for health savings accounts (HSAs) and high-deductible health plans (HDHPs) as follows:

HSA Contribution Limits. The annual HSA contribution limit will increase from $3,450 in 2018 to $3,500 in 2019 for individuals with self-only HDHP coverage, and from $6,900 in 2018 to $7,000 in 2019 for individuals with family HDHP coverage.

HDHP Minimum Deductibles. The 2019 minimum annual deductible remains at $1,350 for self-only HDHP coverage and $2,700 for family HDHP coverage.

HDHP Out-of-Pocket Maximums. The 2019 limit on out-of-pocket expenses (including items such as deductibles, copayments, and coinsurance, but not premiums) will increase from $6,650 in 2018 to $6,750 in 2019 for self-only HDHP coverage, and from $13,300 in 2018 to $13,500 in 2019 for family HDHP coverage.

IRS Creates Webpage Regarding Letter 227 and Releases Sample Versions of Letter 227

The IRS created a webpage on its site (located here: *https://www.irs.gov/individuals/understanding-your-letter-227*) to understand Letter 227, which was sent to certain applicable large employers (ALEs) acknowledging the employer’s responses to Letter 226J. Letter 226J is a tax notice ALEs may receive in connection with the assessment of proposed employer shared responsibility penalties for non-compliance with the ACA.

The IRS sends Letter 227 to explain its review and determination, and the next steps for resolving the tax penalty. There are five different versions of Letter 227, with samples provided on the IRS’ webpage.

Letter 227-J states that the IRS will assess the proposed penalty amount because the ALE agreed with the proposed penalty. No response is required to Letter 227-J, and the case is deemed closed.

Letter 227-K confirms that the penalty amount has been reduced to zero. No response is required to Letter 227-K, and the case is deemed closed.

Letter 227-L confirms that the proposed penalty amount has been revised. Letter 227-L includes an updated Form 14765 (Employee Premium Tax Credit (“PTC”) Listing) and revised calculation table. The ALE can agree with the revised penalty amount, request a meeting with the IRS, or appeal the determination. Note: The PTC is a refundable credit that helps eligible individuals and families

cover premiums for coverage purchased through Covered California.

Letter 227-M confirms that the penalty amount did not change. This version of the letter also includes an updated Form 14765 and revised calculation table. The ALE can agree with the revised penalty amount, request a meeting with the IRS, or appeal the determination.

Letter 227-N acknowledges the decision reached by the IRS appeals division and shows the resulting penalty amount. No response is required to Letter 227-N, and the case is deemed closed.

Only **Letters 227-L** and **227-M** require a response, which must be provided by the date note in the corresponding letter.

Employers should constantly be on the lookout for all correspondence from the IRS relating to employer shared responsibility payments and penalties to avoid any potential delays and untimely filings. Employers who have been assessed penalties and are corresponding with the IRS should carefully review all information reported on Forms 1094-C and 1095-C for the appropriate year to ensure they provided accurate information to the IRS. Employers should keep copies of submitted Forms and all correspondence with the IRS and carefully review all information for accurate calculations. Lastly, employers should consult with an appropriate tax and legal professional if they are in the process of reviewing/disputing/modifying IRS assessed penalties.

ACA Affordability Percentages Increase in 2019 & CalPERS Adopts Health Care Rate and Plan Changes

On May 21, 2018, the IRS issued revenue procedures listing the contribution percentages in 2019 to determine affordability of an employer's plan under the ACA. For plan years beginning after December 31, 2018, employer-sponsored coverage will be considered "affordable" for employer shared responsibility purposes if the employee's required contribution for self-only coverage does not exceed 9.86 percent of the employee's household income for the year (increased from 9.56% for 2018).

On a related note, on June 20, 2018, CalPERS approved health care rate and plan changes for 2019, which include an average of 1.16 percent overall premium increases. These CalPERS premium increases should be considered by employers and accounted for when determining whether offered-health care coverage is affordable for ACA-reporting purposes.

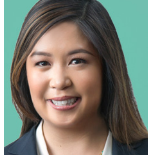
§

Six LCW Attorneys Honored by the Northern California Super Lawyers

2018 NORTHERN CALIFORNIA SUPER LAWYERS

Shelline Bennett, Managing Partner of LCW's Fresno and Sacramento offices, is receiving this honor for the 12th time. Having represented public sector management in labor and employment law matters for over 20 years, Shelline has an extensive background in litigation and labor relations, including collective bargaining.

This is the ninth time that **Richard (Rick) Bolanos** has been selected as a Northern California Super Lawyer. A Partner in the San Francisco office, Rick represents public entities in a full range of labor and employment law matters. He has served as lead negotiator for numerous agencies as well as provided advice and counsel in matters ranging from FLSA, POBR, FBOR, to leaves and disciplinary matters.



2018 NORTHERN CALIFORNIA RISING STARS

For the third consecutive year, **Joy Chen** has been named a "Rising Star." Joy, Associate in LCW's San Francisco office, represents and advises public sector agencies in all aspects of labor, employment, and education law. She is experienced in defending employers in various litigation matters before federal and California state courts.

Sacramento Partner **Gage C. Dungy** is receiving this honor for the tenth consecutive year. Gage provides management-side representation and legal counsel to clients in all matters pertaining to labor and employment law. He regularly serves as chief negotiator for public sector agencies in labor negotiations with their employee organizations.

San Francisco office Associate **Juliana Kresse** is receiving this honor for the sixth consecutive year. Juliana assists the Firm's clients with a wide-range of employment and education law matters. She has represented employers in California State and federal courts and is well-versed in all aspects of the litigation process.

This is the second time that **Erin Kunze**, Associate in the San Francisco office of LCW, has received this honor. Erin provides representation and legal counsel to clients on a variety of employment and education law matters, including retirement, labor relations in the public and private nonprofit sectors, public safety, and safety planning in schools.

Liebert Cassidy Whitmore congratulates them for being honored in their work!

Jesse Maddox Named a Top Labor & Employment Lawyer

We are excited to announce that LCW's **Jesse Maddox** has been named a 2018 California "Top Labor & Employment Lawyer" by the Daily Journal. This is the seventh year that one of Liebert Cassidy Whitmore's attorneys has been selected to this list, which is released annually and recognizes the 75 California attorneys who are the "top in the field."

Jesse was selected for his focus on defending employers throughout California in all aspects of labor and employment litigation. Most recently, Jesse won a unanimous jury verdict in favor of the City of Stockton in a pregnancy/gender discrimination and whistleblower retaliation case in the United States District Court for the Eastern District of California - Sacramento Division.

This case was selected as a "Top Verdict" of 2017 by the Daily Journal as well as "Case of the Month" in the May edition of Trial's Digest - the Fresno County Bar Bulletin. The victory was obtained using a strategy that highlighted the bias of the plaintiff, specifically comments she made about her boss and his Mormon faith.

"By preparing witnesses and making them as identifiable as possible, you make it more personal so the jury understands there are real people involved, making the best decisions they can using their judgment," said Jesse. "It's not just some greedy corporation or governmental entity."

Jesse is a Partner in our Fresno and Sacramento offices and has litigated over 50 employment law actions in federal and state courts through all stages of litigation, including jury trials, bench trials, and appeals. He serves on the Executive Committees of the Firm's Litigation and Public Safety Practice Groups. Jesse is also a member of the Fresno County Bar Association, the Federal Bar Association, and the American Bar Association.

LCW congratulates Jesse for this prestigious recognition of his work!

LCW LIEBERT CASSIDY WHITMORE

2-DAY FLSA ACADEMY

Registration is Now Open!

Monday October 1st - Tuesday October 2nd, 2018
Piedmont Community Hall
711 Highland Ave
Piedmont, CA 94611

This seminar offers an in-depth training for public agencies on one of the most fundamental employment areas – items dealing with wages and hours. The FLSA became applicable to the public sector in 1986, and governs many significant matters that you need to understand and ensure agency compliance. But the FLSA often confuses and complicates the lives of public agencies. We understand the struggle is real and this program is designed to help you strategize and walk away feeling comfortable that you understand this complicated law and can be an effective leader in your organization. Public agency liability can be significant and costly so the best strategic plan is one of prevention.

This two-day workshop will cover all you need to know to understand the key areas covered by the FLSA including:

- FLSA Basics
- Work Periods & Hours Worked
- Exemption Analysis
- The Regular Rate of Pay & Compensatory Time Off
- Conducting a Compliance Review

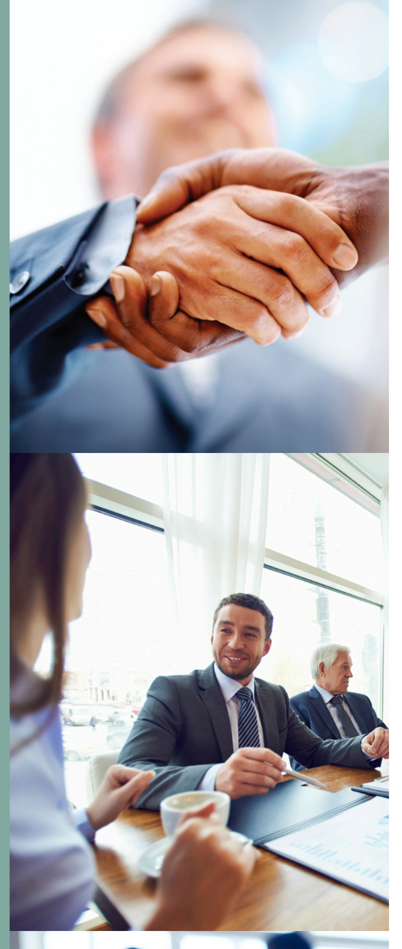
Attendees will receive a copy of our FLSA Guide. The seminar includes a continental breakfast and lunch.

Intended Audience: Professionals in Human Resources, Finance, Legal Counsel and Managers/ Executives

Time: This is a 2-Day Event, 9:00 a.m. to 4:00 p.m both days.

Pricing: $500 pp for Consortium Members | $550 pp for Non-Consortium Members

For more information and to register, visit
http://www.lcwlegal.com/events-and-training /webinars-seminars/2-day-flsa-academy-1



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:

The Public Employment Relations Board (PERB) Academy

September 13, 2018 | Citrus Heights, 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 as we share the insight on PERB!

The Rules of Engagement: Issues, Impacts & Impasse

October 11, 2018 | Fullerton, CA

Understanding the scope of meet and confer matters, impacts/effects bargaining, the rights of union/association representatives, dealing with pickets, protests and concerted activity, issuing last, best & final offers, impasse procedures and managing the chaos that can come when engaged with labor relations challenges will be covered in this workshop.

Nuts & Bolts of Negotiations

November 7, 2018 | Citrus Heights, CA

Navigate the nuts & bolts of public sector labor negotiations by exploring the legal framework of collective bargaining, preparation tips for the process, and setting up your strategy. The fundamentals are the building blocks to success and this workshop will provide the key elements in this process.

Register Now!

https://www.lcwlegal.com/events-and-training/labor-relations-certification-program

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Training

Sept. 5	**"Preventing Workplace Harassment, Discrimination and Retaliation" and "The Future is Now – Embracing Generational Diversity and Succession Planning"** NorCal ERC | San Ramon | Joy J. Chen
Sept. 5	**"Public Service: Understanding the Roles and Responsibilities of Public Employees"** Ventura/Santa Barbara ERC | Webinar | Kristi Recchia
Sept. 6	**"Maximizing Performance Through Evaluation, Documentation and Discipline"** Gateway Public ERC | Pico Rivera | Christopher S. Frederick
Sept. 6	**"Maximizing Supervisory Skills for the First Line Supervisor"** Napa/Solano/Yolo ERC | Fairfield | Kristin D. Lindgren
Sept. 12	**"Navigating the Crossroads of Discipline and Disability Accommodation" and "Leaves, Leaves and More Leaves"** San Gabriel Valley ERC | Alhambra | T. Oliver Yee
Sept. 13	**"Managing the Marginal Employee" and "Nuts & Bolts Navigating Common Legal Risks for the Front Line Supervisor"** East Inland Empire ERC | Fontana | Danny Y. Yoo
Sept. 13	**"Disciplinary and Harassment Investigations: Who, What, When and How" and "Principles for Public Safety Employment"** San Diego ERC | Chula Vista | Stefanie K. Vaudreuil
Sept. 18	**"Maximizing Performance Through Evaluation, Documentation and Discipline" and "12 Steps to Avoiding Liability"** North San Diego County | San Marcos | Stephanie J. Lowe
Sept. 20	**"Difficult Conversations"** Los Angeles County Human Resources | Los Angeles | T. Oliver Yee
Sept. 20	**"A Supervisor's Guide to Labor Relations"** Monterey Bay ERC | Webinar | Che I. Johnson
Sept. 20	**"Public Sector Employment Law Update"** Orange County Consortium | San Juan Capistrano | Geoffrey S. Sheldon
Sept. 20	**"Maximizing Supervisory Skills for the First Line Supervisor"** San Joaquin Valley ERC | Ceres | Kristin D. Lindgren
Sept. 20	**"Conducting Disciplinary Investigations: Who, What, When and How"** San Mateo County ERC | Brisbane | Suzanne Solomon
Sept. 26	**"Preventing Workplace Harassment, Discrimination and Retaliation"** Humboldt County ERC | Arcata | Erin Kunze
Sept. 26	**"A Guide to Implementing Public Employee Discipline" and "Moving Into the Future"** Sonoma/Marin ERC | Rohnert Park | Lisa S. Charbonneau
Sept. 27	**"Public Sector Employment Law Update"** Bay Area ERC | Webinar | Richard S. Whitmore

Sept. 27 **“Difficult Conversations” and “Nuts and Bolts: Navigating Common Legal Risks for the Front Line Supervisor”**
Gold Country ERC | Roseville | Kristin D. Lindgren

Sept. 27 **“Iron Fists or Kid Gloves: Retaliation in the Workplace”**
Humboldt County ERC | Arcata | Erin Kunze

Sept. 27 **“Exercising Your Management Rights” and “Terminating the Employment Relationship”**
North State ERC | Red Bluff | Jack Hughes

Sept. 27 **“Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor”**
South Bay | Manhattan Beach | Danny Y. Yoo

Customized Training

Aug. 3 **“A Guide to Implementing Public Employee Discipline and Investigations”**
Metropolitan Water District of Southern California | Los Angeles | Christopher S. Frederick

Aug. 7,9 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
Midpeninsula Regional Open Space District | Los Altos | Joy J. Chen

Aug. 8 **“Discipline: Putting It Into Practice”**
County of Lassen, Department of Child Support Services | Susanville | Gage C. Dungy

Aug. 8 **“Everything Public Schools Need to Know About Contracts”**
Keenan | Torrance | Christopher Fallon

Aug. 8 **“Skelly Process”**
Orange County Sanitation District | Fountain Valley | Danny Y. Yoo

Aug. 9 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of Carlsbad | Stephanie J. Lowe

Aug. 9 **“Difficult Conversations and Investigations”**
County of Lassen, Department of Child Support Services | Susanville | Gage C. Dungy

Aug. 14 **“Implicit Bias”**
City of Pasadena | Suzanne Solomon

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

Aug. 15 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
Port of San Diego | Frances Rogers

Aug. 16 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
Mojave Water Agency | Apple Valley | Jennifer Palagi

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

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

Aug. 29 **“Preventing Workplace Harassment, Discrimination and Retaliation”**
City of La Habra | Lee T. Patajo

Aug. 30 **“Unconscious Bias and Microaggressions”**
City of Chino Hills | Kristi Recchia

Aug. 30	**"Risk Management Skills for the Front Line Supervisor"** Zone 7 Water Agency | Livermore | Lisa S. Charbonneau
Sept. 5	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Campbell | Erin Kunze
Sept. 12	**"Preventing Workplace Harassment, Discrimination and Retaliation and Mandated Reporting"** East Bay Regional Park District | Castro Valley | Erin Kunze
Sept. 12	**"Laws and Standards for Supervisors"** Orange County Probation | Santa Ana | Christopher S. Frederick
Sept. 13	**"Performance Management: Evaluation, Documentation and Discipline"** ERMA | Tulare | Kristin D. Lindgren
Sept. 13 "	**Ethics in Public Service and Preventing Workplace Harassment, Discrimination and Retaliation"** San Francisco Bay Area Rapid Transit District | Oakland | Morin I. Jacob
Sept. 14	**"Preventing Workplace Harassment, Discrimination and Retaliation"** County of San Luis Obispo | Christopher S. Frederick
Sept. 17	**"Ethics in Public Service"** City of Sunnyvale | Erin Kunze
Sept. 18	**"File That! Best Practices for Documents and Record Management"** City of Concord | Heather R. Coffman
Sept. 19	**"Courageous Authenticity & Conflict Resolution, Do You Care Enough To Have Critical Conversations?"** City of Pico Rivera | Kristi Recchia
Sept. 24, 25	**"Ethics in Public Service"** Merced County | TBD
Sept. 25	**"POBR"** City of Alameda Police Department | Morin I. Jacob
Sept. 25	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Stockton | Gage C. Dungy
Sept. 27	**"MOU's, Leaves and Accommodations"** City of Santa Monica | Laura Kalty

Speaking Engagements

Aug. 2	**"Webinar on Next Steps for Cities after Janus v. AFSCME"** League of Cities City Attorneys' Webinar | Webinar | Laura Kalty
Aug. 27	**"Janus Webinar"** League of California Cities Human Resources Webinar | Webinar | Jack Hughes
Sept. 11	**"Role of the Chief Class"** California Police Chiefs Association (CPCA) | Buena Park | J. Scott Tiedemann
Sept. 13	**"It Can Happen to #YouToo: Harassment Claims against City Officials"** League of California Cities 2018 Annual Conference | Long Beach | J. Scott Tiedemann & Kirsten Keith & Tammy Letourneau

Sept. 20	**"Labor Relations Training"** California State Association of Counties (CSAC) Labor Relations Class | Martinez | Richard S. Whitmore & Richard Bolanos & Gage C. Dungy
Sept. 20	**"Legal Update"** Riverside County Law Enforcement Executives Association (RCLEAA) | Temecula | Geoffrey S. Sheldon
Sept. 20	**"10 Things You Can Do Now to Comply CalPERS Rules"** Southern California Public Labor Relations Council (SCPLRC) Meeting | Cerritos | Steven M. Berliner
Sept. 26	**"Top Missteps Special Districts Should Avoid to Comply with Wage & Hour"** California Special Districts Association (CSDA) Annual Conference | Indian Wells | Peter J. Brown
Sept. 26	**"Town Hall- Legal Eagles"** CSDA Annual Conference | Indian Wells | Peter J. Brown
Sept. 26	**"Tackling Challenges in Accommodating Mental Disabilities in the Workplace"** Public Agency Risk Managers Association (PARMA) Chapter Meeting | La Palma | Danny Y. Yoo
Sept. 27	**"Drugs & Alcohol in the Workplace"** California Fire Chiefs Association (CFCA) | Sacramento | Morin I. Jacob

Seminars/Webinars

Aug. 7	**"Classification of Independent Contractors: Not as Easy as ABC"** Liebert Cassidy Whitmore | Vista | Stephanie J. Lowe
Aug. 9	**"Classification of Independent Contractors: Not as Easy as ABC"** Liebert Cassidy Whitmore | Citrus Heights | Kristin D. Lindgren
Aug. 15	**"Seminal PERB Cases and What They Mean for Your Agency's Labor Relations"** Liebert Cassidy Whitmore | Webinar | Adrianna E. Guzman
Sept. 12	**"Releasing Probationary Employees --More Complex Than you Might Think"** Liebert Cassidy Whitmore | Webinar | Suzanne Solomon
Sept. 13	**"The Public Employment Relations Board (PERB) Academy"** Liebert Cassidy Whitmore | Citrus Heights | Che I. Johnson & Kristi Recchia
Sept. 26	**"How to Successfully Implement and Defend A Light or Modified Duy Assignment for Temporarily Injured or Ill Employees"** Liebert Cassidy Whitmore | Webinar | Jennifer Rosner & Rachel Shaw

LCW Liebert Cassidy Whitmore

View more information and register for LCW seminars and webinars at:

www.lcwlegal.com/events-and-training

Copyright © 2018 LCW Liebert Cassidy Whitmore

Requests for permission to reproduce all or part of this publication should be addressed to Cynthia Weldon, Director of Marketing and Training at 310.981.2000.

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. To contact us, please call 310.981.2000, 415.512.3000, 559.256.7800, 916.584.7000 or 619.481.5900 or e-mail info@lcwlegal.com.