LCW Liebert Cassidy Whitmore

Client Update

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

January 2020

INDEX

LCW NEWS

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

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EMPLOYEE DISCIPLINE

Civil Service Commission Abused Its Discretion By Reducing Deputy's Discipline.

In 2010, Los Angeles County Sheriff's Department (Department) Deputies Mark Montez and Omar Lopez strip-searched an inmate who stole items from a commissary cart. Lopez searched the inmate while Montez monitored the hallway to provide security. During the search, Lopez struck the inmate multiple times with his fist. Montez was aware of the assault, but did not participate.

After the inmate threatened the commissary employee who reported the theft, Lopez took the inmate to a control booth and shoved his face into a wall, causing severe bleeding. Montez was not present during the second assault, but he arrived shortly thereafter. Montez also stood in front of the bloody wall, which led the Department to determine he was aware of the second assault. Montez did not report either assault. A custody assistant, a non-sworn employee working in the facility, also observed the second assault but did not report it.

In the subsequent investigation, Montez denied hearing any indications of assault during the first incident, and denied observing blood on the wall after the second incident. As a result, the County terminated Montez for failing to report the use of force and making false statements during the investigation.

Montez appealed his discharge to the County's Civil Service Commission. The Commission found that the Department had proven the misconduct. But, the Commission decided Montez's penalty was too severe because of the lesser penalty a non-sworn custody assistant received. The custody assistant, who witnessed but failed to report the second assault, also made false statements during the investigation. The custody assistant, however, received only a five-day retraining discipline with pay. The Commission reduced Montez's discharge to a 30-day suspension without pay.

The County petitioned the trial court to overturn the Commission's penalty determination. The trial court agreed with the County, and issued an order directing the Commission to set aside its decision to reduce Montez's discipline. Montez appealed.

On appeal, the court determined that the Commission abused its discretion when it reduced Montez's discipline. Courts will not change the disciplinary penalty that an administrative body – like the Commission – imposes, unless there has been an abuse of discretion. In public employee discipline cases, the primary consideration in assessing the disciplinary penalty is the extent to which the employee's conduct resulted in harm to the public service. Other relevant factors are the circumstances surrounding the misconduct, and the likelihood of its recurrence. If the administrative body's findings are not in dispute, however, an abuse of discretion occurs when the findings do not support its decision.

In this case, the Commission's findings were not in dispute. Montez had failed to report two incidents of inmate abuse and had not been truthful in the Department's investigation. Peace officers are held to higher standards of conduct than civilian

employees. Courts consider peace officer dishonesty to be highly injurious to the employing agencies and the public service. The court concluded that Montez's failure to report two incidents of abuse of an inmate constituted an "inexcusable neglect of his duty to safeguard the jail population," and his lies during the subsequent investigation "brought discredit upon his position and department, and forever undermined his credibility."

Moreover, Montez never recanted the false statements he made to the Department's investigators, and repeated them at the hearing before the Commission. The court found that honesty is not an isolated or transient behavior; instead, it is a continuing trait of character. The court found that the County did not need to retain deputies who lie to protect other deputies who harm inmates.

Thus, the court found that the Commission's decision to reduce Montez's discharge to a 30-day suspension was unsupported by its own findings.

County of Los Angeles v. Civil Service Com. of County of Los Angeles, 40 Cal.App.5th 871 (2019).

NOTE:

This case is another in a long line of cases that finds that termination is an appropriate penalty for peace officer dishonesty. Also important to this decision was that the deputy continued to be dishonest at his appeal hearing.

LABOR RELATIONS

Union Not Required To Exhaust Administrative Remedies Because MOU Did Not Provide For Class Grievances.

The Association for Los Angeles Deputy Sheriffs (ALADS) represents non-management deputy sheriffs and peace officers employed in the County of Los Angeles District Attorney's office. In 2017, the memorandum of understanding (MOU) between ALADS and the County contained provisions requiring the County to match compensation increases given to other safety employee unions. The MOU also contained a grievance procedure that ended in binding arbitration, to resolve any alleged violations of the MOU's terms. However, the MOU did not provide for class grievances.

During the MOU's effective period, the County approved a salary adjustment for another County safety employee union. ALADS thereafter initiated two grievances concerning the County's alleged failure to increase the salaries of ALADS's members to match the salary adjustment approved for other safety employees. As part of the grievance procedure, ALADS sent written requests for arbitration to the Employee Relations Commission (ERCOM). The County objected to the requests because ALADS could not initiate a grievance on behalf of the individuals it represents. According to ALADS, the County also refused to comply with a discovery order from ERCOM. As a result, the arbitrator handling the grievances took the scheduled arbitrations off calendar.

ALADS then sued the County; its lawsuit requested a writ of mandate requiring the County to comply with the MOU's compensation provisions. The County filed a demurrer on the grounds that ALADS failed to exhaust the administrative remedies provided by the MOU. The trial court agreed and sustained the demurrer without leave to amend.

The California Court of Appeal reversed and remanded the case back to the trial court for further proceedings. The failure to arbitrate in accordance with the grievance procedures in a MOU is a failure to exhaust administrative remedies. The Court of Appeal examined an exception to the exhaustion of remedies requirement. Under that exception, exhaustion of administrative remedies is not required if the available remedy is inadequate, or if pursuing that remedy would be futile.

ALADS argued that because class-wide relief was not available through the MOU's grievance process, it would need to prosecute separate individual grievance actions on behalf of each of its 7,800 members. The Court of Appeal agreed that would be an onerous, time-consuming process. The Court of Appeal decided that remedy was inadequate and that the exception to the exhaustion requirement applied.

There is no need to exhaust administrative remedies if the judicial action seeks relief on behalf of a class, and the available administrative procedures do not provide class-wide relief. Although ALADS's action against the County was a representative action on behalf of its members and not a class action, that distinction was immaterial because ALADS sought relief on behalf of a designated group of persons (its members), which was similar to a class action.

ALADS v. County of Los Angeles, 2019 WL6463183 (2019).

NOTE:

This case illustrates why an agency may not always rely on a failure to exhaust administrative remedies defense despite a failure to use an MOU grievance procedure.

Accordingly, agencies should closely examine their grievance procedures and consider whether to provide for class grievances.

County And Privately-Owned Medical Clinics Were Joint Employers.

Ventura County owns and operates Ventura County Medical Center (VCMC). VCMC contracts with a number of privately-owned clinics to provide medical services throughout the County.

The contracts between VCMC and the clinics are almost identical. Each clinic is owned by a physician, who serves as the clinic's medical director. Under the contracts, the clinics manage day-to-day operations and provide physicians and staff. However, the County provides and maintains the facilities, equipment, and furnishings for the clinics to operate; approves the operating budget for each clinic; and owns all revenues and accounts payable that the clinics generate. The County also trains clinic employees on VCMC policies. Clinic employees must attend a VCMC orientation and wear a badge that affiliates them with VCMC. Further, the County periodically reviews the work of clinic employees and conducts audits. Clinic employees could be disciplined if they did not follow VCMC policies.

SEIU, Local 721 (SEIU) sought to represent clinic employees. However, the County refused to process the representation petition. The County said it was not the "employer, joint or otherwise, of the persons SEIU purports to represent." Subsequently, SEIU filed an unfair practice charge with the Public Employment Relations Board (PERB) alleging that the County violated the Meyers-Milias-Brown Act by denying the petition.

The Administrative Law Judge (ALJ) dismissed the unfair practice charge. The ALJ found that PERB did not have jurisdiction because the County was not a single or joint employer of the clinic employees. SEIU challenged the ALJ's decision, and PERB reversed the ruling. PERB found that SEIU had met its burden of proof under both the single and joint employer doctrines. The County then petitioned the California Court of Appeal to review PERB's decision.

The court affirmed PERB's decision and concluded that the County and the private medical clinics are joint employers. A joint employer relationship exists when two or more employers exert significant control over the same employees so as to share or co-determine essential terms and conditions of employment. A joint-employer relationship is established if an entity retains the right to control and direct the activities of the person rendering service, or the manner and method in which the work is performed. The court found that substantial evidence supported PERB's finding that the County was a joint employer of clinic employees.

For example, the clinic employees' salaries and benefits were part of the clinic's annual operating budget, which the County had to approve. The County also owned all revenues and accounts payable that a clinic generates. Moreover, the County had a right to control patient care and personnel policies, training, and other employment conditions. Finally, the County indicated that it had a right to control clinic operations on its various federal and state reporting forms. Thus, the court determined PERB correctly found the County was a joint employer of the clinic employees.

County of Ventura v. Public Employment Relations Bd., 254 Cal. Rptr.3d 902 (2019).

NOTE:

Many agencies believe that contracting for services prevents a joint employment relationship. This case shows that significant control can create a joint employment.

WAGE AND HOUR

Judge Not Required To Approve FLSA Litigation Settlement.

Mei Xing Yu worked as a sushi chef at a restaurant owned and operated by Hasaki Restaurant, Inc. Yu sued Hasaki in New York State, on behalf of other similarly situated employees, for violating the Fair Labor Standards Act (FLSA) overtime provisions and New York labor laws. About three months later, Hasaki sent Yu a settlement offer for $20,000 plus reasonable attorneys' fees pursuant to Federal Rule of Civil Procedure 68 (Rule 68 offer).

Within a month, Yu sent the court notice that he was accepting the Rule 68 offer. The judge did not enter judgment. Instead, the judge directed the parties to submit a joint letter explaining why the settlement was fair and reasonable. Alternatively, the judge allowed the parties to argue why they believed that the judge was not required to approve their Rule 68 settlement.

The parties submitted a joint letter stating their opinion that the judge was not required to approve their settlement. The US Secretary of Labor submitted an amicus brief stating that judicial approval was required for FLSA settlements. Although Rule 68 contains

mandatory language requiring the clerk of the court to enter judgment without judicial approval, the judge noted that there were narrow exceptions to that rule for bankruptcy and class action settlements. The judge decided that FLSA settlements also fell within that narrow exception of Rule 68 offers that require judicial approval. The parties appealed to the US Court of Appeals for the Second Circuit.

The Second Circuit reviewed whether a Rule 68 offer of judgment that disposes of a FLSA claim in litigation needs to be reviewed by a district court or the US Department of Labor (DOL) for fairness before the clerk of the court can enter judgment.

The Second Circuit found that although FLSA authorizes the DOL to bring FLSA actions and to supervise the payment of unpaid wages or overtime pay, nothing in the FLSA commands that FLSA litigation can only be settled with a judge's approval. Conversely, the bankruptcy law, for example, explicitly requires judicial approval of settlements.

The Second Circuit also reviewed and dismissed several arguments that the amici parties raised to support their contention that judicial review and approval was required for FLSA settlements. The Second Circuit decided that no implied requirement for judicial approval could be read into Supreme Court or other court precedents, the FLSA's legislative history, or the remedial purpose of the FLSA.

Mei Xing Yu, et al v. Hasaki Restaurant, et al., 2019 WL 6646618 (2nd Cir.2019).

Note:

This case is limited to FLSA cases that are filed in the Second Circuit and settled through Rule 68 offers of compromise. It is unknown if the Ninth Circuit, which covers California, would follow this precedent. Because this case is thorough and well-reasoned, however, it is persuasive.

DISABILITY

Case Dismissed Because Employee Presented No Evidence Of An Adverse Employment Action And Failed To Notify Employer Of A Disability.

John Doe worked as a psychologist at Ironwood State Prison for the California Department of Corrections and Rehabilitation (CDCR). Between 2013 and 2016, Doe submitted three accommodation requests to assist him with his concentration, including a quieter workspace, a thumb drive, and a small recorder. In support of his requests, Doe submitted medical notes from his physician, which indicated that Doe had a "learning disability," a "chronic work related medical condition" and a "physical disability" that made him "easily distracted" and disorganized when under stress.

When CDCR could not accommodate Doe's requests, he voluntarily took two paid medical leaves of absence. In 2016, during a third leave of absence, Doe submitted his resignation. Doe then sued CDCR, alleging discrimination, retaliation and harassment based on disability in violation of the Fair Employment and Housing Act (FEHA). Doe alleged he had two disabilities: asthma and dyslexia. Doe also alleged CDCR violated FEHA by failing to both accommodate his disabilities and engage in the interactive process. The trial court granted summary judgment for CDCR and Doe appealed. The California Court of Appeal affirmed summary judgment for CDCR on the following grounds.

The Court of Appeal held that Doe's discrimination and retaliation claims failed because he presented no evidence that he was subjected to an adverse employment action—an essential element of both claims. Doe alleged CDCR subjected him to adverse employment actions by (i) criticizing his work performance, (ii) ordering a wellness check when he was out sick, (iii) suspecting him of bringing his personal cell phone into work in violation of work policy, (iv) assigning him to a primary crisis position on the same day as a union meeting, and (v) forcing him to take medical leave when he did not receive his requested accommodations.

The Court of Appeal held that the CDCR's alleged actions were minor conduct that upset Doe, but did not threaten to materially affect the terms and conditions of his job. Therefore, the actions did not reach the level of an adverse employment action. Further, Doe's decision to take medical leave was not an adverse employment action because the leave was voluntary and Doe requested it. The Court of Appeal also affirmed that CDCR's failure to accommodate Doe's alleged disability did not qualify as an adverse employment action for the purposes of a discrimination or retaliation claim.

As for Doe's harassment claim, the Court of Appeal held that none of the alleged conduct was subjectively severe enough to constitute harassment. Rather, each incident involved a personnel decision by Doe's supervisor within the scope of his supervisory duties. Simply because Doe felt his supervisor performed those duties in a negative or malicious way did not transform the conduct into disability harassment.

Finally, the Court of Appeal held that Doe's accommodation and interactive process claims failed because he presented insufficient evidence to support that CDCR was on notice that he had a FEHA-covered disability. Doe's medical notes indicated that he had a "chronic work related medical condition" and "physical disability," but did not state that Doe had asthma or dyslexia. Further, the medical notes failed to describe the extent of limitations his disability caused, which rendered CDCR unable to determine whether it could reasonably accommodate Doe.

Doe v. Department of Corrections and Rehabilitation, 2019 WL 6907515 (2019).

NOTE:

Employers should request employees provide reasonable documentation to support a request for accommodation for an alleged disability. This allows the employer to determine whether there is an FEHA-covered disability and to consider the full range of potential accommodations in the interactive process.

IMMUNITY

Agency Not Liable For Collision Because Deputies Acknowledged Receipt Of Pursuit Policies.

Vehicle Code section 17004.7 gives a public agency immunity from liability for collisions involving peace officer pursuits if the agency follows a written vehicular pursuit policy and provides annual trainings on the topic.

In April 2014, the Alameda County Sheriff's Office (Sheriff's Office) revised its vehicle pursuit policy (Policy). The lengthy Policy included guidelines on "initiating, continuing or terminating pursuits," which covered 15 of the 19 guidelines established by the Commission on Peace Officer Standards and Training (POST Commission). The Policy also included guidelines on "aircraft support procedures," which similarly outlined considerations established by the POST Commission. The Sheriff's Office also provided annual training on vehicular pursuits through a training video covering the same topics and guidelines addressed in the Policy.

The Sheriff's Office required its peace officers to certify electronically that they read and understood the agency's employment policies. Supervisors within the Sheriff's Office would audit these electronic certifications and follow up with those peace officers who failed to timely comply with the agency's policy certification requirements. By October 2014, the Sheriff's Office obtained electronic certifications from approximately 80% of its peace officers for the revised Policy.

In October 2014, a car fleeing from Sheriff's Office deputies struck William Riley. Riley then sued the Sheriff's Office. The trial court granted summary judgment for the Sheriff's Office, holding that the agency complied with the policy and training requirements under Section 17004.7. Therefore, the Sheriff's Office was immune from liability for Riley's injuries.

On appeal, Riley argued that (i) the Policy was not properly promulgated within the meaning of Section 17004.7 and (ii) the Policy failed to satisfy Section 17004.7's training requirements and minimum standards regarding speed and air support. The California Court of Appeal disagreed with Riley's contentions, and affirmed the trial court's ruling that the Sheriff's Office was immune from liability.

Specifically, the Court of Appeal held that the Sheriff's Office properly promulgated its Policy. Riley argued that Section 17004.7 required the Policy to contain explicit certification language. But, the Court of Appeal held that the statute required only that all peace officers of an agency certify in writing that they received, read, and understood the policy. Therefore, the electronic signature page was sufficient under Section 17004.7. The statute did not require the Sheriff's Office to include similar certification language in the Policy itself.

On the promulgation issue, the Court of Appeal also held that the Sheriff's Office showed that it had a system in place reasonably designed to apprise all peace officers of the Policy, and that supervisors followed up with officers who failed to certify electronically that they read and understood the Policy. The Sheriff's Office failed to obtain certifications from approximately 20% of peace officers at the time of Riley's injury, but the Court of Appeal held that while the agency could improve its follow-up process, the current procedures were nonetheless adequate under Section 17004.7.

The Policy satisfied minimum standards relating to speed and air support under Section 17004.7. Although the Policy failed to include a section that specifically addressed speed, the Policy did address the relevant POST Commission's guidelines. Similarly, the Policy's section on air support sufficiently addressed the POST Commission's guidelines. The Court of Appeal declined to require explicit reference to each POST guideline when the Policy as a whole furthered the Legislature's goal of encouraging fewer and safer pursuits. Similarly,

the Sheriff's Office driver training video was sufficient under Section 17004.7 because it presented the same guidelines outlined in the Policy.

Riley v. Alameda County Sheriff's Office, 2019 WL 6872466 (2019).

NOTE:

This case illustrates the importance of having updated written policies that peace officers timely acknowledge, either in writing or electronically.

CALIFORNIA PUBLIC RECORDS ACT

Attorneys' Fees Awarded To Newspaper That Defeated A Reverse-CPRA Action.

The Metropolitan Water District (MWD) is a cooperative water wholesaler with 26 members including the City of Los Angeles Department of Water and Power (DWP). In 2014, following then-Governor Brown's declaration that California was in a drought, MWD began a Turf Removal Rebate Program. The Program provided money or rebates to customers of its member agencies who replaced their grass with drought tolerant landscaping. MWD paid $370 to $450 million in rebates. There were about 40,000 participants in the Program, 7,800 of whom were DWP customers. The City of Los Angeles's Controller questioned the utility of the Program and observed that the rebates were concentrated in certain neighborhoods and certain businesses.

On May 19, 2015, a reporter for the San Diego Union Tribune (Tribune) made a California Public Records Act (CPRA) request to MWD for information related to the participants in the Program including their names, addresses, and rebate amounts.

Before responding to the Tribune's request, the MWD provided a copy of the request to DWP. DWP objected to revealing its customers' names and addresses. DWP and MWD thereafter agreed that MWD's disclosure would be limited and redacted.

On July 31, 2015, DWP sued to prevent MWD from releasing information about anyone (even individuals who were not DWP customers) who participated in the Program. This type of lawsuit is referred to as a "reverse CPRA" action. Reverse CPRA actions are viewed as necessary to protect the privacy rights of individuals whose personal information may be contained in government records. The trial court issued a temporary restraining order to prevent the disclosure of DWP customer information. The West Basin Municipal Water District, Foothill Municipal Water District, and the Upper San Gabriel Municipal Water Districts (Utility Intervenors) thereafter joined DWP's lawsuit and sought similar retraining orders for their own customers.

On August 6, 2015, the Tribune intervened in DWP's lawsuit against MWD and at the same time, filed a CPRA cross-petition against MWD to compel the disclosure of the names and addresses of Program recipients.

On January 15, 2016, the trial court denied DWP's writ petition and granted the Tribune's cross-petition to compel disclosure of the records from MWD. The trial court also awarded the Tribune's attorneys' fees for intervening in the reverse CPRA lawsuit. However, the trial court declined to award the Tribune attorneys' fees for the legal briefing on the Tribune's fee motion.

The California Court of Appeal upheld the trial court's decision to award attorneys' fees to the Tribune on the reverse CPRA action. The Court of Appeal found that the Tribune met the requirements of Code of Civil Procedure section 1021.5, which is known as the "private attorney general" exception to the general rule that parties bear their own attorneys' fees. The court reasoned that the Tribune was attempting to enforce the public's right to know how the government uses public money, and that disclosure of the records sought would confer a significant benefit to the public.

The Court of Appeal overturned the trial court's decision to deny the Tribune its fees for work related to briefing on its motion for attorneys' fees. The Court of Appeal found that the attorney work was not duplicative, and the Tribune was entitled to those fees as the prevailing party.

City of Los Angeles v. Metropolitan Water District, 42 Cal.App.5th 290 (2019).

NOTE:

Agencies considering bringing a reverse CPRA action must consider the possibility of an attorneys' fee award against the agency if the party seeking the records intervenes in that action, and receives a ruling ordering disclosure of the records at issue.

DID YOU KNOW....?

Whether you are looking to impress your colleagues or just want to learn more about the law, LCW has your back! Use and share these fun legal facts about various topics in labor and employment law.

- Assembly Bill No. 5 goes into effect January 1, 2020 at Labor Code section 2750.3. AB 5 codifies the "ABC" test for determining independent contract status that the California Supreme Court adopted in its 2018 decision *Dynamex Operations West, Inc. v. Superior Court,4 Cal.5th 903* (2018).
- New Department of Labor regulations, effective January 15, 2020, clarify that holiday in lieu pay may be excluded from the regular rate of pay. (29 CFR section 778.219(a)(4).)
- As of January 1, 2020, employers will now be required to provide a private lactation room other than a bathroom that must be in "close proximity to the employee's workspace." (Senate Bill No. 142.) Previously, California employers were only required to allow employees to use their break time to express breast milk and to provide a private location other than a bathroom for such lactation accommodation. (Labor Code section 1031.)

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: A Human Resources Manager contacted LCW and explained that the agency accidentally overpaid an employee. The Human Resources Manager wanted to know if the agency could unilaterally withhold the amount the agency overpaid the employee from the employee's next paycheck.

Answer: The attorney advised that the agency could not withhold any amount from the employee's paycheck because doing so would be unlawful "self-help." The attorney explained that the agency could ask the employee to voluntarily repay the amount or recover the funds in small claims court.

BENEFITS CORNER

ACA's Cadillac Tax Repealed.

Previously delayed until 2022, the Affordable Care Act's so-called "Cadillac Tax" has now been repealed entirely as part of a government spending bill signed into law on December 20, 2019. The excise tax, which was set at 40%, would have applied to employer-sponsored healthcare plans with annual premiums exceeding certain dollar thresholds for single or family coverage.

Fifth Circuit Affirms Unconstitutionality Of ACA Individual Mandate, Directs District Court To Reassess Whether Other Parts Of The Law Can Stand.

The U.S. Court of Appeals for the Fifth Circuit has ruled that the Affordable Care Act's Individual Mandate is unconstitutional, partially upholding a controversial federal District Court decision out of Texas. Under the Individual Mandate as initially conceived, individuals who declined to purchase health insurance coverage could incur a monetary penalty known as the "shared responsibility payment." In response to early legal challenges questioning Congress' authority to establish the Individual Mandate, the U.S. Supreme Court construed the shared responsibility payment as a tax that fell within Congress' power of taxation under the U.S. Constitution. However, according to the District Court and now the Fifth Circuit, this constitutional hook was eliminated when Congress reduced the shared responsibility payment to zero as part of the Tax Cuts and Jobs Act of 2017.

But the Fifth Circuit challenged the lower court on the issue of severability. According to the District Court, the Individual Mandate is inextricably linked to the ACA's other parts such that they cannot be severed. The District Court therefore held that absent the Individual Mandate, the entire ACA, which includes various provisions directed at employers, is invalid.

Not so fast, said the Fifth Circuit. While declining to decide the severability issue itself, the Fifth Circuit criticized the District Court opinion for "not explain[ing] with precision how particular portions of the ACA as it exists post-2017 rise or fall on the constitutionality of the [I]ndividual [M]andate." Accordingly, the Fifth Circuit

remanded (i.e., sent the decision back to) the District Court, directing it to "employ a finer-toothed comb" and "conduct a more searching inquiry into which provisions of the ACA Congress intended to be inseverable from the individual mandate."

So what does all of this mean for employers wondering about that status of the ACA's employer-directed provisions? For now, the answer is very little. Absent congressional action, the ruling is likely to keep the operational parts of the ACA in legal limbo for several months, if not years. In the meantime, employers should continue to comply with the ACA's employer shared responsibility provisions, restrictions on reimbursement arrangements that constitute "employer payments plans," and various reporting requirements, as applicable. (See our Special Bulletin at lcwlegal.com/news for upcoming reporting deadlines.)

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NEW TO THE FIRM

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Shane Young is an Associate in our San Francisco office where he advises clients in labor and employment matters including employee hiring, firing, and discipline, personnel grievances, complaints by and against employees, internal policies, and labor relations.

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Jessica Tam is an Associate in our San Francisco office and provides counsel to the cities, counties, special districts and education clients on a range of labor, employment and education matters.

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Savana Manglona is an Associate in our Sacramento office and provides advice and counsel to clients pertaining to labor and employment law and litigation. She also supports the firm's legislative tracking efforts on labor and employment law legislation.

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Daniella Bahrynian is an Associate in our Los Angeles office. She assists public sector agencies and educational institutions on a variety of matters including labor, employment, and education law. Prior to becoming a lawyer, Daniella taught third grade for three years through Teach for America.

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FIRM PUBLICATIONS

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

Congratulations to San Francisco Partner **Linda Adler** for being quoted in a *Law360* article about AB 5 and the new Independent Contractor test and how businesses should take a close look in light of the new law.

Fresno Partner **Che Johnson** and Sacramento Attorney **Lars Reed** authored an article for the *Daily Journal* on the looming pension reform for public agencies.

Sacramento Partner **Gage Dungy** and Associate **Savana Manglona** authored an article for *Bloomberg Law* on the new lactation accomodation requirements that take effect Jan. 1, 2020.

Sacramento Partner **Gage Dungy** and Associate **Savana Manglona** authored an article for Law.com's *The Recorder* on "What Employers Should Know About California's New Lactation Accommodation Requirements."

Los Angeles Partner **Oliver Yee** and Associate **Kaylee Feick** authored an article for the *Daily Journal* on "Navigating the Impacts of AB5 for Public Agency Employers."

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Training

Jan. 8 **"Managing the Marginal Employee"**
North State ERC | Webinar | Michael Youril

Jan. 9 **"Public Sector Employment Law Update"** & **"Navigating the Crossroads of Discipline and Disability Accommodation"**
East Inland Empire ERC | Fontana | Geoffrey S. Sheldon

Jan. 9 **"Finding the Facts: Employee Misconduct & Disciplinary Investigations"**
Gateway Public ERC | Lakewood | James E. Oldendorph

Jan. 9 **"Legal Issues Regarding Hiring and Promotion"**
San Mateo County ERC | Brisbane | Lisa S. Charbonneau

Jan. 15 **"Public Sector Employment Law and Legislative Update"**
Bay Area, NorCal & San Diego ERC | Webinar | Richard S. Whitmore

Jan. 16 **"Labor Code 101"**
South Bay ERC | Webinar | Stephanie J. Lowe

Jan. 16 **"Public Service: Understanding the Roles and Responsibilities of Public Employees"** & **"Preventing Workplace Harassment, Discrimination and Retaliation"**
West Inland Empire ERC | Diamond Bar | Ronnie Arenas

Jan. 29 **"Exercising Your Management Rights"**
Gold Country ERC | Webinar | Richard Bolanos

Jan. 30 **"Managing the Marginal Employee"**
L.A. County Human Resources Consortium | Webinar | Melanie L. Chaney

Feb. 5 **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"** & **"Navigating the Crossroads of Discipline and Disability Accommodation"**
Central Valley ERC | Clovis | Jesse Maddox

Feb. 5 **"Finding the Facts: Employee Misconduct & Disciplinary Investigations"** & **"Public Sector Employment Law Update"**
Coachella Valley ERC | Palm Desert | Geoffrey S. Sheldon

Feb. 6 **"Addressing Workplace Violence"** & **"Iron Fists or Kid Gloves: Retaliation in the Workplace"**
Imperial Valley ERC | El Centro | Stefanie K. Vaudreuil

Feb. 6 **"Administering Overlapping Laws Covering Discrimination, Leaves and Retirement"**
North San Diego County ERC | Rancho Santa Fe | Frances Rogers & Jeremiah Heisler

Feb. 12 **"Navigating the Crossroads of Discipline and Disability Accommodation"** & **"Management Guide to Public Sector Labor Relations"**
Central Coast ERC | Arroyo Grande | Che I. Johnson

Feb. 12 **"Disaster Service Workers - If You Call Them, Will They Come?"** & **"The Future is Now - Embracing Generational Diversity and Succession Planning"**
NorCal ERC | Pleasant Hill | Lisa S. Charbonneau

Feb. 12 **"The Future is Now - Embracing Generational Diversity and Succession Planning"** & **"Disaster Service Workers - If You Call Them, Will They Come?"**
North State ERC | Redding | Gage C. Dungy

Feb. 12 **"Navigating the Crossroads of Discipline and Disability Accommodation"** & **"Privacy Issues in the Workplace"**
Ventura/Santa Barbara ERC | Simi Valley | T. Oliver Yee

Feb. 13 **"A Guide to Implementing Public Employee Discipline"**
Gateway Public ERC | Long Beach | Mark Meyerhoff

Feb. 13 **"Management Guide to Public Sector Labor Relations"**
San Mateo County ERC | Webinar | Richard Bolanos

Feb. 13 **"12 Steps to Avoiding Liability"** & **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"**
West Inland Empire ERC | Diamond Bar | Laura Drottz Kalty

Feb. 19 **"Finding the Facts: Employee Misconduct & Disciplinary Investigations"** & **"Management Guide to Public Sector Labor Relations"**
San Gabriel Valley ERC | Alhambra | Melanie L. Chaney

Feb. 19 **"Prevention and Control of Absenteeism and Abuse of Leave"**
South Bay ERC | Palos Verdes Estates | Danny Y. Yoo

Feb. 20 **"The Future is Now - Embracing Generational Diversity and Succession Planning"**
LA County Human Resources Consortium | Los Angeles | Christopher S. Frederick

Feb. 20 **"Legal Issues Regarding Hiring"** & **"File That! Best Practices for Document and Record Management"**
Napa/Solano/Yolo ERC | Napa | Jack Hughes

Customized Training

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

Jan. 8 **"Communications"**
City of San Bernardino Municipal Water Department | San Bernardino | Kristi Recchia

Jan. 8 **"Preventing Workplace Harassment, Discrimination and Retaliation and Maximizing Supervisory Skills for the First Line Supervisor"**
Mono County | Mammoth Lakes | Gage C. Dungy

Jan. 15 **"Nuts & Bolts Navigating Common Legal Risks for the Front Line Supervisor"**
City of Westminster | Danny Y. Yoo

Jan. 15 **"Labor Negotiations from Beginning to End!"**
Port of Stockton | Stockton | Gage C. Dungy

Jan. 16 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Mountain View | Heather R. Coffman

Jan. 30 **"The Future is Now - Embracing Generational Diversity & Succession Planning"**
Employment Risk Management Authority | Merced | Michael Youril

Feb. 4 **"Maximizing Performance Through Evaluation, Documentation, and Corrective Action"**
City of Ventura | Kristi Recchia

Feb. 5 **"Technology and Employee Privacy"**
Employment Risk Management Authority | Rancho Cucamonga | Joung H. Yim

Feb. 6 **"Inclusive Leadership"**
San Diego County Water Authority | San Diego | Kristi Recchia

Feb. 11 **"Maximizing Supervisory Skills for the First Line Supervisor"**
City of Clovis | Shelline Bennett

Feb. 11 **"Legal Aspects of Violence in the Workplace"**
Midpeninsula Regional Open Space District | Los Altos | Heather R. Coffman

Feb. 13,18,20 **"Legal Aspects of Violence in the Workplace"**
Midpeninsula Regional Open Space District | Los Altos | Heather R. Coffman

Feb. 19 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of La Habra | Christopher S. Frederick

Speaking Engagements

Jan. 9 **"2020 Public Sector Employment Law Updates"**
International Public Management Association for HR (IPMA-HR) Sacramento-Motherlode Chapter | Auburn | Gage C. Dungy

Jan. 16 **"2020 Legislative Update"**
Inland Empire Public Management Association for Human Resources (IEPMA-HR) | Rancho Cucamonga | Laura Drottz Kalty

Jan. 16 **"2020 Public Sector Employment Law Updates"**
IPMA-HR Sacramento-Motherlode Chapter | West Sacramento | Gage C. Dungy

Jan. 29 **"Hiring CalPERS Retirees the Right Way"**
California Society of Municipal Finance Officers (CSMFO) Annual Conference | Anaheim | Steven M. Berliner & Renee Ostrander

Feb. 4 **"Annual Employment Law Update: Recent Cases and Trends - NEW for 2020"**
California Special Districts Association (CSDA) | Webinar | Gage C. Dungy

Feb. 7 **"Legal Update"**
College and University Professional Association for Human Resources (CUPA-HR) Southern California Chapter Winter Conference | Los Angeles | Judith S. Islas

Feb. 20 **"Labor Relations in 2020"**
Southern California Public Labor Relations Council (SCPLRC) Annual Conference | Lakewood | Laura Drottz Kalty

Feb. 20 **"Legal Trends"**
SCPLRC Annual Conference | Lakewood | J. Scott Tiedemann

Seminars

Jan. 22 **"Costing Labor Contracts"**
LCW Conference 2020 | San Francisco | Kristi Recchia & Che I. Johnson

Jan. 23-24 **"LCW Conference"**
LCW Conference 2020 | San Francisco

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